

Lunchtime Learning CLE Programs

Free for CCBA members on August 10 and 16, 2023

See pages 12 and 14



COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

AUGUST 2023

Special feature: Standing Up to Hate - See pages 6 and 8

The Real Estate Issue



Senior Advocates Will-a-Thon A Huge Success For Southern Nevada Community

Featured inside

Developments in Landlord-Tenant Law

Potential Steps for Sellers to Safeguard Against Mechanic's Liens

A Changing Landscape: Expanding the Use of the Lis Pendens in Litigation

What Developers Need to Know About, Amidst the Water Drought

Event highlights

Toast to Barbara Buckley

Bar Luncheon

Meet Your Judges Mixer

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S	M	T	W	T	F	S
		1 ABQ	2 ABQ	3 ABQ	4 ABQ	5 ABQ
6 ABQ	7	8 SAC 7:05pm	9 SAC 7:05pm	10 SAC 7:05pm	11 SAC 7:05pm	12 SAC 7:05pm
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20 RNO	21	22 TAC	23 TAC	24 TAC	25 TAC	26 TAC
27 TAC	28	29 SL 7:05pm	30 SL 7:05pm	31 SL 7:05pm		

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S	M	T	W	T	F	S
						1 SL 7:05pm
						2 SL 7:05pm
3 SL 6:05pm	4	5 SAC 7:05pm	6 SAC 7:05pm	7 SAC 7:05pm	8 SAC 7:05pm	9 SAC 7:05pm
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17 RR	18	19 RNO 7:05pm	20 RNO 7:05pm	21 RNO 7:05pm	22 RNO 7:05pm	23 RNO 7:05pm
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COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION AUGUST 2023

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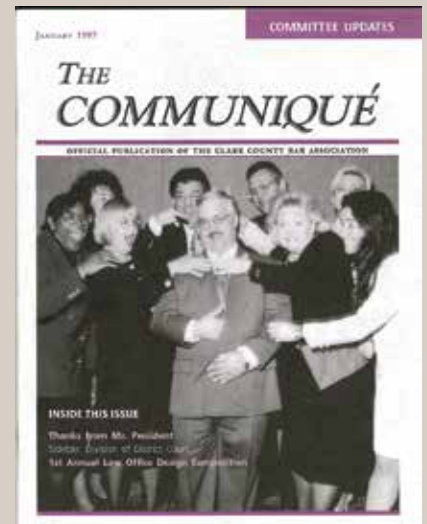
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Senior Advocates Pro Bono Will-a-Thon hosted by the Southern Nevada Senior Law Program (SLP) at the Martin Luther King Jr. Senior Center in North Las Vegas on Thursday, June 15, 2023.
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THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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March 2023	Sports Law	2/1/2023
April 2023	Administrative Law	3/1/2023
May 2023	Natural Resources	4/1/2023
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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.

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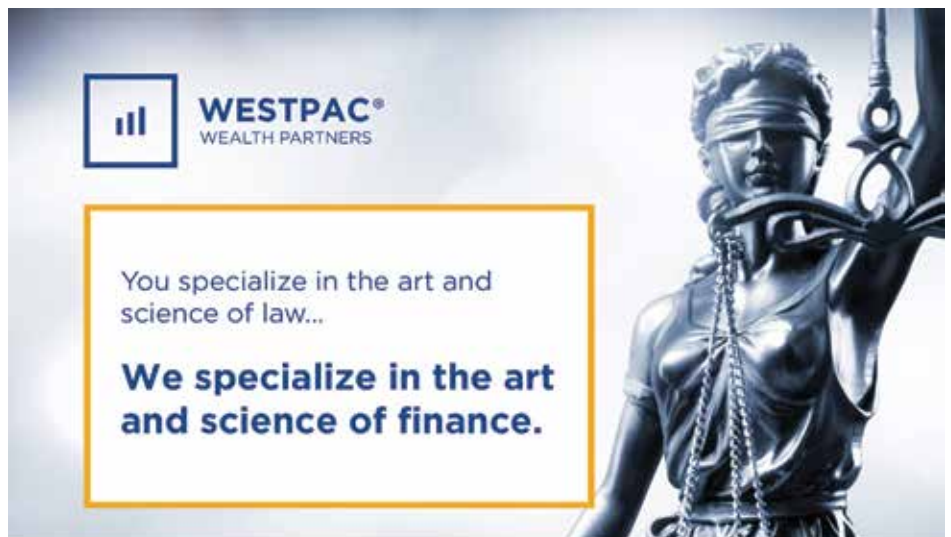
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Join a Bar Committee

CCBA members are invited to join one or more committee and help the CCBA to enrich the lives and careers of our members and community.

- **Community Service Committee** – Meets: First Friday of the month. Chair: Benjamin Gordon, Esq.
- **Continuing Legal Education (CLE) Committee** – Meets: Second Wednesday of the month. Chair: Michael Wendlberger, Esq.
- **Diversity and Inclusion Committee on Equity (DICE)** – Meets: Last Friday of the month. Chair: Michael J. Nunez, Esq. and Naomi Gregoryan, Esq.
- **New Lawyers Committee** – Meets: Second Thursday of the month. Co-Chairs: Benjamin Doyle, Esq. and Alexandra Matloff, Esq.
- **Publications Committee** – Meets: Second Friday of the month. Chair: Jennifer Roberts, Esq.

For more information about a committee, reach out to the committee chair or contact the CCBA office at 702-387-6011. **G**



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Standing Up

By *Brandon Kemble, Esq.*

Hello friends,
In my last column, I poked some fun at national this or that days. And while the national this or thatting of every day can be over commercialized or overdone, the national calling of our attention to causes can be useful and important. June was PRIDE month. Many of us join in the celebration as allies or as members of the LGBTQ+ community to celebrate progress and the hopeful future of inclusiveness. But there are reminders that we still have work to do. Please take the time to read and consider the op-ed in this edition by Kevin Kampschorr. I hope we can all answer his call to stand up to hate.

We'll all be a little better if we take some time to stand up for the wellness of ourselves and others.

August is National Wellness Month. It's an opportunity to focus on the importance of self-care, managing stress, and promoting healthy routines. There are few professions where that focus is more important than ours. A recent study revealed some harrowing results:

Lawyers who reported high stress levels were 22 times more likely to experience thoughts of suicide than lawyers with low stress, while lawyers with moderate stress were more than five times as likely. Lawyers who were highly "overcommitted" to their work—characterized by researchers as an all-encompassing level of devotion, a sentiment reflected in recent American Lawyer surveys of partners and associates—were more than twice as likely to consider suicide than those who maintained boundaries with their work.

