

The Basics of Family Law Jurisdiction CLE Webcast

Free for CCBA members on February 23, 2023

See page 8



COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION FEBRUARY 2023

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The Civil Rights Issue

Read the article

What is Next After Mack v. Williams and the Future of Civil Rights in Nevada?

By Andréa Vieira, Esq.
See page 24



Featured inside

Working to Make Civil Rights Right	6
Nevada Appellate Summaries	14
Special Education in Nevada – Five New Laws We Love	22
Tips for Enforcing State Constitutional Claims In Light of the Supreme Court of Nevada’s Landmark Decision, Mack v. Williams	30

Special Event

Chief Justice Stiglich to Speak at Bar Luncheon

March 23, 2023
See page 9



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THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION FEBRUARY 2023

Table of Contents

Highlights

DICE CLE Series 2023..... 6

Clark County Bar Committee Meetings 7

Please Support DICE CLE Series + a Nevada Bar Foundation Matching Challenge! 7

Family Law CLE Program Free for CCBA Members on February 23, 2023 8

Nevada’s Chief Justice Stiglich to Speak at Bar Luncheon on March 23, 2023..... 9

Civil Bench Bar Meeting..... 10

Eighth Amended Administrative Order #18-04..... 10

Kalani Hoo named Chief Judge of North Las Vegas Justice Court 10

Judge Rebecca Burton Retired in January 12

Commission on Judicial Selection Adds a Fifth Vacancy to the Current Nomination Process.. 12

Special offer for Nevada Ballet Theatre Performance of *Blue Until June*..... 12

CCBA’s Continuing Legal Education (CLE) Library 26

CCBA CLE Passport 28

Pro Bono Opportunity 30

Want to promote your business?..... 31

About the Civil Rights Issue



Andréa Vieira at Robert T. Eglet Advocacy Center. Photo by Stephanie Abbott.

Features

Special Education in Nevada – Five New Laws We Love
By Jean Murrell Adams, Esq. 22

What is Next After *Mack v. Williams* and the Future of Civil Rights in Nevada?
By Andréa Vieira, Esq. 24

Columns

CCBA President’s Message
Working to Make Civil Rights Right
By Brandon Kemble, Esq...... 6

Nevada Appellate Summaries
Advance Opinion Summary (1-5-23)
By Joe Tommasino, Esq...... 14

Pro Bono Corner
Tips for Enforcing State Constitutional Claims In Light of the Supreme Court of Nevada’s Landmark Decision, *Mack v. Williams*
By Leo Wolpert, Esq. 30

Departments

About *Communique*..... 4

Editorial Calendar..... 4

Advertiser Index..... 5

Bar Activities..... 5, 6, 7, 8, 9

CLE Programs 5, 6, 8, 26-29

Court News 10

Ballet Ticket Offer 12



COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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Cover Date	Topic of Articles	Closing Date
January 2023	Five Things	12/1/2022
February 2023	Civil Rights	1/2/2023
March 2023	Sports Law	2/1/2023
April 2023	Administrative Law	3/1/2023
May 2023	Natural Resources	4/1/2023
June/July 2023	Membership Matters	5/1/2023
August 2023	Real Estate	7/1/2023
September 2023	Legislative Wrap-up	8/1/2023
October 2023	Gig Economy	9/1/2023
November 2023	Gaming Law	10/2/2023
December 2023	Pro Bono	11/1/2023

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

Advertiser Index

Advertisers, sponsors

Advanced Resolution Management..... 17
 Ara Shirinian Mediation..... 21
 Bank of Nevada..... 5, 8, 9, 26
 BestImmigrationLawyer.com 32
 Brett Sutton Mediation..... 19
 First Legal.....9
 GGRM Law Firm.....15
 Las Vegas Legal Video..... 5, 8, 21, 26
 Legal Aid Center of Southern Nevada 30
 Legal Wings 25
 Nevada Ballet Theatre..... 12, 13
 Nevada Legal Services..... 11
 Portraits to You 16
 Prominence Health Plan..... 18
 Red Panda Systems 10
 State Bar of Nevada2
 The Vegas lawyers..... 32
 Welt Law..... 23
 WestPac Wealth Partners5

Bar services

Advertise in *Communiqué* 31
 Association Health Plans..... 18
 Ballet Tickets Discount Offer..... 12
 Bar Committees.....7
 Bar Luncheon9
 CLE Programs..... 5, 6, 8, 26-29
 Pro Bono Opportunity..... 30

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Thursday, March 30, 2023
12:00 PM – 1:15 PM

Free live webcast for CCBA members only

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 Or call 702-387-6011

Event sponsors

Featuring
Aviv Itzhaki, MD, MPH
 of Focus Mental Health Solutions

Working to Make Civil Rights Right

By Brandon Kemble, Esq.

As all lawyers learned in law school, the federal constitution only limited the size and scope of the federal government. But, with the passage of the 14th Amendment in July of 1968, the protections of the U.S. Constitution were extended to the states. The 14th Amendment has long served as the primary tool for constraining government abuses and for vindicating what can generally be referred to as civil rights – the focus of this month's *Communiqué*.

In this nation's long history, race and civil rights have always been deeply intertwined. The 14th Amendment was primarily a response to horrendous atrocities that were occurring after the Civil War, and Sec.1 of the Ku Klux Klan Act of 1871, known today as 41 U.S.C. Sec. 1983, was enacted as the legal mechanism to enforce it.

As a lawyer, I am excited to be part of moving things forward and helping with the thoughtful determination of these issues.

Not unlike many places in this country, Clark County has a complicated history with race issues. In his publication "The Mississippi of the West?," Michael S. Green quotes NAACP attorney Franklin Williams after a 1954 visit – Las Vegas was "a non-southern city with the pattern of the deep south . . . Human rights in the western states are in a vacuum."

And the history is not all that old either. I recall Pahrump's brief, and misguided "English-only" ordinance passed in 2006.

But like most of our history, despite some painful bumps along the way, we are on an upward trajectory. I am so proud of the work that the Clark County Bar Association and other organizations have done on diversity, inclusion, and equity. Our committee on the issue, DICE, has done great work educating folks about and elevating these important issues.

While these race issues are central to the topic of civil rights, the subject has taken on notable breadth in recent years. By a wide margin, Nevadans recently voted to amend the Constitution of the State of Nevada to prohibit

DICE CLE Series 2023

Volunteers needed for event planning

Bar members are invited to support the CCBA's efforts by volunteering to plan and present programs for the continuing legal education of Nevada lawyers with information relevant to diversity and inclusion.

Contact Stephanie or Donna at the CCBA office at (702) 387-6011.



Brandon Kemble is an Assistant City Attorney in the Civil Division with the City of Henderson. Brandon handles litigation for the City and provides legal advice and legislative support for various City departments. Brandon serves as the CCBA President through December 2023.

the denial of rights based on “age, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.” In addition, issues like education choice, religious freedom, economic freedom, personal medical determination, reproductive rights, and so many more have been the subject of political campaigns, legislation, and high-profile legal battles.

