



Pair of DICE CLE Programs

Free for Bar Members on October 14 and November 4, 2022

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The Cyber Law Issue

OCTOBER 2022

Special announcement

**Las Vegas Raiders President
Sandra Douglass Morgan
Set as Featured Speaker
at Bar Luncheon on
October 26, 2022**

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Featured inside

Volunteers needed for
UNLV Law Mentorship
Program and Client Counseling
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Legal Technology Enhances the
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CLE Article #13: Is Nevada Cyber
Law Keeping Up with National
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Celebrate Pro Bono Week!
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Pictured: Sandra Douglass Morgan.
Photo courtesy of Las Vegas Raiders.

COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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March 2022	Educational Law	2/1/2022
April 2022	Environmental Health	3/1/2022
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October 2022	Cyber Law	9/1/2022
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Attorney Mentors Sought for Boyd Law Mentorship Program

Members of the bar are invited to mentor students at the UNLV William S. Boyd School of Law. The new mentorship program at UNLV Law is designed to pair a first-generation law student with an attorney in the Las Vegas area. First-generation students often feel, and are, alone when trying to navigate the legal field. The purpose of this program is to bridge that gap. The attorney-mentor is someone the law student-mentee can go to for any questions they might have about law school, summer internships, practice areas, the bar exam, entry into the legal field, etc. Interested attorneys are invited to fill out the excel spreadsheet and send it to elody.tignor@ogletree.com. The spreadsheet is available from the Clark County Bar's website at <https://clarkcountybar.org/diversity-inclusion-activities/>. For more information about the mentorship program, reach out to Elody Tignor at Ogletree Deakins or Brian Wall, Associate Dean for Student Affairs, UNLV Law. **☎**

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Legal Technology Enhances the Lives of Lawyers

By Nedda Ghandi, Esq.

While this issue focuses on legal issues in cyber law, there is an additional consideration to be made as to how legal technology is evolving. The past few years have seen a shift in using technology to understand the business of law and not just focusing solely on the practice of law. We are no longer simply using technology for practice management, legal research, or billing applications and software. Law firms need to start using technology in the way corporations would to drive the business of law and optimize their practice. Technological solutions involve an investment, which means spending the necessary money to meet client demands. While some law firms may show resistance, the winning, competitive firms will understand the value these technologies add to their business.

Legal technology enhances the lives of lawyers with remote work opportunities, constant connectivity, better timekeeping and billing, and more. Legal technology is also evolving to solve the overload of information and data that is endemic in the practice. Law firms realize the value of artificial intelligence for managing day-to-day tasks. Another priority for law firms should be optimal data security and privacy. Cybercrime is on the rise, especially in the legal sector. As law firms shift from in-person to a remote or hybrid work environment, more and more sensitive information is at risk from a hack or breach from bad actors. Law firms have a responsibility not only to their own businesses but to provide their clients with the assurance that the systems and processes they are using provide the best available protection.

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.

Law firms have a responsibility not only to their own businesses but to provide their clients with the assurance that the systems and processes they are using provide the best available protection.

Technology has also made modern clients more anxious than ever, and they expect fast responses to questions and concerns from legal teams. Clients are looking for attorneys who are available and ready to answer questions and provide comfort with the stress involved in their cases. This puts considerable strain on lawyers, but opportunities are available for law firms to invest in solutions that can resolve these demands. To promote work-life balance, law firms can consider working with partner organizations or establishing 24/7 website and phone access to help clients when lawyers and legal teams are unavailable.

Though traditional in its approach, the legal industry is becoming more and more comfortable with automation, remote hearings, video conferences, and other technology offerings that improve client communications, streamline workflows, and enhance work-life balance. Done correctly, legal technology can remove existing barriers and positively impact the legal industry. **☛**





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Bar Activities



CCBA Volunteers for The Just One Project

On August 20, 2022, several CCBA members volunteered to distribute groceries to people served by The Just One Project. The activity was held at Canyon Springs HS on August 20, 2022. Special thanks to all who signed up to volunteer including:

Benjamin Gordon
Mariteresa Rivera-Rogers
Annette Bradley
Michael Wendlberger
Tiffany Doctors
Sarah Thornton
April Anstett
Hon. Elana Graham
Marni Watkins
Stu Rich
Daniel O'Brien
Christina LoRusso
Kristine Brewer
Brianna Bower
W. Reese Levins

Nevada Ballet Special Offers for CCBA Members

The CCBA has partnered with Nevada Ballet Theatre for the 2022-2023 season. The CCBA will get a limited number of VIP level seats for select performances of the Nevada Ballet Theatre productions listed below:

- **Dracula** - Sat. 10/8/2022 (7:30pm)
- **The Nutcracker** - Fri. 12/16/2022 (7:30pm), Sat. 12/17/2022 (2:00pm)
- **Blue Until June** - Sat. 2/18/2023 (7:30pm)

- **Wizard Of Oz** - Sat. 5/13/2023 (7:30pm), Sat. 5/20/2023 (2:00pm)

CCBA members are invited to request the use of the CCBA's tickets or the special code for discount pricing on the purchase of their own tickets for select performances. Restrictions apply to this offer. For more information, see <https://clarkcountybar.org/member-benefits/ccba-ballet-tickets-special-offer/> or contact Donna at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101. Phone: (702) 387-6011.