"Lawyers Who Are Highly Stressed Are 22 Times More Likely To Consider Suicide," *Above the Law* (Feb. 14, 2023).

Take some time to work on your wellness this month, and while you are at it, if you can, help another lawyer work on theirs. The Nevada State Bar has some great resources to help you or another lawyer you know do just that: <https://nvbar.org/for-lawyers/resources/lawyer-wellbeing/>.

We'll all be a little better if we take some time to stand up for the wellness of ourselves and others. **G**



Brandon Kemble, Esq., 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.



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Standing Up to Hate

Editor's note: This article was originally published on the Clark County Bar's blog on June 16, 2023. See <https://clarkcountybar.org/standing-up-to-hate/>

By Kevin Kampschror, Esq.

To provide some context, a colleague, who I will refer to as an ally of the LGBTQ community, forwarded the screen shot of the tweet. He was outraged. This tweet is from one of our own, a licensed attorney in Nevada.



To the author of this hate, you have let our profession down.

While this tweet is misplaced and full of hate, it is protected by the First Amendment. Indeed, people are free to possess and share their opinions, no matter how offensive or hateful they may be, provided they not violate any laws. However, I am also free to take this opportunity – during PRIDE month – to issue a response.

One of my goals as the Chair of the LGBT Section of the State Bar is to be a resource for the community when these situations arise. I did not, however, expect to encounter this type of speech from a colleague.

The timing of this tweet not only falls during PRIDE, but follows the very month that Nevada Lawyer focused upon civility in practice. In June, that same publication featured Diversity, Equity, and Inclusion (DEI) within the practice of law. This tweet by a Nevada Lawyer could not be further from civil or diverse. It is adversarial and bigoted, and makes a false and supremely offensive connection between Nazism and rainbows (a symbol for the LGBTQ Community). I am a proud gay Jewish lawyer, who must, on behalf of myself and others, recognize this tweet and its underlying values as an embarrassment to our profession.

I am left with questions for the lawyer and author of this embarrassment. Do you understand that you are born with your sexual orientation? It is not a choice. Are you a member of religion or race that was targeted through a mass genocide? Do you truly see a connection between the symbol of pride and community and the Nazi regime? This tweet is both homophobic and antisemitic.

I am not a member of the so-called cancel culture. To the contrary, I encourage the author of this tweet to publicly share his opinions. Invite us to engage with you in public discourse. Defend your opinions, at the risk of learning they are indefensible. I suspect you do not have the courage to do so.

To the author of this hate, you have let our profession down. You have not proven yourself to be someone willing or capable of defending the inalienable rights protected by our Nevada and U.S. Constitutions.

Kevin Kampschror, Esq. 

Kevin Kampschror, Esq. is a Partner at Shook & Stone in Las Vegas. His practice focuses on workers' compensation injury law.

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Senior Advocates Will-a-Thon a Huge Success for Southern Nevada Community



Will-A-Thon group included (left to right): Angela Dows, Benjamin J. Doyle, Amanda Stevens, James Leavitt, Amber Lynn White-Davidson, Diane Fearon, Bryan Goynes, Mariteresa Rivera-Rogers, Michael Wendlberger, Paul Lai, Emilia Cargill, Whitney Short, Haley Price.

On Thursday, June 15, 2023, several members of the bar volunteered to provide *pro bono* services at the Will-a-Thon hosted by Southern Nevada Senior Law Program (SLP) at the Martin Luther King Jr. Senior Center in North Las Vegas. This event was hosted on World Elder Abuse Awareness Day and featured several local bar members providing *pro bono* services to 51 vulnerable seniors.

Special thanks to these attorney volunteers:

- **Kristen Schwingler** – Blut Law Group, LLC
- **Marc R. Kustner** - Solomon Dwiggin Freer & Steadman, Ltd.
- **Lisa Woodson** - Adam S. Kutner, P.C.
- **Amber Lynn White-Davidson** - Bremer Whyte Brown & O’Meara
- **Benjamin J. Doyle** - Gordon Rees Scully Mansukhani, LLP
- **James Terry Leavitt** - Leavitt Legal Services, P.C.
- **Michael R. Wendlberger** – Legal Aid Center of Southern Nevada
- **Paul Joseph Lal** – NV Energy
- **Angela H. Dows** – Cory Reade Dows & Shafer
- **Annette Obodai** - Annette Obodai, Esq.
- **Haley Price** - Borg Law Group
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- **Brooke M. Borg** - Borg Law Group
- **Gemma G. Nazareno** - Nazareno-Edquilang & Associates
- **Emilia K. Cargill** – Wingfield Nevada Group
- **Amanda L. Stevens** – Short & Stevens Law

The volunteer attorneys helped SLP to prepare a Last Will and Testament by conducting interviews that identified the seniors’ wishes and priorities for basic estate planning and identified whether seniors needed an advance directive. In addition, the seniors were screened for food insecurity and other social service needs for referrals to other community resources.

Diane Fearon, the executive director of SLP, shared her gratitude for all who helped with the event:

“We hosted a very successful Will-a-Thon event at the Martin Luther King Jr. Senior Center yesterday in partnership with the Clark County Bar Asso-

ciation, with an initial goal of having 12 *pro bono* attorneys and serving 36 seniors. Ultimately, we had 20 *pro bono* volunteers through the CCBA recruitment campaign, scheduled 17 to participate in the event, and ended up serving 51 seniors between pre-scheduled appointments, waitlist, and walk-ins. Due to the outreach of CIM Marketing Partners, we also had a field reporter from News 3 come to the event and broadcast live on the noon news.

My sincere thanks to Mariteresa Rivera-Rogers, Carol Kingman, Chelsea Crowton, Tiffany Shaw, Casi Colobong, and Adilene Plancarte for making this event a great experience for the seniors served, the volunteer attorneys, the news coverage, and MLK Jr. Senior Center. In addition to the direct benefits of the event, Adilene and I made several new community partner contacts to follow up with in the future to expand our support of seniors and increase awareness of SLP.” **C**

Legal Community Toasts Barbara Buckley

On June 15, over 100 members of the bar gathered at Nevada Brew Works for a “Toast to Barbara Buckley,” to honor the accomplished career of Executive Director at the Legal Aid Center of Southern Nevada.