As the landscape of civil rights expands, so are the tools for vindicating them. Very recently, the Supreme Court of Nevada issued an opinion in *Mack v. Williams* (read more inside from a better author) clarifying that Nevadans have a right to recover money damages for the violation of certain rights under the Nevada Constitution.

As a lawyer, I am excited to be part of moving things forward and helping with the thoughtful determination of these issues. There are times in my day-to-day that I lose focus of the critical role lawyers play in shaping society and its trajectory. The best of us get to do it in the *Brown v Board* cases, but the rest of us do it every time we help someone exercise, vindicate, or even just understand their rights a little better. 🗣️

Please Support DICE CLE Series + a Nevada Bar Foundation Matching Challenge!

The CCBA is producing a series of professional programs designed to address, inform, and educate Nevada bar members regarding diversity, inclusion, and equity.

To help our efforts, the Nevada Bar Foundation (NBF) is pledging a \$5,000 award to provide funding for five DICE CLE programs offered between September 22, 2022, and June 2023. Additionally, the NBF will provide a matching grant of up to \$5,000!

Contact Donna at the CCBA office at (702) 387-6011 or complete the sponsor form at <https://clarkcountybar.org/>.

Clark County Bar Committee Meetings

Join in the fun and plan the CCBA's upcoming activities

CCBA members are invited to join bar committees and/or attend their planned activities:

- **Community Service Committee**

Friday, February 3, 2023 (12-1pm) via Zoom

Meeting for CCBA members to plan activities that provide outreach services to the community at large in southern Nevada.

- **CLE Committee**

Wednesday, February 8, 2023 (12-1pm) via Zoom

Meeting for CCBA members to plan CLE programs for the benefit of the Clark County Bar Association and Nevada legal community.

- **New Lawyers Committee Meeting**

Thursday, February 9, 2023 (12-1pm) In-Person

at CCBA office, 717 S. 8th Street, Las Vegas
Meeting for new lawyers (admitted to practice in Nevada within the last seven years and

regardless of age) to plan social mixers and organize support for law student competitions at the William S. Boyd School of Law.

- **Publications Committee Meeting**

Friday, February 10, 2023 (12-1pm) via Zoom

Meeting for CCBA members to plan content for upcoming issues of the bar journal *Communiqué*.

- **Diversity and Inclusion Committee for Equity (DICE) Meeting**

Friday, February 24, 2023 (12-1pm) via Zoom

Meeting to organize educational programs that facilitate constructive discussion and enhance understanding of diversity issues.

Contact the Donna or Stephanie at the CCBA office, 702-387-6011, for more information or to RSVP for a CCBA event.

Family Law CLE Program Free for CCBA Members on February 23, 2023

Pricing of the live event is included with the 2023 CCBA membership.

On Thursday, February 23, 2023, family law lawyers Marshal Willick and Richard Crane will make a special presentation for the continuing legal education of Nevada lawyers in a program produced by the Clark County Bar Association.

Marshal S. Willick is the principal of the Willick Law Group, an AV-rated law firm in Las Vegas, Nevada, and practices in trial and appellate family law. He is a certified family law specialist, a fellow of both the American and International Academies of Matrimonial Lawyers, former Chair of the State Bar of Nevada's Family Law Section, and former president of the Nevada chapter of the AAML. He has authored many books and articles on family law and retirement benefits issues and was managing editor of the *Nevada Family Law Practice Manual*. In addition to litigating trial and appellate cases in Nevada, Mr. Willick has participated in hundreds of divorce and pension cases in the trial and appellate courts of other states, and in the drafting of various state and federal statutes in the areas of pensions, divorce, and property division. He is an AAML-certified family law mediator, has served as an alternate judge in various courts, and frequently testifies as an expert witness. He serves on the board of directors for the Legal Aid Center of Southern Nevada.




Marshal Willick and Richard Crane

Richard L. Crane is an associate attorney with the Willick Law Group. His practice is centered on domestic relations trial and appellate cases. Born and raised in Michigan, he enlisted in the United States Navy right after high school and traveled the world for the next thirty years. Richard was first admitted to practice law in Nevada on October 20, 2005. He has consistently been recognized for his pro bono service and has taught CLEs on the basics of family law and the basics of family law jurisdiction. A member of the Council of Community Property States, Richard has presented papers on Nevada community property law at the council's conferences.

Willick and Crane will present "The Basics of Family Law Jurisdiction" to CCBA members only online via Zoom, from 12:00 to 1:15 p.m., Thursday, February 23, 2023. The presentation will offer 1.0 CLE credit for Nevada lawyers.

Pricing of the live webcast event is included with the 2023 CCBA membership. Non-CCBA members may attend this CLE provided they make a payment of \$25.00 to the Clark County Bar Association. All RSVPs must be made to the CCBA at least 48 hours before the event starts. CCBA membership will be verified upon RSVP. During the event, attendance will be taken and only those Nevada lawyers in attendance will have their attendance reported to Nevada's Board of Continuing Legal Education.

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

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

CCBA's CLE programming sponsors



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Nevada's Chief Justice Stiglich to Speak at Bar Luncheon on March 23, 2023

Special guest speaker Nevada Chief Justice Lidia Stiglich is expected to present an update about the Supreme Court of Nevada at the Clark County Bar Luncheon at the Las Vegas Country Club on March 23, 2023. The special event also will feature:

- CCBA Volunteer Appreciation Awards Presentation
- Swearing-in Ceremony for CCBA Executive Board

CCBA president Brandon Kemble commented, "We are honored to have Chief Justice Stiglich and are excited to learn more about the state of the Nevada Supreme Court and what is in store for the future. The Chief Justice's attendance is fitting for the importance of this event as we honor the CCBA's volunteers. The CCBA owes its success to those that freely give their time and talents to the CCBA and our legal community. Come on out and help us have some fun showing our great volunteers how thankful we are for all they do."



Chief Justice Lidia Stiglich

Special thanks to the event sponsors:


- Bank of Nevada
- First Legal

The options for entrée are:

- Chicken Angelo
- Salmon Filet w/ Lemon Caper Cream Sauce
- Portobello Stack (Vegan/Vegetarian)

The pricing for people to attend this luncheon is \$45 per CCBA member and \$55 per non-member. The CCBA is pleased to offer a free lunch to CCBA members who actively participated in the committee's activities and attended the majority of the CCBA committee's meetings during 2022. To confirm eligibility, contact Steph or Donna at the CCBA office.

Check-in and networking will begin at 11:30 with the luncheon program to be held from 12:00 to 1:00 p.m. All members of the Nevada bar and bench are invited to attend and congratulate Clark County Bar volunteers and leaders. However, space will be limited to those who RSVP with payment to the Clark County Bar Association by March 17, 2023.