Call for Volunteers for CCBA Group Activity at U.S. Vets-Las Vegas

On Saturday, December 3, 2022, from 11:30 a.m. to 1:00 p.m., bar members are invited to volunteer with the CCBA's Community Service Committee at a group activity at US Vets-Las Vegas at 525 E Bonanza Rd, Las Vegas, Nevada. The activity is to serve food and distribute blankets to people in need who are served by US Vets.

To volunteer for this event, please send an email to StephanieAbbott@clarkcountybar.org. Thanks! 🇺🇸

Member Watch

Catherine Mazzeo was promoted to Vice President/General Counsel and Compliance Officer at Southwest Gas Corporation. In her new role, Cathy oversees the Company's Legal, Risk Management and Corporate Compliance functions. Cathy graduated from UNLV's Boyd School of Law in 2002 and spent 8 years in private practice before joining Southwest Gas in 2010. She serves on the State Bar of Nevada Board of Governors and is a Past President of the CCBA (2016).

Stephen Davis and **Matthew Tsai** have joined Holland & Hart as associates in its Construction and Real Estate Development practices in Las Vegas, Nevada.

Member Watch is an editorial department in the *Communiqué* to make a short announcement about a CCBA member. Content submitted for Member Watch is limited to text and is subject to editing for format, style, and length. Space is limited and placement is not guaranteed. To guarantee placement of an announcement in *Communiqué*, place a display ad. For more information, reach out to StephanieAbbott@clarkcountybar.org. 🇺🇸



CALL FOR VOLUNTEERS

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We need volunteers to judge the Clark County Bar Association's 24th Annual Client Counseling Competition at the William S. Boyd School of Law scheduled for Friday, October 21, and Saturday, October 22, 2022.



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Sandra Douglass Morgan Featured Speaker at October Bar Luncheon

RSVP with payment to the Clark County Bar Association must be received by October 20, 2022.

On October 26, 2022, Sandra Douglass Morgan, President of the Las Vegas Raiders, will make a special presentation for members of the Nevada Bar during a luncheon event at Piero's Italian Cuisine. Bar members are invited to attend and celebrate the professional development and career of this compelling leader.

Sandra Douglass Morgan is a visionary and trailblazer with more than two decades of leadership experience in the sports, gaming, legal and corporate sectors. She has served as a chief regulator, director, attorney, and advisor to integrated resorts, casinos, and telecommunications companies. No stranger to historic firsts, Sandra was named President of the Las Vegas Raiders by Owner Mark Davis in July of 2022, making her the first Black female team president in the National Football League's history. Having an adept understanding of the community as a native Las Vegas, Sandra accepted the role with the vision of making the city the sports capital of the world.

Prior to her joining the Raiders, Sandra served as Chairwoman of the Nevada Gaming Control Board. As the chief regulator for Nevada's dominant billion-dollar gaming industry, Sandra led the passage and implementation of cashless wagering regulations, ensured that gaming licensees adopted policies prohibiting discrimination and harassment, and led a team of 400 employees in five cities across the state of Nevada. The Las Vegas native was the first person of color and the second woman to serve as Chair in the state's history. Sandra also served as a Commissioner on the Nevada State Athletic Commission and was the first Black City Attorney in the State of Nevada when she was the chief legal officer for the City of North Las Vegas, where she served from 2008 to 2016.

The Clark County Bar Luncheon is sponsored by Bank of Nevada, Cusick Insurance Brokers, Dillon Health, and First Legal. Doors open at 11:00 a.m. for check-in and networking. Buffet services begins at 11:40 a.m. Featured presentations will begin at 12:00.

The Clark County Bar Luncheon is open to attendance by all members of the Nevada legal community; however, space will be limited. Pricing is at \$70 per CCBA member and \$85 per non-member. RSVP with payment to the Clark County Bar Association must be received by October 20, 2022. Cancellations must be submitted in writing to the CCBA via email to Donnaw@clarkcountybar.org by 10/20/2022. Qualifying refunds of the event registration fee less a \$15 processing fee. No refunds will be issued after 10/20/2022. To RSVP, complete the form at <https://clarkcountybar.org/> or call the CCBA at (702) 387-6011. 📍



*Sandra Douglass Morgan
President, Las Vegas Raiders*

Bar Luncheon Sponsors



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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

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



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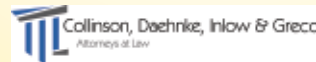
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DICE Hosts Programs on Critical Race Theory on October 14 and November 4, 2022

On October 14 and November 4, 2022, two special events for the continuing legal education of Nevada lawyers will be held in-person and webcast via Zoom at the State Bar of Nevada office in Las Vegas. These events are hosted by the Diversity and Inclusion Committee for Equity (DICE) and sponsored by the Clark County Bar Association, Las Vegas Chapter of the National Bar Association, Las Vegas Legal Video, and the UNLV Program on Race, Gender & Policing.