Barbara spent her entire legal career with the Legal Aid Center, beginning as a staff attorney in 1989. Barbara became the Executive Director of the Legal Aid Center in 1996. In that time, Barbara created many new programs at the Legal Aid Center, including:

- A partnership with William S. Boyd School of Law, where all first-year law students are trained to teach legal classes to the public.
- The Family Justice Project, serving victims of domestic violence and immigrant victims of violence.
- The Children’s Attorneys Project, representing abused or neglected children.
- The Civil Law Self-Help Center and the Family Law Self-Help Center, where every year tens of thousands of litigants have access to legal information and forms so they can properly represent themselves in court.
- Barbara is also immensely proud of the Legal Aid Center’s role in managing the Vegas Strong Resiliency Center, a one-stop center for the survivors of the October 1 shooting, which has recently expanded to serve all victims of crime.

Barbara served as Speaker of the Nevada State Assembly from 2007 through 2010 and was the first woman in the state’s history to hold this position. From 2001 to 2007, she served as Majority Leader of the Nevada State Assembly, also the first woman to serve in this role.

She has received many awards and honors since her election in 1994, including Most Effective Legislator in the Assembly in 1999, 2001, 2003, 2005, 2007, and 2009.

This event was sponsored by:

- Clark County Bar Association
- Las Vegas Legal Video
- Leavitt Legal Services, P.C.
- Legal Aid Center of Southern Nevada
- Nevada Brew Works
- Nevada Latino Bar Association
- NV Chapter American Immigration Lawyers Association
- South Asian Bar Association of Las Vegas
- Southern Nevada Association of Women Attorneys
- Southern Nevada Senior Law Program **G**



U.S. Magistrate Judge Cam Ferenbach and Barbara Buckley.



LaTeigra Cahill, Andrea Vieira, Angela Cook, Jon Norman.



James Leavitt raises his glass to toast to Barbara Buckley (left).

Cybersecurity for Law Firms CLE Free for CCBA Members on August 10, 2023



David Shultis

On Thursday, August 10, 2023, IT consultant David Shultis will make a special presentation for the continuing legal education of Nevada lawyers in a lunchtime learning program produced by the Clark County Bar Association and sponsored by RedPanda Systems.

David is president and partner at RedPanda Systems. While he is not a native, he was raised in Las Vegas for most of his life, where he attended the University of Nevada, Las Vegas and obtained his bachelor's degree in international business. Dave began his IT career in 1999, when the Internet and technology had begun rapidly expanding. Fascinated with the release of Google in the prior year, Dave was inspired to pursue a career in IT, which first started with an eight-week technology course at Microsoft. Here, he would begin building experience, leading to him obtaining a career with a dial-up Internet service provider. He worked all over the United States, installing telephone systems back when the Internet was still evolving. Since

then, he has been certified by numerous organizations, ranging from the Cisco Certified Network Associate (CCNA) Certification, CompTIA A+ Certification, and the Certified Information Systems Security Professional (CISSP) Certification.

Please join the CCBA for this special presentation:

“Cybersecurity for Law Firms” – a CLE program

- **Date:** Thursday, August 10, 2023
- **Time:** 12 to 1:15 pm
- **Where:** Online via Zoom
- **CLE:** 1.0 General CLE Credit (NV)
- **Speaker:** President and Partner David Shultis, RedPanda Systems
- **Program Topics:**
 - Importance of cybersecurity for law firms
 - Threats to law firms and their data
 - Data compliances and standards for law firms
 - How to protect your data



- **Price for live webcast (via Zoom):** FREE for CCBA Members (2023) only
- **Price for recorded materials rental:** \$25/CCBA Member or \$50/non-member
- **RSVP Deadline:** 8/8/2023

All RSVPs must be made to the CCBA at least 48 hours before the event starts. Pricing of the live webcast event is included with the 2023 CCBA membership.

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 or (702) 387-6011. 📍

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On-line Calendar Available

ChatGPT and AI Tools CLE Free for CCBA Members on August 16, 2023



Pooja Kumar and Michael Smith

On Wednesday, August 16, 2023, general liability lawyers Pooja Kumar and Michael Smith of Lewis Brisbois will make a special presentation for the continuing legal education of Nevada lawyers in a lunchtime learning program produced by the Clark County Bar Association and sponsored by the Bank of Nevada and Las Vegas Legal Video. Please join the CCBA for this special presentation.

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

ChatGPT and Other AI Tools in the Law

- **Speakers:** Pooja Kumar and Michael Smith of Lewis Brisbois
- **Topics:**
 - What is ChatGPT? A brief background on how artificial intelligence is available to everyday users.
 - What can ChatGPT potentially do? Examples of how attorneys can ask questions on the platform and expected responses.
 - Does it work? A real-time example, with fact-checking and corroborating/refuting research.
 - Are there implications? Looking at plagiarism issues and legal ethical issues when using these.
 - Bottom line. A summary of what we present, including steps to utilizing the platforms in your career.
- **Date:** Wednesday, August 16, 2023
- **Time:** 12 to 1:15 pm
- **Where:** Online via Zoom
- **Offers:** 1.0 General CLE Credit for Nevada lawyers
- **RSVP Deadline:** August 14, 2023

All RSVPs must be made to the CCBA at least 48 hours before the event starts. Pricing of the live webcast event is included with the 2023 CCBA membership.

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.


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Vegas Golden Knights Chief Legal Officer Chip Seigel Guest Speaker at Bar Luncheon

On August 9, 2023, Chip Seigel III, the Chief Legal Officer of the Vegas Golden Knights (VGK), will make a special presentation of “Path to the Cup—A Legal Perspective” for members of Nevada’s legal community during the Clark County Bar Luncheon sponsored by Bank of Nevada, First Legal, Junes Legal Service, Inc., and Worldwide Litigation.

Charles A. “Chip” Seigel III is the Chief Legal Officer of Foley Entertainment Group (FEG), which includes the Vegas Golden Knights Hockey Club. Prior to FEG, Chip was the Chief Legal Officer of Qdoba Restaurant Corporation and the Chief Legal Officer of CKE Restaurants, parent company of Carl’s Jr. and Hardee’s. Chip also worked in private practice, both at a corporate-based law firm and a litigation firm he founded and managed.