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

Event sponsors



Civil Bench Bar Meeting

On Tuesday, February 14, 2023, the Eighth Judicial District Court will hold the Civil Bench Bar Meeting online via Zoom. Bar members are invited to attend and learn about any modifications of processes in the civil departments. For more information, send inquiries to EJDCBenchBar@gmail.com.

Eighth Amended Administrative Order #18-04

On January 10, 2023, another amended order was issued in the administrative matter regarding guidelines for administrative own recognizance releases for the Las Vegas Justice Court. *See* Eighth Amended Administrative Order #18-04. The order became effective immediately and supersedes all prior versions. For more information about court rules and administrative orders, visit the court's website at <https://www.lasvegasjusticecourt.us/>.

Kalani Hoo named Chief Judge of North Las Vegas Justice Court

North Las Vegas Justice of the Peace Kalani Hoo has been named the Chief Judge of North Las Vegas Justice Court. His two-year term began January 3, 2023 and will be his second term as chief.

Judge Hoo has been the North Las Vegas Justice Court Department 1 Justice of the Peace since December 2012. Prior to his election, Judge Hoo was a partner at the law firm of Eichhorn & Hoo, LLC, practicing criminal and civil law in both state and federal court. He has been licensed to practice law since 1998.

Judge Hoo has volunteered as a Truancy Diversion Judge in North Las Vegas schools since 2012. The Truancy Diversion Program is designed to improve student attendance and performance by involving parents, students, and teachers.

Judge Hoo currently presides over two specialty courts. As a co-founder of the North Las Vegas Community Court, Judge Hoo partners with a team of criminal justice and social service professionals. Community Court focuses on rehabilitating 18-25 year olds who are charged with non-violent offenses.

The first Veterans' Court in North Las Vegas began in January 2014. Judge Hoo assumed responsibility for the program in 2021. Veteran's Court is a type of specialty court that is charged with trying cases of minor offenses which involve military veterans, particularly those diagnosed with service-related illnesses.

Justice court handles misdemeanors, traffic matters, and felony arraignments, civil disputes under \$15,000, small claims and landlord tenant disputes. In 2022, North Las Vegas Justice Court handled over 14,000 cases.



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News *continued on page 12*



2023 ASK A LAWYER CLINICS

Nevada Legal Services needs volunteer attorneys to assist with upcoming ask a lawyers. These ask a lawyers are conducted via Zoom or telephonically.

Please consider advocating for a client in need!

Please contact Pro Bono Coordinator, Yrene Chavez, at (702) 386-0404 ext. 145 or ychavez@nevadalegalservices.org to participate.

Did you know?

Nevada attorneys can now earn 1 CLE credit for every 3 hours of volunteered pro bono time up to 4 credits a year!

Bankruptcy

Tuesday, January 3rd
Tuesday, February 7th
Tuesday, March 7th
Tuesday, April 4th
Tuesday, May 9th
Tuesday, June 6th

Estate Planning

Monday, January 23rd
Monday, February 27th
Monday, March 20th
Monday, April 17th
Monday, May 22th
Monday, June 19th

Consumer

Thursday, February 23rd
Thursday, April 27th
Thursday, June 22nd

Family

Wednesday, January 11th
Wednesday, January 18th
Wednesday, January 25th
Wednesday, February 8th
Wednesday, February 15th
Wednesday, February 22nd
Wednesday, March 8th
Wednesday, March 15th
Wednesday, March 22nd
Wednesday, April 5th
Wednesday, April 12th
Wednesday, April 19th
Wednesday, May 10th
Wednesday, May 17th
Wednesday, May 24th
Wednesday, June 7th
Wednesday, June 14th
Wednesday, June 21st



Judge Rebecca Burton Retired in January

After 30 years of work in family law, Judge Rebecca Burton retired in January 2023. Judge Burton left the District Court Family Division after eight years of service including: serving as the presiding Family Division judge and on the court Executive Committee. In a letter to the governor, the chief justice of the Nevada Supreme Court and the chief judge of the Eighth Judicial District Court, Judge Burton wrote, “For 30 years, I have been devoted to family law, actively endeavoring to serve the best interests of children, litigants and the community.”

Judge Burton who was born and raised in Minneapolis, Minnesota prior to coming west, said that she plans to spend more time with family and friends. “Serving as a judicial officer has been a great privilege, both challenging and rewarding. I have enjoyed immensely serving my community and working with my colleagues.”




“Judge Burton has made significant contributions as the presiding judge of the Family Division,” said District Court Chief Judge Jerry Wiese. “She will be missed, and we wish her well.”

The Eighth Judicial District Court of Nevada has 58 judges who preside over nearly 100,000 criminal, civil and family cases that are filed each year. District Court judges and staff continuously work to develop new ideas, maximize efficiencies and improve access to justice. For more information about the Nevada Eighth Judicial District Court, visit website at clarkcountycourts.us, Facebook facebook.com/NV8thJDCourt, Twitter at <https://twitter.com/Nv8thC>, or blog at <https://eighthjdcourt.wordpress.com>.

Commission on Judicial Selection Adds a Fifth Vacancy to the Current Nomination Process

On December 27, 2022, the Commission on Judicial Selection added another department to the current nominating process to fill vacancies in the Clark County District Court. Department O is the fifth vacancy available due to the retirement of the Honorable Frank P. Sullivan in February 2023.

For more information, visit the Supreme Court of Nevada’s website at <https://nvcourts.gov/>. 

Ballet Ticket Offer

NEVADA BALLET THEATRE

NBT

Special offer for Nevada Ballet Theatre Performances of *Blue Until June*

Sat., Feb. 18, 2023, at 7:30 p.m.

Sun., Feb. 19, 2023, at 2:00 p.m.

Reynolds Hall,
The Smith Center for the
Performing Arts

Offers for CCBA Members:

- **Free Tickets** – CCBA Members may request use of two tickets for select performances by sending a request via email to CCBA Executive Director Donna Wiessner at donnaw@clarkcountybar.org.
- **Discount on Tickets** – CCBA Members may order tickets and get value pricing on select performances of the Nevada Ballet Theatre using a special discount code available from donnaw@clarkcountybar.org.

*Restrictions apply to the CCBA Ballet Tickets Offer. Use of the tickets will be restricted to paid CCBA members and will be provided on a first come first serve basis to members whose membership is paid for the same membership year of the scheduled performance. For more information, contact Donna at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101. Phone: (702) 387-6011.

NEVADA BALLET THEATRE

BLUE UNTIL JUNE

Music from Etta James

Choreography by Trey McIntyre

February 18 & 19, 2023



Plus, George Balanchine's
Allegro Brillante and a
World Premiere by Sidra Bell

NEVADA BALLET THEATRE

NBT



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Advance Opinion Summary (1-5-23)

By Joe Tommasino, Esq.