Members of the State Bar of Nevada are invited to attend these presentations in the DICE CLE series:

1. “An Introduction to Critical Race Theory” on Friday, October 14, 2022
2. “Critical Race Theory on Civil Rights and Criminalization” on November 4, 2022

Each presentation will be held from 12:00 to 1:00 p.m. followed by a short Q&A and reception. Light refreshments will be served for the participants who attend the events in person. There will be no charge for attendance.

The events will be non-partisan discussions to demystify the important and current topic of critical race theory (CRT) and feature panel presentations made by notable law professors from the William S. Boyd School of Law at the University of Nevada, Las Vegas, and the University of San Diego School of Law.

About the panelists

Roy L. Brooks is the Warren Distinguished Professor of Law at the University of San Diego. Brooks served as a senior editor of the Yale Law Journal, clerked for the Honorable Clifford Scott Green of the U.S. District Court in Philadelphia, and practiced corporate law with Cravath, Swaine & Moore in New York City. He joined the USD School of Law faculty in 1979.

Frank Rudy Cooper is William S. Boyd Professor of Law and Director of the Program on Race, Gender, and Policing at the University of Nevada, Las Vegas, William S. Boyd School of Law.

Addie C. Rolnick is the San Manuel Professor of Law at the University of Nevada, Las Vegas, William S. Boyd School of Law. She is the Faculty Director of the Indian Nations Gaming & Governance Program and the Associate Director of the Program on Race, Gender & Policing. She is also a member of the National Academy of Sciences Ad Hoc Committee on Reducing Racial Disparities in the Criminal Justice System.

The events will be non-partisan discussions to demystify the important and current topic of critical race theory . . .

CRT CLE Sponsors



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**UNLV Program on
Race Gender &
Policing**




Stewart Chang is Professor of Law at the University of Nevada, Las Vegas, William S. Boyd School of Law. Prior to joining Boyd in 2018, he was Associate Professor of Law and the Director of the Center for International and Comparative Law at Whittier Law School, and before becoming a professor, he practiced public interest law for over a decade with the Asian Pacific American Legal Center of Southern California where he specialized in domestic violence, immigration, and family law.

More about the events

Each event will offer 1.0 hours of ethics CLE credit for Nevada lawyers. 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 Nevada Board of Continuing Legal Education.

The DICE CLE series will be open to attendance by all members of the Nevada legal community. Bar members interested in attending the live events will need to RSVP with the CCBA as soon as possible. Space will be limited.

The events will be recorded for use in the CCBA's audio/visual library for Nevada lawyers to rent at no charge. For more information and to RSVP, contact Donna Wiessner at Donnaw@clarkcountybar.org, (702) 387-6011. 

Light refreshments will be served for the participants who attend the events in person. There will be no charge for attendance.

Bar members interested in attending the live events will need to RSVP with the CCBA as soon as possible.



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Business Court Bench-Bar Meeting

When: Thursday, October 20, 2022, Noon to 1:00 p.m.

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

What: The program will be on Electronically Stored Information and Discovery Preservation obligations. Emily Allen-Buchwald will moderate the panel. Pisanelli Bice will sponsor lunch for the first 20 people attending the meeting in-person at the RJC.

Civil Bench Bar Meeting

When: Tuesday, October 11, 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 EJDCBenchBar@gmail.com.

Note: The Civil Bench Bar Meeting will not be held in November, due to Election Day.

Administrative Order 22-11

On September 1, 2022, the Eighth Judicial District Court filed an order in the administrative matter of reassigning MAT Re-Entry Court cases. See Administrative Order 22-11.


Citing NRS 3.025 and EDCR 1.30(b), the order modifies the specific

assignments to further foster consistency, efficiency, and fairness. Specifically, all MAT Re-Entry Court cases are reassigned from Department 2 to Department 1. Judge Yeager will be assisted in the handling of these matters by Hearing Master Claudia L. Romney. Court administration shall publish the list of cases affected by the reassignment mentioned above to the EJDC website.

The order became effective September 5, 2022. For more information, see <https://www.clarkcountycourts.us/>.

Administrative Order 22-07 Amended

On August 26, 2022, the Las Vegas Justice Court filed an amended administrative order in the matter regarding DUI and Vehicular Crimes Case Assignments. See Administrative Order #22-07 Amended.

The order reflects changes to Page 2, #(5), Line 7 of the original order filed on July 26, 2022. The newly amended is effective immediately and supersedes Administrative Order 15-03. For more information, see <http://www.lasvegasjusticecourt.us/>. 