Chip received his accounting degree from The George Washington University and his law degree from The Washington University School of Law in St. Louis. Chip is married to Julie Seigel and they have two children, Lauren (25) and Michael (23). Outside of work, Chip loves participating in all outdoor sports, especially fishing, golfing, and hiking. Chip is also a big hockey fan and played amateur hockey through high school. Chip’s favorite VGK memory is when the team won the 2023 Stanley Cup.

Mark your calendars and RSVP now for this special event!



Chip Seigel



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

Clark County Bar Luncheon

- **Featuring:** Chip Seigel III, Chief Legal Officer, Vegas Golden Knights
- **Topic:** Path to the Cup-A Legal Perspective
- **When:** Wednesday, August 9, 2023
- **Check-in and networking:** 11:30 a.m., **Luncheon:** 12 to 1 p.m.
- **Where:** MacKenzie River Pizza, City National Arena, 1550 S. Pavilion Dr., Las Vegas
- **Entrée options:** Blackened Salmon, Vegetarian Lasagna, or Flank Steak
- **Pricing:** \$60 per Member or \$80 per Non-member
- **RSVP Deadline: Friday, August 4, 2023:** RSVP with payment to the Clark County Bar Association by the published deadline via RSVP form at ClarkCountyBar.org, call to 702-387-6011, or delivery to 717 S. 8th Street, Las Vegas, NV, 89101. Cancellations must be submitted in writing to the CCBA via email to Donnaw@clarkcountybar.org by 8/4/2023 to qualify for a refund of the event registration fee less a \$15 processing fee. No refunds will be issued after 8/4/2023.

RSVP Deadline: 8/17/2023

SPECIAL EVENT

September 7, 2023

5:30-8:30 p.m.

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Admission fee/per person:

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- \$102/Non-member (Includes \$3 credit card processing fee)
- \$69/CCBA member (Check Payment; must be received by 8/17/2023)
- \$99/Non-member (Check Payment; must be received by 8/17/2023)
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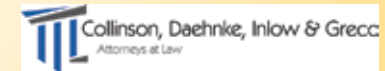
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ADR/Discovery Commissioner Selected

On July 10, 2023, the Eighth Judicial District Court announced that attorney Adam Ganz has been selected to serve as the ADR/Discovery Commissioner.



“I take to this position the same perseverance, fairness, and experience that have guided me my entire personal and professional life,” said Commissioner Ganz. “This position will be the cornerstone of my career and I am ready to give back to our legal community in this role.”

“We look forward to the contributions Commissioner Ganz will bring to Alternative Dispute Resolution/Discovery division,” said District Court Chief Judge Jerry Wiese. “His experience is well suited for the rigorous workload that comes with the post.”

For more information, read the full announcement on the court’s website at <http://www.clarkcountycourts.us/adr-discovery-commissioner-named-to-fill-post-in-district-court/>. NV8thJD Blog, 7/10/2023.

Business Bench-Bar Meeting

When: August 10, 2023, 12pm
Where: Regional Justice Center, Courtroom TBA and via BlueJeans
About: All lawyers and our legal services providers are invited to attend the meeting hosted by the Business

Bench-Bar Committee of the Eighth Judicial District Court. The topic will be Books and Records Requests and forensic accounting. One hour of CLE will be applied for. Lunch for first 25 people sponsored by Jones Lovelock. RSVP to lawrenceck@clarkcountycourts.us.

Supreme Court Law Library Awarded Two Grants

The Supreme Court of Nevada Law Library was recently awarded two Library Services and Technology Act (LSTA) grants: a \$75,000 2022 LSTA Last Chance Grant and a \$66,636 2023 LSTA Competitive Grant from the Institute of Museum and Library Services (IMLS), administered by the Nevada State Library, Archives and Public Records. The Law Library will use 100 percent of the funds to



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translate more than 65 self-help standardized family law, protective order, guardianship, divorce, custody and name change forms into Spanish, Mandarin, Tagalog, and Vietnamese to ensure self-represented litigants of limited English proficiency (LEP) in Nevada have equal access to the courts.

The Supreme Court of Nevada Law Library is a vital informational resource provided by the Court for the judicial branch, the bar, and citizens of Nevada. Its mission is to serve as a comprehensive current and archival resource for legal research conducted by the justices and staff of the Supreme Court of Nevada, the Nevada Court of Appeals, and members of the public. The Law Library provides access to the legal materials necessary so users may knowledgeably exercise their rights and obligations. Consequently, the Supreme Court of Nevada Law Library recognized the need for trans-

lation of standardized Self-Help forms for Limited English Proficient (LEP) Nevada residents.

In Nevada, there are over 276,000 LEP individuals who solely speak Spanish, Mandarin, Tagalog, and Vietnamese. This includes any person with limited English proficiency who utilizes Nevada court services. As the COVID-19 pandemic spread through Nevada, access to court services and legal resources have become increasingly virtual and the language barrier that LEP populations struggle with has become more apparent. Using the funds provided by these grants to translate standardized self-help forms, the Nevada Supreme Court Law Library hopes to remove some of the barriers LEP persons face and increase access to Nevada courts and self-help legal services.

Forms are available on the State of Nevada Self Help Center website





<https://selfhelp.nvcourts.gov/>, and via the Nevada Legal Kiosk website <https://nv.legalkiosks.com/>. The Nevada Legal Kiosks have been installed at 22 Nevada public libraries.

For a full list of translated self-help forms, please visit <https://nvcourts.gov/lawlibrary> or contact the Law Library at (775) 684-1640, reference@nvcourts.nv.gov.

Funds for this project have been provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Nevada State Library, Archives and Public Records. **■**

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Improving Advocacy in Real Estate Matters - a recent opinion

By Chief Judge Michael Gibbons

The Nevada Court of Appeals underwent a major change this year with the retirement of Judge Jerry Tao and the election of Judge Deborah Westbrook. Judge Westbrook brings tremendous energy and knowledge of appellate law to the court. Judge Bonnie Bulla and I welcome her and look forward to her many contributions to the court and the law.