Supreme Court of Nevada

Arbitration: Nevada Arbitration Rule (NAR) 19(C) bars a district court from setting aside a judgment confirming an arbitration award under Nevada Rule of Civil Procedure (NRCP) 60(b). Under NAR 19(C), a district court may grant post-judgment relief only to correct “clerical mistakes in judgments and errors there-in arising from oversight or omission.” Clerical mistake is not an NRCP 60(b) ground for setting aside a judgment. Instead, clerical mistake is an NRCP 60(a) ground for correcting a judgment. NAR 19(C)’s language means that a court may fix a mistake or error in a judgment but not set aside a judgment entirely. *Arce v. Sanchez*, 138 Nev. Adv. Op. No. 83, ___ P.3d ___ (December 22, 2022).

Attorney disqualification: Nevada permits screening of nonlawyers as a means to cure the nonlawyer’s imputed conflict of interest. Here, petitioner challenged a district-court order denying her motion to disqualify real parties in interest’s law firm based on an alleged conflict of interest resulting from that firm hiring a paralegal who had previously worked for petitioner’s attorney. Petitioner argued that the facts, including that the paralegal worked on petitioner’s case while employed by petitioner’s attorney, required automatic disqualification and she did not need to show actual prejudice. On appeal, the Supreme Court of Nevada concluded that “automatic disqualification was not required despite the paralegal’s significant work on the case at the prior firm because petitioner failed to show any actual disclosure of confidences or ineffectiveness of the screening measures implemented by real parties in interest’s firm.” The district court acted within its discretion by denying the motion to disqualify. Because there were no specific factual or credibility disputes, no evidentiary hearing was required. *Nelson v. Eighth Jud. Dist. Ct.*, 138 Nev. Adv. Op. No. 82, ___ P.3d ___ (December 22, 2022).

Criminal procedure: (1) Although prior bad acts generally cannot be admitted to show a defendant’s inclination to commit crimes, NRS 48.045(3) provides an exception to this general rule such that evidence of separate sexual offenses can be admitted to show a defendant’s propensity to commit sexual offenses; (2) in *Franks v. State*, 135 Nev. 1, 432 P.3d 752 (2019), the Supreme Court of Nevada outlined procedural safeguards a district court must follow prior to admitting evidence of a separate sexual offense under NRS 48.045(3), including the weighing of the evidence’s probative value against its prejudicial effect; and (3) here, the court clarified the mechanics of NRS 48.045(3). First, NRS 48.045(3) is applicable whenever a criminal defendant is charged with a sexual offense. Thus, the district court should consider only the charging document, and not the facts or evidence underlying the charge, in making its initial determination as to whether NRS 48.045(3) is implicated. Second, the district court must ensure that *Franks* procedural safeguards are followed before determining whether to admit evidence of a prior sexual offense under NRS 48.045(3). *State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev. Adv. Op. No. 90, ___ P.3d ___ (December 30, 2022).

Elections: (1) NRS 293.269927 provides that the registrar and his employees will conduct the signature-verification process for mail ballots; and (2) the statute contains no requirement that a board verify the signatures, nor is there any requirement that signature verification on mail-ballot returns be done by persons of different political parties. The Legislature has placed such express requirements in other statutes governing the election process, and it is for the Legislature to determine whether similar requirements are warranted for signature

Summaries continued on page 16

Workers' Comp is *not* Personal Injury.

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Any questions?



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- Police/Firefighter Benefits



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verification of mail ballots. *Republican Nat'l Comm. v. Dist. Ct.*, 138 Nev. Adv. Op. No. 88, ___ P.3d ___ (December 29, 2022).

Judicial disqualification: (1) Pursuant to Nevada Code of Judicial Conduct (NCJC) 2.11(A)(6)(d), a judge does not “preside[]” over a matter, as that term is used in the disqualification rule, merely because a case was administratively assigned to a judge; and (2) to preside over a matter within the meaning of the rule, the judge must have exercised some control or authority over the matter in the lower court. While Justice Herdon technically was assigned to the case in district court, the relevant facts demonstrate that he took no action in it during the period of his assignment and did not “preside []” over it in such a way that NCJC 2.11(A)(6)(d) mandates his disqualification. *Taylor v. Brill*, 138 Nev. Adv. Op. No. 81, ___ P.3d ___ (December 15, 2022).

Juvenile dependency: (1) NRS 432B.393(3)(c) relieves a child-welfare-services agency from its duty to provide reasonable efforts to reunify a child with his or her parent if a court finds that the parental rights of that parent were involuntarily terminated with respect

to a sibling of the child; and (2) NRS 432B.393(3)(c), insofar as it relieves an agency of making reunification efforts, does not infringe on the fundamental liberty interest a parent has in the care and custody of his or her child and therefore does not violate due process. Parents are entitled to due-process protections before being deprived of the custody of their child or having their parental rights terminated. A finding under NRS 432B.393(3)(c), however, does not terminate parental rights or alter the custody of children. Rather, it relieves the agency from providing reunification efforts. Because NRS 432B.393(3)(c) does not infringe on a fundamental liberty interest, it cannot deprive any party of a fundamental liberty interest without due process of law, unless it violates substantive due process under the lenient rational-basis test. Since NRS 432B.393(3)(c) rationally relates to the legitimate interest that Nevada has in preventing the return of children to a dangerous home or from languishing too long in foster care, NRS 432B.393(3)(c) does not violate due process. *Washoe Cty. Human Servs. v. Dist. Ct.*, 138 Nev. Adv. Op. No. 87, ___ P.3d ___ (December 29, 2022).

Legal malpractice: (1) Legal-malpractice claims that arise from legal advice given in the course of drafting an estate plan are transactional legal-malpractice claims; (2) while the statute of limitations set forth in

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NRS 11.207(1) applies to both transactional and litigation-based legal-malpractice claims, the litigation-malpractice tolling rule applies only to litigation-based legal malpractice claims, meaning claims that arise from legal representation during litigation; and (3) for transactional legal-malpractice claims, such an action accrues when the plaintiff suffers damages and discovers (or should have discovered) the material facts of the case. Here, appellant Lynita Nelson asked the Supreme Court of Nevada to determine that her legal-malpractice claim was neither strictly litigation-based nor transactional. The court determined that her claim was plainly transactional and therefore did not apply the litigation-malpractice tolling rule to it. Rather, the court determined that, under NRS 11.207(1), the statute of limitations on Lynita’s malpractice claim began to run when she retained independent counsel to review the legal documents that were the subject of her claim and thus sustained the expense of hiring such counsel to litigate the documents’ meaning. As she retained counsel more than two years before filing her malpractice claim, the claim is barred by the statute of limitations. *Nelson v. Burr*, 138 Nev. Adv. Op. No. 85, ___ P.3d ___ (December 29, 2022).