Senior Justice Abbi Silver

Announcement of Retirement of Justice Abbi Silver

Justice Abbi Silver has announced her impending retirement from the Nevada Supreme Court after serving nearly four years as a member of the court. Justice Silver was elected,

CCBA eNews

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For more information and to update your contact information, reach out to Stephanie Abbott at the CCBA, (702) 387- 6011, StephanieAbbott@clark-countybar.org.



unopposed, to the Supreme Court in November 2018, taking office January 7, 2019; she is the only judge in the history of Nevada to have been elected to every court in Nevada's court system.

In a letter to Gov. Steve Sisolak on August 26, 2022, Justice Silver wrote she is retiring due to "unforeseen circumstances and to spend more time with my family." She also wrote "The greatest honor of my life has been to wear the black robe while presiding as a judge for almost 20 years."

Justice Silver's retirement will take effect September 29, 2022.

"Justice Silver has been my friend and colleague for over 30 years," said Nevada Supreme Court Chief Justice Ron Parraguirre. "As a colleague, I express my appreciation for her significant contributions and unwavering dedication to the Court. I will miss her thoughtful insight and spirited debate on cases. As her friend, I am

proud of her numerous personal and professional accomplishments, and I look forward to an abundance of stories as this next chapter of her life unfolds."

Nevada Governor Brian Sandoval appointed Justice Silver as one of three judges to the Inaugural Court of Appeals of Nevada in December of 2014 and she was elected to the seat in November of 2016. In January of 2017, Governor Sandoval swore her in as the first female Chief Judge of the Nevada Court of Appeals. Also in January of 2017, the Nevada Supreme Court appointed Justice Silver to the Nevada Standing Committee on Judicial Ethics. Finally, in January of 2022, Justice Silver became the Chief Presiding Justice for the Northern Nevada Panel of the Supreme Court of Nevada.

In mid-September, the Commission on Judicial Selection will open the application for merit selection to

fill the vacancy created by Justice Silver's retirement. The appointment will complete the term for Seat F, ending January 6, 2025. The Commission is a judicial body created pursuant to Article 6, Section 20 of the Nevada State Constitution. The Commission is charged with selecting three candidates for the Governor's review and appointment to fill judicial vacancies that occur before the expiration of a term of office in the Supreme Court, Court of Appeals, or District Court.

Chambers and duty station for Seat F will be located in Carson City. Applications will be available on the Nevada Supreme Court website beginning on Monday, September 12, 2022. **G**

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The Virtual Advocacy Commission

By Justice Ron Parraguirre

The COVID-19 pandemic presented Nevada's courts with the extraordinary challenge of maintaining access to justice while courthouses were closed. This challenge was addressed by adopting virtual technology to conduct remote hearings; I commend our courts and attorneys for the efforts put forth in embracing this technology. Although the pandemic created chaos and uncertainties for the judicial process, it ushered in the widespread use of virtual advocacy in our courts. As we slowly emerge from the pandemic, members of Nevada's judiciary and the State Bar of Nevada have expressed interest in the continued use of virtual advocacy. Thus, one silver lining to the pandemic is that it may lead to uniform procedures and protocols.

In August 2021, the Nevada Supreme Court created a Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts (the Commission). The Commission is charged with evaluating rules governing the unified use of remote technology in Nevada's limited and general jurisdiction courts. It is also considering rule changes to facilitate remote hearings in criminal, civil, and family law cases. My colleagues, Justices James Hardesty and Douglas Herndon, are the co-chairs of the Commission, serving alongside other distinguished judges, attorneys, and IT professionals.



Justice Ron Parraguirre is serving his third term as Chief Justice of the Nevada Supreme Court. He begins his fourth term on the state's highest court in January 2023.

In the administrative context, the Commission is studying how virtual advocacy may impact the courts, including whether remote hearings will alleviate court backlogs, increase judicial efficiency, or expand access to justice.

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The Commission has the momentous task of studying the concerns that arise with the adoption of virtual technology. Although I cannot summarize all the Commission's work in this article, I hope to highlight facets of the study that may be of particular interest. Among these are administrative, legal, and public-policy concerns that inhere in the implementation of virtual technology.

In the administrative context, the Commission is studying how virtual advocacy may impact the courts, including whether remote hearings will alleviate court backlogs, increase judicial efficiency, or expand access to justice. The Commission must also study what equipment, software, and staffing courts will need to adopt remote-hearing platforms, and the impact the adoption of this technology will have on court budgets. Finally, the Commission must also consider whether uniform procedures can cohere in Nevada's rural and populous courts.

The Commission must likewise consider a wide range of legal concerns in the remote-hearing context. Chiefly, the Commission is determining which types of hearings should be conducted virtually. Broadly guiding this analysis are considerations of witness testimony, the presentation of digital evidence, and the convenience of virtual courtroom appearances. Given constitutional or pragmatic

Given constitutional or pragmatic considerations, some types of hearings are more properly conducted traditionally in the courtroom.

considerations, some types of hearings are more properly conducted traditionally in the courtroom.

Finally, the Commission is studying public-policy concerns and the benefits that remote hearings may have for members of the public. Perhaps the most compelling justification for the continued use of remote hearings is that they promote access to justice by reducing litigation costs and increasing judicial efficiency, which undoubtedly benefits the public.