Near the end of 2022, the court decided a case impacting real estate litigators. This was the second time these parties were before this court regarding property in Reno. In *Iliescu v. Reg'l Transp. Comm'n of Washoe Cty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 462 (Ct. App. 2022), the Regional Transportation Commission (RTC) began working on a project to improve traffic after it acquired, through eminent domain, a permanent easement, a public utility easement, and a temporary construction easement on property owned by the Iliescu Trust. Ten months later, Iliescu complained that RTC employees had parked their personal and construction vehicles on a private parking lot not subject to the easement. Iliescu alleged that this conduct caused physical damage to the parking lot and filed a complaint with claims sounding in tort, real property, and contract law.

The district court granted the RTC's motion to dismiss for several of Iliescu's claims and then granted the RTC's motion for summary judgment on the remaining claims, finding that none were supported by either law or proffered evidence.

This opinion examines the elements attorneys should consider when advising clients about real estate matters involving claims for breach of contract, waste, trespass, and declaratory relief.

On appeal, the Nevada Court of Appeals affirmed in part, reversed in part, and remanded. This court clarified that a claim for waste to real property can only be sustained against someone in rightful possession of the property, like against a tenant. Thus, Iliescu could not successfully pursue a waste claim arising from the RTC's alleged behavior on a parking lot that it had no permission to possess or use. The court also clarified that for a trespass claim damages are not required and nominal damages can be a proper remedy. Finally, the court concluded that injunctive relief is a remedy, not a separate cause of action, and that a party claiming breach of contract must prove that the breach caused damage.

This opinion examines the elements attorneys should consider when advising clients about real estate matters involving claims for breach of contract, waste, trespass, and declaratory relief. It also clarifies the available remedies for trespass, including injunctive relief and nominal damages.

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Chief Judge Michael Gibbons has served on the Nevada Court of Appeals since its inception in 2015. He previously served as a general jurisdiction district court judge for 20 years.

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Developments in Landlord-Tenant Law

By Morgan F. Shah, Esq.

Those following the most recent Nevada legislative session might have noticed several bills concerning residential landlord-tenant matters passed out of both houses; however, the governor vetoed nearly all of them. Nevertheless, practitioners should be aware of several recent developments relating to rental housing.

Landlords prohibited from passing on fees for essential repairs.

Effective July 1, 2023, SB381 amended NRS 118A.290 to prohibit landlords from requiring tenants to pay any fee or other charge (including home warranty deductibles or copayments) to perform repairs, maintenance tasks, or other work which the landlord has a duty to perform to maintain the unit in a habitable condition. Therefore, a landlord may not pass on fees or charges for maintenance or repairs needed to provide proper plumbing, hot water, electricity, heating, air conditioning, and other items as enumerated in NRS 118A.290(1). However, this prohibition does not apply if the repairs are necessary to remedy a condition caused by the tenant, members of the tenant's household, or their guests.

[P]ractitioners should be aware of several recent developments relating to rental housing.

Certain home sale-leaseback arrangements exempt from NRS Chapter 118A.

Effective July 1, 2023, SB223 amended NRS 118A.180 to exempt home sale-leaseback arrangements from NRS Chapter 118A, which governs residential landlord-tenant relationships, if the occupancy is for a period of no more than 90 days and the occupant is the seller. SB223 also relocates provisions concerning an existing tenancy where there is a voluntary transfer or sale of the property from NRS 40.255 to a new section in NRS Chapter 118A.

AB486 expired on June 5, 2023.

In 2021, the Nevada Legislature enacted AB486 to establish an eviction mediation program and require certain actions for summary eviction to be stayed where the tenant asserts as an affirmative defense that they have a pending application for rent assistance. These provisions naturally expired on June 5, 2023.



Morgan F. Shah, Esq. serves as Director of Community Engagement at Nevada Legal Services, Nevada's only statewide nonprofit legal aid organization providing free civil legal assistance to low-income residents in every county. Tenants can request legal help by completing an intake application online at www.nevadalegalservices.org or calling the nearest NLS office.

Two new rent assistance programs available to aid tenants on fixed income or facing a temporary hardship.

With pandemic assistance programs winding down, Clark County Social Services launched two new rent assistance programs earlier this year: Fixed Income CHAP and Eviction CHAP. Tenants on a fixed income facing eviction due to non-payment of rent following a rent increase in the 12 months prior to applying for assistance may be eligible for Fixed Income CHAP, which can provide financial assistance to prevent eviction and maintain the tenant's housing for a period of time. This program is not a permanent subsidy, but instead provides a reprieve to vulnerable residents with limited affordable housing options. Tenants facing eviction for non-payment of rent due to a temporary hardship may be eligible for Eviction CHAP, which can provide a one-time payment to bring the tenant current on their rent. Clark County residents needing assistance can apply for these programs at <https://chapportal.clarkcountynv.gov>. Additionally, the Las Vegas Justice Court has established an eviction diversion program to help identi-

fy tenants who may be eligible for assistance and connect them with services. LVJCLRP 6.8.

Las Vegas Justice Court requires parties to summary eviction proceedings to use Civil Law Self-Help Center forms.

As amended in February 2023, the Las Vegas Justice Court Local Rules of Practice require landlords pursuing summary eviction to use the surrender and eviction notices and complaint forms approved by the court and made available to the public on the Civil Law Self-Help Center website at www.civillawselfhelpcenter.org. LVJCLRP 6.2(f)(1), (3). Likewise, a tenant contesting a summary eviction must use the court-approved tenant's affidavit in opposition to summary eviction form provided by the Civil Law Self-Help Center. LVJCLRP 6.2(f)(2). Failure to use the approved surrender or eviction notices may result in the dismissal of the case, and non-conforming complaints or tenant's answers may be stricken. LVJCLRP 6.2(j)-(l). **c**



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Potential Steps for Sellers to Safeguard Against Mechanic's Liens

By Michael R. Kalish, Esq.

Commercial real estate developers rely on financing to acquire real property and/or to construct the development proposed thereon. The increases in the federal funds rate since March of 2022 have made it increasingly more difficult for developers to make their *pro formas* "pencil." This, in turn, has caused many developers to terminate pending purchase and sale agreements after incurring significant costs for inspections, entitlements and/or development plans. Given this increase in cancellations and Nevada's mechanic's lien laws applicable to these types of transactions, sellers should take steps to protect themselves and their properties against liability for mechanic's liens for lienable work that may be performed on behalf of their buyers prior to cancellation.