Nevada Constitution: A private right of action against state actors for retrospective monetary relief exists to enforce search-and-seizure rights under Article 1, Section 18 of the Nevada Constitution, but a qualified-immunity defense does not apply to such an action. Article 1, Section 18 of the Nevada Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches.” The self-executing search-and-seizure provision of the Nevada Constitution contains a private cause of action to enforce its proscription, regardless of any affirmative legislative authorization, and a damages remedy remains essential to effectuate and advance the goals of Article I, Section 18. In addition, qualified immunity, a federally created doctrine, is not a defense to claims under Article 1, Section 18, in the absence of legislative authorization. As only the legislature may waive sovereign immunity of state actors, so too only the legislature may restore sovereign immunity to state actors. *Mack v. Williams*, 138 Nev. Adv. Op. No. 86, ___ P.3d ___ (December 29, 2022).

Summaries *continued on page 18*

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Nevada Public Records Act (NPRA): (1) Here, the Las Vegas Review-Journal (LVRJ) appealed from an order awarding it costs and attorney fees in proceedings under the NPRA but discounting the amount requested by almost 40%; and (2) the district court abused its discretion by imposing such a substantial discount without clearly explaining its reasoning. A district court enjoys wide discretion in determining what fees are reasonable to award. However, when the district court makes its award, it must explain how it came up with the amount. The district court should provide “a concise but clear explanation” of the reasoning behind its award amount. Where the difference between the lawyer’s request and the court’s award is relatively small, a somewhat cursory explanation will suffice. Where the disparity is larger, a more specific articulation of the court’s reasoning is expected. Such detail is needed for the prevailing party to object to—and the Supreme Court of Nevada to meaningfully review—the district court’s decision. *L.V. Review-Journal v. Clark Cty. Coroner*, 138 Nev. Adv. Op. No. 80, ___ P.3d ___ (December 15, 2022).

Personal jurisdiction: (1) This opinion concerns whether the effects test announced in *Calder v. Jones*, 465 U.S. 783 (1984), applies when determining whether a court has specific personal jurisdiction over a non-resident trustee sued in a trust-administration case; (2) the Supreme Court of Nevada concluded that “the effects test applies so long as the underlying claims sound in intentional tort, as they do here”; and (3) because the plaintiff in this case failed to provide prima facie evidence of the defendant trustee’s minimum contacts with Nevada, and any injury the plaintiff suffered in Nevada was not caused by the trustee’s contacts with Nevada, the district court erred in concluding that the trustee was subject to personal jurisdiction in Nevada. When a nonresident defendant challenges personal jurisdiction at the pleading stage, the plaintiff bears the burden of making a prima facie showing that personal jurisdiction is proper by producing some evidence in support of all facts necessary for a finding of personal jurisdiction. NRS 164.010(5)(b) provides a statutory basis for exercising personal jurisdiction over a nonresident trustee under certain circumstances. However, “[t]he Due Process Clause of the Fourteenth Amendment constrains a State’s authority to bind a nonresident defendant to a judgment of its courts”



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and requires that the nonresident has sufficient minimum contacts with the forum state. The district court may only exercise specific personal jurisdiction over a nonresident trustee under NRS 164.010(5)(b) if the statute's requirements are satisfied *and* the plaintiff meets her burden under the Due Process Clause's minimum-contacts analysis. There was no meaningful dispute as to NRS 164.010(5)(b)'s application here, so the dispositive issue was whether Margaret Burgauer met her burden to show that Steven Burgauer had sufficient minimum contacts with Nevada to allow relief to be granted against him. Courts apply this test to determine whether they may exercise specific personal jurisdiction over a defendant:

1. The nonresident defendant must have purposefully availed himself of the privilege of acting in the forum state or purposefully directed his conduct to the forum state.
2. The cause of action "must arise out of or relate to the defendant's contacts' with the forum."
3. The exercise of jurisdiction must be reasonable, meaning that it would not offend traditional notions of "fair play and substantial justice."

Because the parties disputed whether purposeful-availing or purposeful-direction analysis applied to resolve the first factor of the minimum-contacts analysis, the Supreme Court of Nevada first addressed the proper analysis to apply. The court then turned to whether Margaret satisfied the minimum-contacts analysis. The *Calder* effects test is used to analyze the purposeful-direction prong of the minimum-contacts analysis. Most courts applying the effects test have limited its application to tort cases. Courts usually focus on traditional purposeful availing in cases involving contract claims. A petition like Margaret's, seeking to remove a trustee for breach of fiduciary duties and a trust accounting and revision of the trust administration due to the trustee's breaches, generally sounds in intentional tort. In similar circumstances, other courts have looked to the defendant's purposeful direction as a measure to determine whether it has specific personal jurisdiction over the nonresident defendant by using the three-part *Calder* effects test. Thus, the Supreme Court of Nevada concluded that the effects test governed its inquiry into whether Steven purposefully directed activities to Nevada, such that the district court had specific personal jurisdiction over

Summaries *continued on page 20*

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Steven. Under the effects test, purposeful direction is satisfied when the defendant “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” The plaintiff’s contacts with the defendant and the forum are irrelevant. Instead, the inquiry “focuses on the relationship between the defendant, the forum, and the litigation, and ‘the defendant’s suit-related conduct,’ which ‘must create a substantial connection with the forum.’” Here, the district court erred when it concluded Steven had sufficient minimum contacts such that he was subject to the court’s specific personal jurisdiction. *In re Tr. of Burgauer*, 138 Nev. Adv. Op. No. 79, ___ P.3d ___ (December 15, 2022).

Trusts: (1) NRS 165.1207(1)(b)(5) does not provide a beneficiary whose only distribution interest in a trust is discretionary with a right to an accounting, and NRS 165.180 does not provide a district court with an independent basis on which to order an accounting; (2) whether a beneficiary has a right to an accounting under the terms of a trust turns principally on the language of the trust instrument itself, so as to give force to the grantor’s intent; (3) where a trust provides certain entitlements to “present” or “vested” beneficiaries, the construction of those terms should look to their definitions in the trust instrument first and foremost; in the absence of a specific definition, the construction should consider their usage in the instrument; and (4) a district court should provide sufficient specificity in its orders where it directs a trustee to take particular action with respect to the administration of a trust. Here, Nevada’s trust statutes—in particular NRS 165.1207—do not require the trustees to provide the beneficiaries with an accounting because the beneficiaries’ sole distribution interests are discretionary. However, because the beneficiaries constitute “present” and “vested” beneficiaries, as those terms are used in the trust, they may request and receive copies of certain trust instruments, may inspect the books of account and records of financial transactions, and on request, may receive an annual tax return, inventory, and accounting under the terms of the trust. Additionally, the district court ordered the trustees to provide the beneficiaries with copies of all sections of the trust document concerning the beneficiaries’ rights. The Supreme Court of Nevada agreed that neither Nevada statutes nor the trust instrument require the trustees to provide the beneficiaries with a copy of the entire trust instrument. The trustees did

not show that the district court abused its discretion in ordering them to produce sections of the trust concerning the beneficiaries’ rights. However, the district court abused its discretion in failing to specify *which* sections must be provided. *In re Tr. Agreement, 23 Partners Tr. I*, 138 Nev. Adv. Op. No. 84, ___ P.3d ___ (December 22, 2022).