It is my hope that the adversity created by the pandemic leads to uniform procedures that will benefit our courts, attorneys, and the public. The Commission will issue a report and recommendations by October 31, 2022, which I look forward to receiving. **C**

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Preventing and Preparing for Cyber Intrusions

By Jessica E. Brown, Esq.

As cyberattacks increase against Nevada law firms, lawyers have a heightened duty to regularly assess firm security practices and data breach protocols. It's no secret that state-supported cyberhackers target law firms of all sizes, holding sensitive and confidential client information for ransom. The nature of legal practice provides hackers with a trove of valuable information. And a lawyer's duty of confidentiality means that the incentive to pay the ransom is high. No wonder hackers appear to be in relentless pursuit of lawyer data. Law firms present an attractive, and often an easy, target.

Beyond compliance with Nevada's data breach laws, what are our requirements as lawyers, both with respect to implementing cybersecurity measures and remediating a breach? The Nevada Rule of Professional Conduct 1.6(c) requires lawyers to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information related to the representation of a client." But Rule 1.15 on safekeeping property also comes into play for cases where information may not be disclosed but instead may be lost, as in a ransomware attack.

What constitutes reasonable efforts? The comment to Rule 1.6(c) provides factors to be considered, including "the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the

Beyond compliance with Nevada's data breach laws, what are our requirements as lawyers, both with respect to implementing cybersecurity measures and remediating a breach?

safeguards adversely affect the lawyer's ability to represent clients." From an *ex-post* perspective, these factors could justify most cybersecurity configurations, provided some effort is made. But *ex-ante*, they provide little help in identifying concrete measures for prevention.

The "cybersecurity pillars" of "people, process, and technology" provide good guidance for firms. First, training people is vital. Most cyber-attacks involve social engineering: where someone falls for a phishing scam or email and unintentionally gives the hacker access to the system. Checking email addresses to confirm the sender is legitimate, not opening attachments from unknown individuals, and not providing credentials or codes via email or over the phone are just a few steps that, if consistently taken, can prevent social engineering attacks.

With regards to process, firms should define, produce and adhere to a course of action for things like wiring

Intrusions *continued on page 20*



Jessica E. Brown, Esq. is an Associate at John Cotton and Associates where her practice focuses on professional liability defense, commercial litigation, and appeals. Before becoming a lawyer, she was a technologist and developer.

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funds. A hacker that gains access to a system can send impersonating emails changing wiring instructions for funds, for example. A process that requires verbal confirmation of wiring instructions using known telephone numbers can detect unauthorized changes, avoiding loss of client funds in violation of Rule 1.15.

From a technology perspective, strong firewalls, consistent and timely patching of systems, antivirus protection, and use of multifactor authentication are just a few of the steps that can be taken to harden the law firm technical environment. With the advent of cloud computing, using hypercloud services that monitor for attacks is generally more safe than trying to manage and maintain an on-premises environment, as counterintuitive as this may seem to how lawyers have traditionally maintained documents and files.

What about after the attack has occurred? The ABA has provided guidance in Formal Opinion 483, Lawyers' Obligations After an Electronic Breach or Cyberattack. Firms should develop a "comprehensive incident response plan." Frequently such plans require hiring a third-party mitigation expert. Additionally, the communication requirements embodied in Rule 1.4 require attorneys to

notify clients when data is lost, disclosed, or improperly accessed.

Paying ransom is also a consideration. It is not in itself a criminal act, but the recipient of the ransom could be sanctioned, which is increasingly common given the sanctions applicable to Russia, where many hacker gangs are based.

Finally, insurance is a consideration. Malpractice insurance will not usually cover cyberattacks, but cyberliability insurance (including ransomware payment) is available, including through the ABA. Given the rise in attacks, such insurance has become more expensive, with more exclusions, but may still be valuable if the worst happens.

In sum, law firms have a duty to simultaneously prevent and prepare for cyber intrusions. In the event of a breach, law firms must undertake a prompt and thorough investigation, usually conducted by mitigation experts. Lawyers must also disclose the breach, which may help further mitigate the damage to both the client and the firm. **C**

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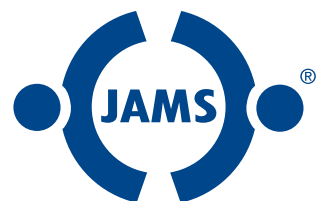
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The Rise of NFTs: Opportunities and Liabilities

By Caleb L. Green, Esq.

Since 2021, non-fungible tokens (aka “NFTs”) have increased in popularity. But what is this emerging technology, and, more importantly, what opportunities and legal liabilities does it introduce?

What are NFTs?

Before diving into the legal implications of NFTs, we first understand the nature of this emerging technology. At its core, an NFT is a unique digital token on a blockchain ledger. Blockchain ledgers are immutable record-keeping systems. Blockchains operate in a decentralized manner: not controlled by any single entity or person. It is made up of a network of various computers, often called “nodes,” which verify information and data stored on the blockchain. This makes blockchain technology extraordinarily reliable and secure because each node must verify and confirm the information held on the ledger. In other words, if someone attempts to breach or change data stored on a blockchain ledger, they will have to compromise each node on the blockchain, which is nearly impossible.