Buyers' consultants are customarily engaged during the due diligence phase of a purchase and sale agreement to perform inspections, planning, design and construction work related to the property that is under contract. They are eligible to seek mechanic's liens whether or not their work is completed and whether or not their work is actually performed on, or incorporated into, such property. See NRS §§ 108.2214, 108.22184, and 108.222. And such consultants can still seek a mechanic's lien even if they are engaged only by the buyer. See *Iliescu v. Steppan*, 133 Nev.

Furthermore, a seller who enters into a purchase and sale agreement can be deemed to have indirectly caused the lienable work that is performed on behalf of the buyer and can thus be prohibited from recording a notice of nonresponsibility to avoid liability for such lienable work.

182 (2017). Furthermore, a seller who enters into a purchase and sale agreement can be deemed to have indirectly caused the lienable work that is performed on behalf of the buyer and can thus be prohibited from recording a notice of nonresponsibility to avoid liability for such lienable work. *Id.* at 188-89. Unfortunately, in *Iliescu*, the Supreme Court of Nevada did not analyze the language in the purchase and sale agreement at issue; however, it is customary for such agreements to contain broad language permitting buyers to perform a wide range of due diligence. *Id.* As a



Michael R. Kalish, Esq. is a Member of Reisman Sorokac and he focuses his practice on a wide range of complex commercial real estate transactions, including, acquisitions, dispositions, commercial leasing and land use matters.

result, the majority of buyers' consultants engaged during due diligence may be entitled to seek mechanic's liens; and sellers may be precluded from relying on the statutory protections for disinterested owners under NRS Chapter 108.

In light of the foregoing, a seller should seek to contractually limit its liability for mechanic's liens by including remedial terms in its purchase and sale agreements where possible. A seller can require that the buyer obtain a surety bond for the payment of any lienable work that is performed on behalf of such buyer. In most cases, the bond will permit any recorded mechanic's lien to be removed as a title exception in the title policy for the buyer or, if such transaction is terminated prior to closing, any other potential buyer with whom the seller subsequently contracts. Additionally, a buyer can indemnify the seller from and against any lienable work and any costs incurred by the seller in connection therewith, including attorneys' fees. The buyer should be obligated to obtain this bond and provide indemnity during the pendency of the agreement and after any termination of the same, which will protect the seller even if the mechanic's lien arises after cancellation. The foregoing provisions will hopefully limit the liability of a seller for any mechanic's lien and prevent delay in

the closing of the sale of its property.

In addition to such contractual provisions, or in the absence thereof, a seller should take steps to preserve its objections to any mechanic's lien. In most cases, lien claimants must substantially comply with NRS Chapter 108, which requires, in part, that notice of mechanic's liens be provided to owners within specific timeframes and by specific delivery methods. See NRS §§ 108.245, 108.226 and 108.227, and *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 536 (2010). Thus, a seller should keep records of the date and manner in which any lien notice or recorded lien is delivered to such seller. A seller should also consider limiting its review of the buyer's due diligence and any proposed plans to avoid any argument that such seller has actual notice of any lienable work. In certain cases, actual notice permits a lien claimant to avoid the pre-lien notice requirements under NRS Chapter 108. Sellers should avoid making it easier for lien claimants to perfect their mechanic's liens, and detailed records will assist sellers' challenges to the validity of such liens.

In order to avoid being left holding the bag for their buyers' due diligence bills after termination, sellers can seek to limit their liability by being proactive in their negotiations and by tracking lien notices thereafter. **■**

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A Changing Landscape: Expanding the Use of the Lis Pendens in Litigation

By *Spencer H. Gunnerson, Esq. and Chad R. Aronson, Esq.*

“The right of property is the guardian of every other right, and to deprive a people of this is, in fact, to deprive them of their liberty.” Arthur Lee, *An Appeal to the Justice and Interests of the People of Great Britain, in the Present Disputes with America* 29 (1775). Throughout the history of this country, the protection of an individual’s right to property has been paramount in safeguarding core liberties and shaping our legal tradition. However, one limitation that has the potential to deprive an owner of his or her property rights is the notice of lis pendens. A notice of lis pendens is a legal doctrine that serves the public policy goal of providing “constructive notice to the world that a dispute involving real property is ongoing.” *Weddell v. H20, Inc.*, 271 P.3d 743, 750 (2012) (citing NRS 14.010(1)).

A lis pendens, when properly recorded, provides notice that real property involved in a dispute should be preserved and available until the conclusion of the litigation. While this doctrine serves the laudable purpose of notifying interested parties and safeguarding their interests, its ramifications can be severe. Once a lis pendens is recorded against a property, the likelihood of selling that property or using it as security for a loan becomes extremely difficult, if not

Once a lis pendens is recorded against a property, the likelihood of selling that property or using it as security for a loan becomes extremely difficult, if not impossible.

impossible. This creates a potential for abuse, prompting jurisdictions across the country to narrowly construe their respective lis pendens statutes to minimize such risks. *E.g.*, *Burger v. Superior Ct.*, 199 Cal. Rptr. 227 (Ct. App. 1984); *5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313 (1984); *E & E Hauling, Inc. v. DuPage Cnty.*, 77 Ill. App. 3d 1017 (1979).

Until the beginning of this year, the Supreme Court of Nevada followed an exceedingly narrow interpretation of the state’s lis pendens statute. In addition to pending mortgage foreclosures, NRS 14.010(1) permits a lis pendens in actions “affecting the title or possession of real property.” In the well-cited case of *Levinson*, the court limited the statute’s reach to actions where there was “some *claim of*



Spencer H. Gunnerson, Esq. is a partner at Kemp Jones, LLP and practices primarily in the areas of complex commercial and real estate litigation.

Chad R. Aronson, Esq. is an associate at Kemp Jones, LLP and practices primarily in the areas of complex civil and commercial litigation.

entitlement to the real property affected by the lis pendens,” and categorically rejected its use “to merely enforce a personal or money judgment.” *Levinson v. Eighth Jud. Dist. Ct. of State In & For Cnty. of Clark*, 857 P.2d 18, 20 (1993) (quoting *Burger*, 199 Cal. Rptr. at 230) (emphasis added). The court reasoned that extending the statute’s application to matters not directly involving real property would invite abuse. *Id.*

A shift in the court’s position emerged earlier this year with *Tabican v. Eighth Jud. Dist. Ct.*, 523 P.3d 550 (2023). The court deviated from the categorical holding in *Levinson* requiring a lis pendens to be “grounded in a claim of ownership or possess[ion]” in the real property. *Id.* at 554. The *Tabican* court claimed to minimize disruptions to its prior holding while attempting to reinforce the policy considerations underlying the decision in *Levinson*. It also affirmed that “a lis pendens may not be used in place of a writ of attachment to secure the ultimate collection of an anticipated money judgment.” Foreshadowing its shift, the *Tabican* court also noted that *Levinson* did not preclude a constructive trust claim as a basis for a lis pendens if the claim had merit. *Id.* at 553 (quoting *Levinson*, 857 P.2d at 21).