Trusts: NRS 163.002 and NRS 163.008 permit a settlor to create a trust as to real property via trust instrument, and a description of real property held in trust satisfies the statute of frauds if it can be identified through extrinsic or parol evidence. NRS 163.002 and NRS 163.008 govern the methods of creating, and evidentiary requirements for, trusts funded by real property. The heirs in this case argued that, to create a trust in relation to real property, the settlor must execute and record a formal deed conveying the property to the trust. They also argued in the alternative that if another type of written instrument can fund a trust with real property, the agreement must include a legal description of the property to comport with the statute of frauds. Regarding the first argument, the Supreme Court of Nevada concluded that “[p]ermitting the creation of a trust in relation to real property by declaration or transfer without requiring a separate deed serves ‘the longstanding objective of this court to give effect to a testator’s intentions to the greatest extent possible.’” “Good practice certainly calls for the use of additional formalities,” and self-represented settlors would benefit from specificity in the trust instrument. But revocable trusts make up an increasingly significant percentage of estate-planning tools used by unrepresented individuals, and formalities should not raise an unnecessary barrier to their desired estate disposition. Regarding the second argument, because California shares Nevada’s generous approach to the common-law statute of frauds regarding interests in land, and because Nevada’s statute-of-frauds jurisprudence has long reflected the pragmatism of common-law treatises, the Court held that “the description of real property held in trust satisfies the statute of frauds when it provides sufficient means to identify the property using extrinsic or parol evidence.” Here, a detailed description of the parcel was easily available through the county assessor, so the house in question was identifiable through extrinsic evidence, such that the common-law statute of frauds (as codified in NRS 111.205(1)) was satisfied. *In re Tr. Agreement of Davies*, 138 Nev. Adv. Op. No. 89, ___ P.3d ___ (December 29, 2022).

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Joe Tommasino has served as Staff Attorney for the Las Vegas Justice Court since 1996. Joe is the President of the Nevada Association for Court Career Advancement (NACCA).



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Special Education in Nevada – Five New Laws We Love

By Jean Murrell Adams, Esq.

The past few school years have been extremely challenging for students with special education needs, as well as their parents, teachers, and service providers. Teacher and staff shortages, academic setbacks, and a lingering pandemic have taken their toll. But at least five Nevada laws that became effective in 2022 may make a big difference. From curbing the school-to-prison pipeline to increasing staff support in our largest school districts, these laws may improve educational outcomes and promote civil rights and liberties for children with disabilities throughout the state. Whether you represent or have children with special education needs, here are five new laws you need to know.

Restorative justice

Before removing a student from the classroom or other school grounds or suspending or expelling them, schools must provide them with a restorative justice action plan. “Restorative justice” is nonpunitive intervention and support provided by the school to a student to improve their behavior and remedy the harm they may have caused. NRS 392.472(5)(b). Restorative justice is particularly important for students with disability-related behavioral challenges who are disproportionately caught up in the school-to-prison pipeline. But school districts and charter schools had little guidance on how to draft or monitor re-

Before removing a student from the classroom or other school grounds or suspending or expelling them, schools must provide them with a restorative justice action plan.

storative justice action plans. A new law, Senate Bill 354, requires Nevada’s Department of Education to develop a statewide restorative justice framework and provide training for school staff in restorative justice, including positive behavioral interventions and support, conflict resolution, and de-escalation techniques. Further, public schools must offer a student who is removed from a classroom for more than two school days (a) education services to prevent them from losing academic credit or becoming disengaged from school during the removal period; and (b) appropriate positive behavioral interventions and support, trauma-informed support, and a referral to a school social worker or school counselor. This law offers positive interventions and educational continuity as alternatives to zero-tolerance expulsions and police involvement.



Jean Murrell Adams founded the California law firm of ADAMS ESQ in 2002 after fighting for proper testing, services, and education for her child with exceptional needs. In 2010, ADAMS ESQ expanded to Nevada where it continues to represent parents of children with special education needs on a contingency basis.

Truthful textbooks and educational equity

Instead of banning books and limiting access to uncomfortable truths, this new Nevada law broadens the scope of education for all K-12 students in public and charter schools. Thanks to Assembly Bill 261, school districts and charter schools must ensure that K-12 instruction includes the history and contributions to science, the arts, and humanities of diverse groups. The definition of diverse groups is extensive and includes persons with disabilities. Instructional materials, including textbooks, must accurately portray their history and contributions to science, the arts, and humanities.


Increased specialized instructional support for students

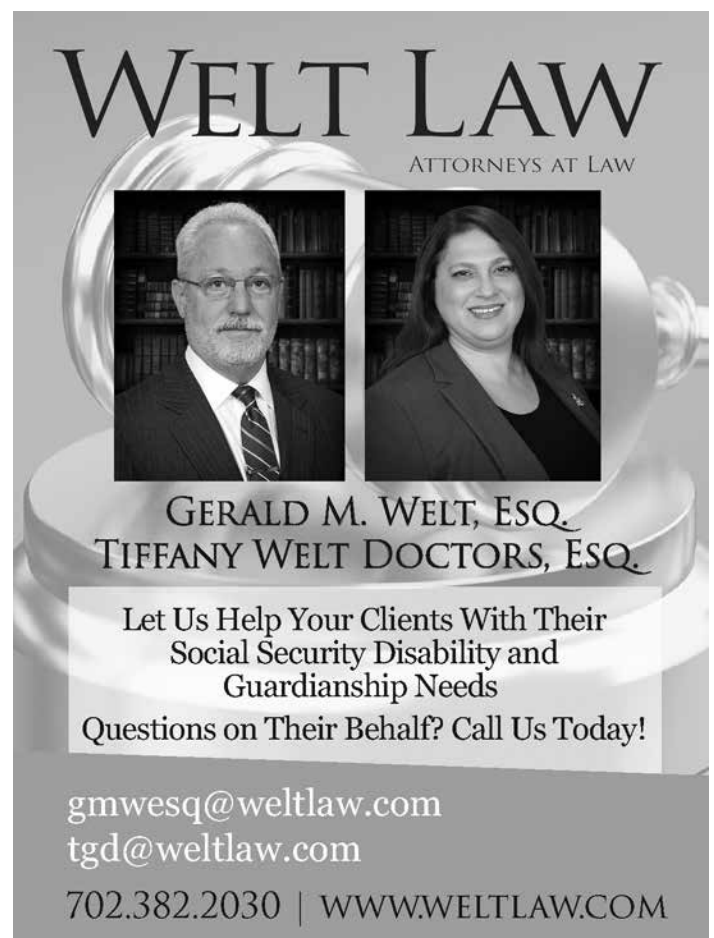
Even prior to the pandemic, school districts and charter schools struggled to hire and keep qualified service providers for students who needed special education or disability-related classroom modifications or accommodations. Although student needs increased during school closures, the number of staff and specialized service providers decreased. Senate Bill 151 requires Nevada's largest school districts, Clark County and Washoe County, to develop a plan to improve the ratio of students to specialized instructional support personnel to meet recommended state standards. The plan must include annual targets and strategies to recruit and retain school counselors, school psychologists, school social workers, speech-language pathologists, school nurses, and other specialized instructional support personnel.