Blockchain technology is most infamously associated with cryptocurrencies like Bitcoin and Ethereum. However, the technology has several applications beyond cryptocurrencies, including non-fungible tokens (“NFTs”). An NFT is essentially a digital receipt for a digital asset and provides a way for creators to exploit additional value from their works. Once an NFT is “minted” (the industry

An NFT is essentially a digital receipt for a digital asset and provides a way for creators to exploit additional value from their works.

term for “created”) on a blockchain, they are immutable because it is permanently stored and irreversible. NFTs are also “non-fungible,” meaning they are unique and cannot be duplicated. Considered in the following illustration: an NFT is like owning an autographed poster of your favorite celebrity or athlete. There can only be one owner of that autographed poster—you. Likewise, only one person can own a particular NFT.

Artists and crypto-enthusiasts have embraced NFTs to monetize their artworks and musical works and exploit their intellectual property rights. However, like with any new technology, there are severe legal implications NFT buyers, sellers, and creators should consider.

Intellectual Property Concerns

NFTs create a new way to distribute and monetize various works, including works subject to copyright protection and publicity rights. Copyright protects original

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.



artworks, photos, and other creative works, giving the author exclusive rights to reproduce and distribute those works. In many states, including Nevada, rights of publicity prohibit using another's name, image, or likeness for commercial purposes without prior authorization. NFT creators and buyers alike should be aware of the scope and limitations of intellectual property rights when navigating this new space. The rights granted by an NFT seller may or may not include the underlying intellectual property rights a buyer may expect. Continuing the illustration of the autographed poster above, your ownership of an autographed poster does not convey any intellectual property rights. In other words, you do not own the right to make copies of that autographed poster (copyright violation), nor do you have any rights to the celebrity or athlete's name, image, or likeness rights. Similarly, when you buy an NFT of artwork, you do not have any intellectual property right in the underlying work unless the author expressly conveys it.

Fraud Concerns

In addition to intellectual property concerns, NFTs can be a theft mechanism. When you mint an NFT, typically, there is no way to verify that you are the actual owner of the underlying work. This means anyone can take a screenshot or picture of someone else's work, create an NFT, and sell it for profit.

Civil Procedure

NFTs raise jurisdictional issues as well. In ordinary civil lawsuits, you have mechanisms to determine who the parties are and where they reside. However, in the NFT world, this has become more challenging. As discussed above, blockchains are decentralized, meaning there is no central company, person, or computer server that controls and logs the information. Instead, anonymous nodes verify and store the information on the blockchain. Additionally, NFT creators enjoy anonymity, using cryptocurrency wallets and pseudonyms to disguise their true identities. Consequently, tracking down bad actors in the NFT space can be difficult. Plaintiffs may be at the mercy of NFT marketplaces to track down fraudulent actors or, as an alternative, may seek jurisdiction *in rem* if they can determine where the NFT is located. **G**

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Is Nevada Cyber Law Keeping Up with National Efforts to Protect its Residents Online?

By Benjamin B. Gordon, Esq.

**About the CCBA's Article #13: "Is Nevada Cyber Law Keeping Up with National Efforts to Protect its Residents Online?" offers 1.0 general Continuing Legal Education (CLE) credit to Nevada lawyers who complete the test and order form per the offer described in the October 2022 issue of Communiqué. See pp. 24-28. The CCBA is an Accredited Provider with the NV CLE Board.*

Cyber law governs interactions and transactions between individuals and entities online, including, but not limited to, laws regulating online harassment, website content moderation liability, and consumer data privacy. Unlike the European Union, which passed the sweeping General Data Protection Regulation (GDPR), the United States does not have an all-encompassing federal data protection law. Instead, the U.S. model requires states to fill in the many large gaps in federal data protection laws. Despite this lack of federal leadership, the recent *Van Buren* case and proposed Fourth Amendment Not for Sale Act indicate the federal government may have an interest to create a national standard. *Van Buren v. United States*, No. 19-783, slip op. (U.S. June 3, 2021).

History of personal data regulation

Regulation of personal data began in the pre-digital era with the Privacy Act of 1974, which primarily focused on individuals' data stored on federal government databases.

The subsequent rise of online communication and services has significantly increased the spread of personal data to commercial databases, including data brokers who collect and sell personal data to commercial buyers and government entities. This exponential spread of personal data has increased the need for both civil and criminal privacy laws regulating the storage, transfer, exploitation, and destruction of personal data.

Examples of federal legislation governing personal data protection include the Privacy Act of 1974, the Health Insurance and Portability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA), the Children's Online Privacy Protection Act (COPPA), and the Fair and Accurate Credit Transactions Act (FACTA). The Privacy Act of 1974's primary purpose was to regulate individuals' personally identifiable information stored in government databases. HIPAA regulates personal information stored by healthcare providers. The 1999 GLBA regulates personal data held by financial institutions. COPPA governs online collections of personal data of persons 13 years or younger. FACTA is



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an amendment to the Fair Credit Reporting Act and regulates consumer personal information related to credit and lending with an emphasis on curbing identity theft.