The impact of the *Tabican* decision lies in the court’s reinterpretation of NRS 14.010(1). The court concluded that an action with a fraudulent transfer claim *affects* “title or possession of real property,” under the statute. *Id.* at 554 (quoting NRS 14.010(1)). For immediate, practical purposes, the court has broadened litigants’ array of pre-judgment remedies, at least in fraudulent transfer actions, and has perhaps introduced new strategic considerations for such cases.

Given the abrupt, expanded use of the lis pendens in Nevada litigation resulting from the *Tabican* decision, practitioners can reasonably anticipate confronting new legal theories testing the limits of NRS 14.010(1). Does *Tabican* pave the way for further expansion of actions affecting “title or possession” of real property to other matters wherein real property serves only to secure a potential monetary judgment? In light of the *Tabican* court’s arguably ambivalent take on *Levinson*, there is no clear answer one way or another.

While the Supreme Court of Nevada may consider *Tabican* to be a minor adjustment to long-held precedent, it could very well portend a new landscape. Litigants can now cloud a party’s title based on the strength of mere fraudulent transfer allegations alone and further secure their ability to collect on money judgments. **G**

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What Developers Need to Know About, Amidst the Water Drought

As water conservation efforts ramp up, developers will need to implement strategies to comply with these regulatory changes across the Valley.

By Brooke Holmes, Esq. and Michael S. Alires, Esq.

With southern Nevada reliant on the Colorado River, water resource planning is a priority to meet the community's water demands. The Southern Nevada Water Authority ("SNWA") has sought to ensure water removed from Lake Mead is used, deposited into the sewer system, treated, and returned. Each gallon returned generates "return-flow credits," allowing southern Nevada to take more water from the Colorado River system. Water removed and not otherwise returned, such as evaporation or septic system storage, is deemed consumptive use and is the target of the SNWA. Developers are feeling the ripple effects from SNWA's plans to reduce consumptive water use, including:

1. Expedited construction timelines

To reduce consumptive water loss, the Las Vegas Valley Water District (the "District") updated its service rules prohibiting service to projects with evaporative cooling systems unless a building permit is applied for before September 1, 2023, issued before February 1, 2024, and a temporary certificate of occupancy, certificate of occupancy, or certificate of completion is issued before Feb. 1, 2026. *See* District Service Rules, Chapter 2, Section 2.1(a)(3); *see also* A.B. 97, 82nd Sess. (Nev. 2023) (allowing the adoption of a building code or ordinance or taking any other action to prohibit the construction or use of evaporative cooling mechanisms or to restrict water service to properties utilizing evaporative cooling). Tenant improvements within the shell building permitted prior to the deadlines may utilize evaporative cooling, and tenants or owners may

Brooke Holmes, Esq., with Brownstein Hyatt Farber Schreck, LLP, is an experienced real estate and land use attorney, assisting clients with matters from acquisition, disposition, development, entitlements, and a wide array of other complex real estate matters, with a focus in hospitality, gaming, retail development, and undeveloped land.



Michael S. Alires, Esq. is an experienced real estate attorney with Brownstein Hyatt Farber Schreck, LLP and a Las Vegas native whose practice focuses on solving problems impacting homebuilders and commercial real estate developers across the life cycle of real estate ownership, including acquisitions, development, leasing, common-interest community compliance, and dispositions.

replace or upgrade systems provided there is no increase in water consumption upon approval by the SNWA. Similarly, SNWA passed a resolution supporting the moratorium on commercial and industrial evaporative cooling systems, pushing municipalities to adopt similar ordinances. *See also* Henderson, NV, Ordinance 3939 (amending the Henderson Municipal Code, Chapter 15.24 relating to evaporative cooling).

Developers must explore alternative cooling technologies, such as dry cooled systems, and assess their efficacy in desert climates. These development changes may cause project and material delays, increased costs, retrofitting challenges, and modifications to scope and size of projects. Some developers are looking to phase developments and allow transition time to integrate alternative cooling systems and absorb additional operational costs. Alternatively, other developers are hastening design and construction timelines while seeking expedited plan review to meet the moratorium deadlines.

2. Consideration for alternative amenities

Developers are being pushed to consider amenity alternatives to further reduce evaporative water loss. The District, SNWA, and other municipalities have imposed:

- Limitations on swimming pools, including a 600 square foot size restriction for single-family homes, and a 4% size restriction for the first 10 acres and 0.4% for additional development area for non-single-family developments (resort hotels being provided an additional 5 square feet per guest room). *See* Clark County Development Code, Sec. 30.64.060(2)(E)(iii).
- Prohibitions on “nonfunctional turf” as of Jan. 1, 2024, without approval from SNWA pursuant to requirements adopted by SNWA, except for schools, parks, and cemeteries. *See* A.B. 220, 82nd Sess. (Nev. 2023); *see also* *District Service Rules*, Chapter 3, Sec. 3.10(b) & (c). SNWA has implemented a plan to remove existing nonfunctional turf, except for single-family properties, to be completed by Dec. 31, 2026. *See* A.B. 356, 81st Sess. (Nev. 2021).

Developers can expect heightened review of landscape and amenity plan approvals during the entitlement phase of development. Developers should consider landscaping alternatives to open area amenities, such as providing clubhouses to meet open space requirements. *See also* Hender-

son Mun. Code, Sec. 19.26.3.C. Developers with existing entitlements not yet developed may be required to modify previously approved designs due to recent regulatory changes.