Crisis intervention training for peace officers

Did you know that the Clark County School District Police Department is one of the largest law enforcement agencies in Nevada? Assembly Bill 304 expands mandatory continuing education for all police officers (including school police) to include courses in crisis intervention. This mandatory training can help de-escalate situations where students may be experiencing a mental health crisis event either on or off-campus.

Diversity and cultural competency, equity and inclusion training for mental health professionals

Behavior analysts, doctors, physician assistants, nurses, psychologists, marriage and family therapists, clinical professional counselors, social workers, and other mental health counselors and clinicians must complete certain continuing education for license renewal. Assembly Bill 327 requires these mental health practitioners to complete instruction in cultural competency, diversity, equity, and inclusion as part of their continuing education requirements. Among other areas, this must include training to address persons with mental illness, as well as persons with an intellectual disability, developmental disability, or physical disability. 



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What is Next After *Mack v. Williams* and the Future of Civil Rights in Nevada?

By *Andréa Vieira, Esq.*

On December 29, 2022, the Supreme Court of Nevada issued its opinion in the matter of *Mack v. Williams*, a landmark decision for civil rights cases in Nevada. *Mack* recognized the self-executing right of people to file, at minimum, a search and seizure civil rights claim for monetary damages under the Constitution of the State of Nevada. Notably, these claims are not subject to qualified immunity.

Plaintiff Sonjia Mack filed a civil rights action in federal court under 42 U.S.C § 1983 and alleged violations of the Nevada Constitution after she was strip searched and interrogated at High Desert State Prison when she went to visit her boyfriend. Mack alleged violations of Nev. Const. art. I, § 8 which states, “[n]o person shall be deprived of life, liberty, or property, without due process of law” and Nev. Const. art. I, § 18 which states “[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated . . .” Judge Andrew Gordon certified questions such as whether there is a private right of action under the Nevada Constitution and if so, whether any immunities apply.

The Supreme Court of Nevada held that a private right of action under Article I, Section 18 (the search and seizure

The Supreme Court of Nevada held that a private right of action under Article 1, Section 18 (the search and seizure claim) for retrospective monetary relief exists; the search and seizure rights are “self-executing” and “inherently enforceable;” and that qualified immunity is not a defense to the claims in the absence of legislative authorization.

claim) for retrospective monetary relief exists; the search and seizure rights are “self-executing” and “inherently enforceable;” and that qualified immunity is not a defense to the claims in the absence of legislative authorization. The court adopted framework from *Katzberg v. Regents of Univ. of Cal.*, 58 P.3d 339 (2002), as well as factors set



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forth in § 874A of the Restatement (Second) of Torts for determining whether a provision of the Nevada Constitution can be the basis of a civil rights damages action.

The *Mack* decision still leaves some questions unanswered:

- Do the sovereign immunity damages limitations from NRS 41.035, known as tort caps, apply to state constitutional claims? NRS 41.035 states that tort caps apply to “actions sounding in tort... against a present or former officer or employee of the State or any political subdivision... arising out of an act or omission within the scope of the person’s public duties or employment.” However, the court disagreed that any commonalities between state tort-law claims and constitutional protections provide meaningful recourse for violations of a constitutional right because state tort law protects and serves different interests than constitutional guarantees, and it held that only the legislature can waive or restore sovereign immunity to state actors.

Other questions include:

- What statute of limitations applies? § 1983 actions follow the state’s tort law statute, which in Nevada is two years per NRS 11.190(4), but civil rights claims could fall under the four-year statute of limitation under NRS 11.220’s catchall provision.
- Can plaintiffs bring search and seizure claims, or other Nevada Constitution based claims that meet the *Katzberg* framework, in state court without asserting § 1983 claims?
- Can plaintiffs participate in the court-annexed arbitration program in Clark County if there is a probable jury award value less than \$50,000?
- Can claims that have a value less than \$15,000 be filed in justice court?
- Can plaintiffs seek punitive damages as under § 1983?
- What about attorney fees? Nevada state court practitioners can use an offer of judgment to recover discretionary attorney fees. However, there is statutory right to attorney fees in § 1983 cases under 42 U.S.C. § 1988; plaintiffs can seek fees after a judgment, when they achieve a consent decree, or enter into a legally enforceable settlement agreement against the defendant.

Mack recognized the remedy to vindicate violations of the people’s long-standing and self-executing state constitutional rights, which cannot be abridged or impaired by statute. The next step is providing the framework for the exercise of these remedies. Similar to Colorado, New Mexico, Connecticut, Massachusetts, and the City of New York, the Nevada Legislature can codify the practical components of a state civil rights action, including making it clear that no immunity, qualified or otherwise, will excuse a violation. **E**



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12. Someone Subpoenas Your Client Files – What Do You Do Next?

Speaker: John M. Naylor, Esq. of Naylor & Braster
 Recorded: June 30, 2022
 CLE: 1.0 Ethics CLE (NV)
 Price: \$25/CCBA Member or \$50/non-member

13. Preparing Witnesses with Documents: Risks and Rewards

Speakers: Michael J. Gayan, Esq. and Alysia M. Grimes, Esq. of Kemp Jones, LLP
 Recorded: May 26, 2022
 CLE: 1.0 Ethics CLE credit (NV)
 Price: \$25/CCBA Member or \$50/non-member

14. How to Avoid (or Compel) Disclosure of Documents a Witness Reviewed Before Testifying

AKA: CCBA CLE Article #11
 By Michael J. Gayan, Esq. and Alysia M. Grimes, Esq.
 Published: *Communiqué* (May 2022)
 Format: Article (PDF)
 Offers 1.0 Ethics CLE credit (NV)
 Price: \$25/CCBA member, \$50/Non-member

15. EDCR 5 Update: New Rules Approved

Speakers: Hon. Denise Gentile and Hon. Charles Hoskin of 8th Judicial District Court, Family Division; Marshal Willick of Willick Law Group; Michael P. Carman of Fine Carman Price; Jennifer V. Abrams and Vincent Mayo of Abrams Mayo Law Firm
 Recorded: 5/20/2022
 Format: Audio/Video
 CLE: 2.0 CLE credits (NV)
 Price: \$50/CCBA member, \$100/non-member