Each one of these federal acts seeks to protect a narrow category of personal data, making individual state laws necessary as a backstop to regulate the use, storage, and sharing of personal data not covered within these categories. For instance, personally identifiable information which is collected for marketing and sales purpose would likely fall outside these federal categories.

In April 2017, Congress voted to repeal internet privacy rules instituted by the Federal Communications Commission which restricted what service providers could do with user data, required notice to all individuals whose personal data was collected, and required affirmative permission from individuals to allow collection of their information.

Nevada state regulations

In response, Nevada passed NRS 603A in 2017 in an effort to protect Nevada consumers. The bill was sponsored and introduced by then state senator, now Attorney General, Aaron Ford. According to the legislative minutes, Attorney General Ford believed the bill was important to provide guidelines for internet users, internet websites, or online service owners or operators with respect to using consumers' information, although not as far reaching as the repealed FCC regulation.

NRS 603A broadly applies to website operators and data brokers. The statute defines "website operators" as persons who own or operate a commercial website or online service who collects and maintains personal data of

Nevada residents. The person must purposefully direct their collection activities toward the state and its residents. "Data brokers" are defined as Nevada residents whose primary business is purchasing and selling the personally identifiable information of consumers with whom they do not have a direct relationship. This means websites operators outside the state are subject the law if their commercial actions are directed at Nevada consumers, while out of state data brokers are not.

NRS 603A requires operators and data brokers to comply with best practices to keep private personal data private, and mandates opt-out provisions for data collection. NRS 603A applies to operators who deliberately target consumers within the state and have minimum contacts within the state. This standard of operators and data brokers who intentionally target Nevada consumers is distinct from federal legislation, which primarily focuses on the data of individuals who interact with the federal government and its agencies.

Importantly, NRS 603A requires reasonable security measures for storage, transmission, and destruction of personally identifying information, as well as consumer opt-out requirements. To properly opt out, consumers must submit verified requests to operators and data brokers instructing them not to sell any of the personally identifiable information. In the event of a data breach, data collectors must disclose the breach to any Nevada resident whose information is reasonably believed to have been acquired by an unauthorized person. If the operator or broker does not comply with the reasonable security and/or opt out requirements, they are provided with opportunities to remedy their failures to avoid civil penalties, per NRS 603A.347-349.

CLE *continued on page 26*



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NRS 603A exempts website operators whose activities are not for commercial purposes, such as government entities. Financial institutions and healthcare providers are also exempt from the law, likely because of the federally established HIPAA and GLBA regulations. Civil penalties for violating NRS 603A include issuance of injunctions and fines up to \$5,000 per violation. Importantly, the statute does not create a private right of action and can be combined with any other applicable legal remedies.

Recent federal developments

Two recent federal developments suggest that Congress and the United States Supreme Court have an interest to set a national standard for data privacy. In *Van Buren v. United States*, police officer Nathan Van Buren was paid \$6,000 to provide personal vehicle registration information to an unauthorized third party. *Van Buren v. United States*, No. 19-783, slip op. (U.S. June 3, 2021). While Van Buren was authorized to access the registration database, he did so in this instance outside his official police duties. Van Buren was convicted of computer fraud under the Computer Fraud and Abuse Act's (CFAA) definition of "exceeds authorized access." On appeal, Van Buren argued accessing the database he was authorized to access, but for an improper purpose, was not a violation of the CFAA. The U.S. Supreme Court agreed, finding that a person violates the CFAA's "exceeds authorized access" provision when he or she accesses files that is off-limits to them within a computer system they are authorized to use. Because Van Buren was authorized to view personal registration information, even it viewed for an improper purpose, the court held he did not violate the CFAA.

In April 2021, the United States Senate introduced the Fourth Amendment is Not for Sale Act. This Act, and its companion House bill, aim to stop government and law enforcement use of personal data obtained from third-party data brokers without a court order. In promotion of the act, the bill's sponsors Senator Ron Wyden (D-Oregon), Senator Rand Paul (R-Kentucky), and 18 other co-sponsors, claim that the bill will close a legal loophole that allows data brokers to sell American's personal information to law enforcement and intelligence agencies without any court oversight. The access to this personal data is distinct from rules for telecommunications companies and social media companies who must comply with court order requirements before turning over identifiable information to government entities.