3. Cost implications to sewer and septic system restrictions

To reduce consumptive water loss from septic systems, effective June 6, 2023, subject to certain exceptions, no new septic system may be installed on SNWA served property. The Nevada Legislature authorized a financial assistance program (to be established by Dec. 31, 2024) to pay 100% of the cost for properties served by the municipal water system to connect to the sewer system. An annual fee may fall upon property owners with existing septic systems to fund these costs. *See* A.B. 220, 82nd Sess. (Nev. 2023). Developers will need to consider the unavailability of septic systems, existing sewer line locations, and sewer connection costs. **C**



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Edward Kielty
(702) 491-5578
Ed@LegalWings.com

General Manager
Rena Brown
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Rena@LegalWings.com

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Get Involved with Nevada Legal Services' Lawyer in the School Program!

By Constantina V. Rentzios, Esq.

Nevada Legal Services (NLS) launched the *Lawyer in the School Program* last fall through a grant from the Legal Services Corporation's Pro Bono Innovation Fund. This unique program is designed to provide direct access to legal services for underserved families by embedding NLS staff and pro bono volunteers at Myrtle Tate Elementary School (a Title I school in northeast Las Vegas). One hundred percent (100%) of the school's students participate in a free lunch program out of necessity, and it is not uncommon for families to move an average of five times throughout the school year or experience bouts of homelessness due to poverty, poor housing conditions, and the issues that result from the intersection of the two.

The *Lawyer in the School Program* helps to stabilize the lives of children in the community by providing onsite legal assistance to these vulnerable families in a multitude of areas, such as tenant's rights, unemployment, protective orders for domestic violence, custody and guardianship, and other matters affecting their lives. Every Tuesday and Thursday, program staff and volunteer lawyers meet school families in a classroom at Myrtle Tate Elementary while school is in session. Parents, caregivers, school staff, and family members experiencing civil legal problems are encouraged to complete an intake application with us at the school to request assistance. Pre-screened clients are then



Constantina V. Rentzios, Esq. leads NLS' Lawyer in the School Program, connecting low-income families with critical legal assistance

and supporting the volunteer attorneys participating in the program. NLS is Nevada's only statewide nonprofit legal aid organization providing free civil legal help in every county.

scheduled for an Ask-A-Lawyer session with a volunteer attorney, which can be conducted either virtually or in person at the school. The case can be recommended for pro bono placement if further assistance is needed.

We hope you will join us in our efforts to increase access to justice through this community-based initiative. The help of a caring lawyer truly makes a difference in the lives of these children and their families by protecting their rights and providing increased stability, which in turn promotes academic success and equips students for a brighter future. NLS staff is present at the school and will provide relevant substantive training to volunteers. We are grateful for any assistance you can provide, whether it is a single Ask-A-Lawyer session or accepting a case for representation.

To volunteer or learn more, please contact Lawyer in the School Program staff at: croa@nevadalegalservices.org, or trentzios@nevadalegalservices.org. 

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In Memory of Sal Gugino

By Tommy Gugino

Growing up, I always looked forward to Sunday afternoons. I loved going over to grandma’s house near the Palace Station, the same house where my dad and his three siblings lived when they moved to Las Vegas in the 1960s. My parents, my twin brother Anthony, and I would make our way over to grandma’s house, and not long after the rest of the family would walk in through the back sliding door of the house into the kitchen. My aunt, Mary-Ellen, always came in with an arm full of celebrity and lifestyle magazines (usually a few copies of *People*) for my other aunt, Margaret. My sister, Kristen, would walk in with her coffee a little bit after them. Uncle Sal was usually the last one to join everyone around the table in the kitchen.

The Sundays that Uncle Sal would come over were full of a lot of laughter. He loved to tell us stories about things happening in his life, his business, and his upbringing (which usually involved him and my dad getting into some sort of trouble during their days at St. Joseph’s Catholic School and Clark High School—and receiving some tough love from my grandpa.). I remember Sal would always bring copies of his “Ask Mr. Lawyer” column after they would publish so he could read them to us.

Now in my 30s, I look back on those Sunday afternoons so fondly and wish I could relive those memories. Sal always brought so much joy and laughter to every room he entered, which is how I’ll always remember him. **©**

Tommy Gugino is the son of Tom Gugino, the younger brother of Sal Gugino. Born and raised in Las Vegas, Tommy works as the Director of Marketing and Communications at the William S. Boyd School of Law at UNLV.

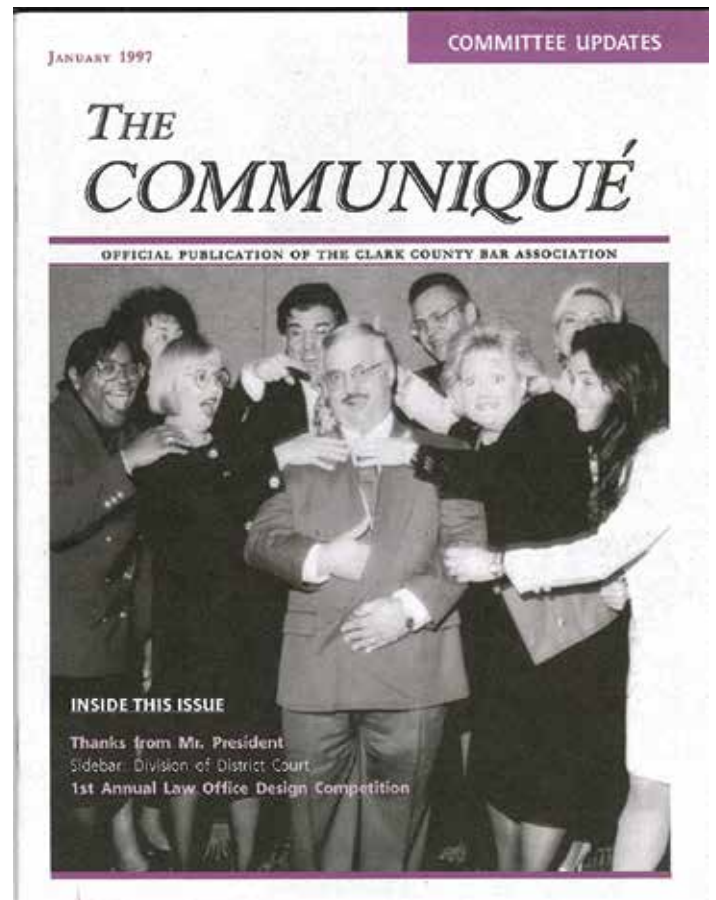


Photo (from left to right): Anthony Gugino (Sal's nephew), Sal Gugino, Michael Gugino (Sal's son), Tommy Gugino (Sal's nephew), and Tom Gugino (Sal's brother).

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