16. Taking Steps to Improve your Mental Health

Speaker: Aviv Itzhaki MD of Focus Mental Health
 Recorded: 4/27/2022
 Format: Audio/Video
 CLE: 1.0 Substance Abuse/Addiction/Mental Health (AAMH) CLE credits (NV)
 Price: \$25/CCBA member, \$50/non-member

17. Basics of Handling 1983 Claims

Speakers: U.S. Magistrate Judge Brenda Wexler; Travis N. Barrick, Esq. of Gallian Welker & Beckstrom, L.C.; Philip Lyons, Paralegal
 Recorded: 3/30/2022
 Format: Audio/Video
 CLE: 1.0 CLE credit (NV)
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Library *continued on page 28*

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Library *continued from page 27*

18. Employment Law Class Actions in Nevada

Speakers: Montgomery Y. Paek and Diana G. Dickinson of Littler Mendelson
Recorded: 2/8/2022
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19. Five Procedures to Keep You Bar Compliant and Client Happy

Speaker: Joel Selik, Esq. of Selik Law Offices
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20. Landlord Tenant Law in Nevada and the COVID 19 Impact

Speaker: Jim Berchtold of Legal Aid Center of Southern Nevada
Recorded: 12/16/2021
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21. Probate and the Pandemic: Trust and Estate Legislative Update

Speakers: Alan D. Freer and Jeffrey P. Luszeck of Solomon, Dwiggin, Freer & Steadman, Ltd.
Recorded: 12/1/2021
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22. What Every Lawyer Should Know about Estate Planning

Speaker: A. Collins Hunsaker, Esq. of Law Firm of Jeffrey Burr
Recorded: 11/17/2021
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23. Legislative Update: Looking In and Out

Speakers: Lesley Cohen, Esq. Assemblywoman, District 29; Edgar Flores, Esq. Assemblyman District 28; Shea Backus, Esq. Backus Carranza & Burden
Recorded: 11/9/2021
Format: Audio/Video
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24. Diversity in the Legal Profession CLE Luncheon

Speakers: Judge Tierra D. Jones, Eighth Judicial District Court; Bryan K. Scott, Las Vegas City Attorney; Lora Picini, Senior VP, Inclusion and Talent Management, Everi Holdings; Nedda Ghandi, Partner, Ghandi Deeter Blackham; Annette Bradley, Chair, CCBA's Diversity and Inclusion Committee for Equity
Recorded: 10/21/2021
Format: Audio/Video
CLE: 1.0 Ethics CLE credit (NV)
Price: FREE to Nevada lawyers

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

Speaker: Rock Rocheleau, Esq. of Right Lawyers
Where: Online via Zoom
When: Thursday, October 14, 2021, 12:00-1:00 PM
CLE: 1.0 CLE credit (NV)
Price: \$25/CCBA member, \$50/non-member

26. Wanna Stay Out of Trouble in Discovery?

Authors: ADR/Discovery Commissioners Jay Young and Erin Truman
Published: *Communiqué* (Oct. 2021)
CLE: 1.0 CLE credit (NV)
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Tips for Enforcing State Constitutional Claims In Light of the Supreme Court of Nevada's Landmark Decision, *Mack v. Williams*

By Leo Wolpert, Esq.

Can a person sue the state (and its agents) for violations of their rights under the Nevada Constitution? The Supreme Court of Nevada ended 2022 by answering this question in the affirmative, at least regarding unreasonable searches and seizures. In the recent landmark decision, *Mack v. Williams*, 138 Nev. Adv. Op. 86 (Dec. 29, 2022), the *en banc* court unanimously held that a private right of action for money damages exists to vindicate violations of search-and-seizure rights under the Nevada Constitution.

The Supreme Court of Nevada further held that qualified immunity, "a federal, judicially created doctrine that immunizes state, local, and federal officials from liability for discretionary functions unless (1) the official violated a federal constitution-

al right, and (2) the right was clearly established at the time the challenged conduct occurred," does not apply to a private damages action under Article 1, Section 18 of the Nevada Constitution. These are pivotal holdings in the landscape of civil rights law, especially as states, rather than the federal government, become more important protectors of our civil rights.

While *Mack* only considers Nevada's prohibition on unreasonable searches and seizures, the logic underlying the *Mack* decision may extend to other rights protected by the Nevada Constitution, such as the right to free speech (Article 1, Section 9) and the right to assemble (Article 1, Section 10). Thus, plaintiffs should be certain to file causes of action for violations of both the U.S. Constitution and the analogous provision of the Ne-

vada Constitution if filing in federal court. Critically, even if a court finds that qualified immunity bars a claim brought under 42 U.S.C. § 1983, the analogous state constitutional claim survives.

Further, some practitioners may avoid federal court altogether and trade the entitlement to fees for prevailing civil rights plaintiffs enshrined in 42 U.S.C. § 1988 in for the many benefits for plaintiffs in litigating in state court. **■**

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Leo Wolpert is an attorney at McLetchie Law, focusing on civil rights litigation, defamation defense, public records litigation, and cannabis law.

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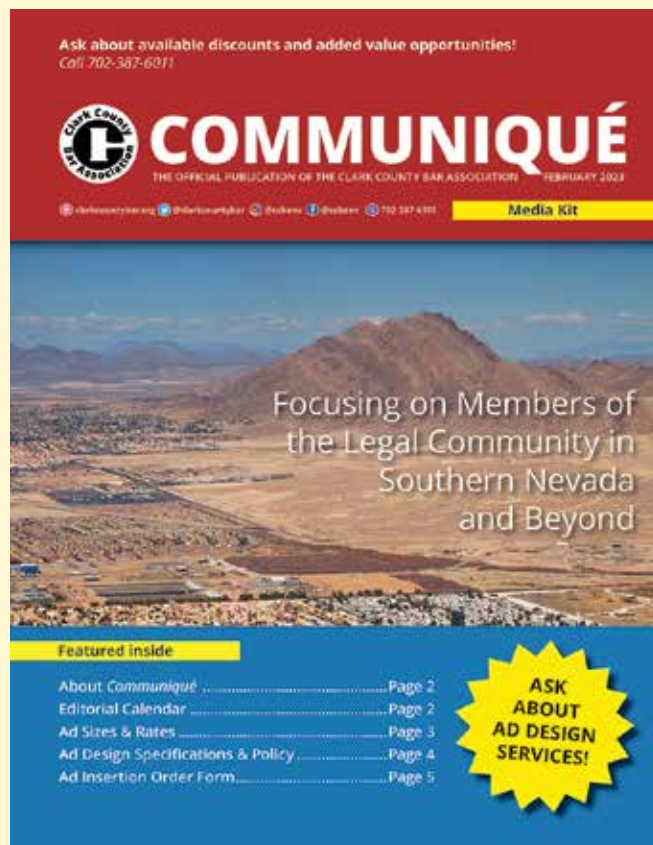
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