Here again, the federal government is seeking to create a national standard for data privacy. Congress could simply allow states to individually regulate data brokers' sale of personal data to law enforcement, but it appears Congress is not satisfied to sit on the sidelines giving the states lead in this area. Some commentators worry the recent *Dobbs* decision, which overturned *Roe v. Wade* and returned abortion regulation to the states, could have implications for data sharing with government agencies and law enforcement. *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, slip op. (U.S. June 24, 2022). and *Roe v. Wade*, 410 U.S. 113 (1973). For example, an anti-abortion state could pass legislation making it illegal to travel across state lines to obtain an abortion. In an effort to enforce such a law, anti-abortion states could seek location and other personal data from a third-party broker to identify individuals who visited an abortion clinic across state lines. Vice News recently reported the case of Jessica Burgess, a Nebraska teen who, along with her mother, has been charged with felonies related to a prescription-abortion based on Facebook messenger communications obtained by law enforcement via warrant. While this Nebraska case was pre-*Dobbs* and information was obtained via warrant rather than from data brokers, it nevertheless identifies potential prosecutorial uses of personal data in the post-*Dobbs* era.

As transactions, services, and socialization increase online through the metaverse and beyond, personally identifiable information shared online will simultaneously increase, making individuals' private data more vulnerable to exploitation. The state and federal patchwork of data privacy laws will need to evolve to plug the springing leaks created by new digital innovations. NRS 603A is a good first step towards helping Nevada protect its residents' data privacy. However, its strict focus on website operators and brokers will need to be expanded as technology changes. ●

Instructions for CCBA's CLE Article #13

How Nevada lawyers may earn 1.0 Ethics CLE credit in three easy steps:

1. Read the article, "Is Nevada Cyber Law Keeping Up with National Efforts to Protect its Residents Online?" See pages 24-26;
2. Complete the quiz. See page 27; and
3. Complete the order form. See page 28.

Questions: Contact Donna Wiessner at (702) 387-6011, donnaw@clarkcountybar.org.

CCBA CLE Article #13

Quiz

Is Nevada Cyber Law Keeping Up with National Efforts to Protect its Residents Online?

Offers 1 General CLE Credit (NV)

Complete the quiz. Each question has only one correct answer.

- The first federal personal data act was established in:
 - 1999
 - 1974
 - 2017
- NRS 603A is based on the European GDPR:
 - True
 - False
- The federal act regulating personal data of individuals aged 13 years and younger is the:
 - COPPA
 - FACTA
 - GLBA
- In 2017, Congress voted to repeal Federal Communications Commission (FCC) rules requiring consumer consent to store and sell their personal data.
 - True
 - False
- Which state legislator sponsored and introduced Senate Bill 538 that became NRS 603A?
 - Senator Pat Spearman
 - Senator Joseph Hardy
 - Senator Aaron Ford
- NRS 603A applies to website operators and data brokers.
 - True
 - False
- In the event of a data breach, data collectors:
 - Must disclose the breach to Nevada residents reasonably believed to have been affected.
 - Register the breach with the Nevada Attorney General.
 - Are liable to criminal prosecutions.
- NRS 603A considers government entities to be commercial operators for purposes of the statute.
 - True
 - False
- In deciding *Van Buren v. United States*, the United States Supreme Court found the defendant:
 - Exceeded authorized access
 - Obtained information for an unauthorized purpose
 - Both a and b
- The Fourth Amendment is Not For Sale Act aims to stop all use of personal data by law enforcement without court order.
 - True
 - False

CCBA CLE Article #13 Order Form

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Celebrate Pro Bono Week!

By Michael Wendlberger, Esq.

October 23 - 29, the last week of October, is Pro Bono Week. Pro Bono Week is a time to celebrate you, the pro bono attorney. To celebrate, legal aid providers throughout Southern Nevada are planning numerous events, from free CLEs to Ask-A-Lawyer events to pro bono receptions.

To celebrate, legal aid providers throughout Southern Nevada are planning numerous events, from free CLEs to Ask-A-Lawyer events to pro bono receptions.

On Tuesday, October 25th, a multi-agency Ask-A-Lawyer event will take place at the East Las Vegas Library from 11:00 am - 2:00 pm. This Ask-A-Lawyer will include volunteer attorneys donating their time to provide free legal consultations to the community.

Later in the week, Legal Aid Center will have a large reception thanking all pro bono attorneys. The reception will be a great time to see your colleagues and share all the incredible work you've accomplished throughout the year. I invite all pro bono attorneys to attend. And of course, no celebration is complete without your friends. So please get in touch with your friends and associates, bring them along, and ask them to participate in pro bono. Non-attorneys can also get involved by volunteering as a Volunteer Education Advocate.

Do you remember the first time you volunteered, doing something new with little to no experience? The nervous excitement? The worry that you may mess up? A real fish out of water? But do also you remember how good it felt when you finished? The incredible joy after you changed someone's life forever. A feeling that can only be replicated by helping others. So please, invite your friends, and let's make Pro Bono Week the best week ever! 🇺🇸



Michael Wendlberger, Esq. is the Director of the Pro Bono Project at Legal Aid Center of Southern Nevada. The Pro Bono Project pairs volunteer attorneys with screened clients in the areas of family, consumer, landlord tenant, civil rights, immigration, bankruptcy, and other areas of law. Interested attorneys should contact Michael at 702 386-1429 or mwendlberger@lacsnsn.org.



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