

# CCBA Memberships Expire December 31

Renew online before November 4, 2023, for Early Bird Special Offer

See page 3



# COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

OCTOBER 2023

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The Gig Economy Issue



*Feature article*

## **FTC Takes Action and Fines Angie's List \$7.2 Million After Committing to Protect Gig Workers**

By Jennifer L. Braster

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### *Bar activities*

**Bar Luncheons**

**CLE Programs**

**Executive Board Election**

**Holiday Mixer**

**Judicial Excellence Award**

**Rock & Roll for Pro Bono Event**

**Walk to End Alzheimer's**

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### *Feature articles*

- **Benefits and Pitfalls of the Gig Economy** (CLE Article #15)
- **Embracing AI**
- **An Emotionally Rewarding Side Gig**

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# COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

OCTOBER 2023

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### CCBA Memberships Expire December 31

Renew your CCBA Membership for 2024 now!

### Early Bird Special Offer

Join the CCBA or renew a CCBA membership for the 2024 membership year online using the form below BEFORE NOVEMBER 4, 2023, to receive an email with the links to stream TWO CLE programs compliments of the CCBA. For more information, see <https://clarkcountybar.org/> or call the CCBA at 702-387-6011.

Thank you!





# COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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Editorial Calendar		
Cover Date	Topic	Closing Date
November 2023	Gaming Law	10/2/2023
December 2023	Pro Bono	11/1/2023
January 2024	Five Things	12/1/2023
February 2024	Civil Rights	1/2/2024
March 2024	Criminal Law	2/1/2024
April 2024	Technology in Practice	3/1/2024
May 2024	Ethics	4/1/2024
June/July* 2024	Memberships Matter	5/1/2024
August 2024	Education Law	7/1/2024
September 2024	Labor & Employment Law	8/1/2024
October 2024	Law of Medicine	9/1/2024
November 2024	Constitutional Law	10/1/2024
December 2024	Pro Bono	11/1/2024

\*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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**Editorial Calendar Set for *Communiqué* (2024)**

**Proposals for content for first three issues (Jan., Feb. & Mar.) are due by October 11, 2023.**

The CCBA Publications Committee has set the editorial calendar for the *Communiqué* (2024). See page 4. CCBA members are encouraged to contribute original content for publication. Proposals should include:

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

Proposals for content for first three issues (Jan., Feb. & Mar.) are due by Oct. 11, 2023. Proposals should be submitted to the Editor-in-Chief c/o StephanieAbbott@clarkcountybar.org. Proposals will be forwarded to members of the editorial board for review.

The CCBA Publications Committee gives priority to articles and content submitted by active CCBA members. Not a current member? Join or renew a CCBA membership (<https://clarkcountybar.org/about/join-renew/>) for 2024 now!

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# Jamaica Mistaica! We All Do. Let It Go.

By Brandon Kemble, Esq.

Jimmy Buffett died last month. I was not a huge fan, but the guy died a billionaire and it seems like he had a lot of life figured out. One of the stories that emerged on his passing was the origin of his song “Jamaica Mistaica.”

The story goes that in 1996 Buffett, an avid pilot, was flying U2 frontman Bono and his family around and landed in Jamaica. The Jamaican authorities mistook the plane for a drug-runner. As Bono and Buffett exited the plane, the authorities let loose a barrage of machine gun fire. No one was hurt.

Of the incident, Buffett said: “I know that there are times in my life where I probably should have been shot at for a lot worse behavior,” and responding to encouragement to sue the Jamaican government he replied: “No, it’s probably karma. We’re even now.” Instead of suing, Jimmy wrote a song about it.

There are more than a few lessons that can be gleaned from the story: forgiveness, perspective, making the best of a bad situation, hanging out with Bono so you can have cool stories. I would take the Bono one if I could, but I can’t. The lesson I like then is Buffett’s perspective. Not

every offense is worth reckoning, even some that are easy wins and even some that are bad. Sometimes it is good to just call it even when someone else has behaved badly towards you; you might even get some benefit from it. I have needed, and gotten, some grace from other lawyers for mistakes I have made. I try, and will try harder, to let a few more things slide.

If you do not know it by now, I am going with my standard recommendation to make it easier to let things slide. Have fun with your fellow lawyers. We have some awesome events coming up. We have a great luncheon and CLE program on October 26, called “Diversity in Action,” sponsored by our DICE committee (p. 9). We have the Walk to End Alzheimer’s on October 28 (p. 10), and coming up on November 11, there is going to be a great event for a great cause – Rock N Roll for Pro Bono (p. 5) featuring some killer local bands. On second thought, forget Bono. For cool stories and crazy times, I’ll take Lost Vagrants’ front man John Courtney.

Some other housekeeping that needs to be on the radar: CCBA elections are coming up; nominations are due November 14 (p.8). Honor your favorite judge by nominating them for the CCBA’s Judicial Excellence award by November 9 (p. 8). Finally, mark your calendars for our Annual Meeting & Volunteer Appreciation Luncheon with guest speaker Dean Leah Grinvald (Dec. 14) at Morton’s The Steakhouse (p. 17).

Be well, everyone. 🍷

*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.*



**Save the date!**

Clark County Bar Association presents  
**9th Annual**

# Holiday Mixer

Hosted by the CCBA's New Lawyers Committee and Diversity and Inclusion Committee for Equity (DICE)

**November 30, 2023**  
**5:30 p.m. to 8:00 p.m.**  
Location: TBA

RSVP to the CCBA at [clarkcountybar.org](http://clarkcountybar.org), 702-387-6011  
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The Shearing Senior Community Impact Award | **Jeff Dorocak**  
The Access to Justice Advocate Award | **Justice Michael Douglas**

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# Judicial Excellence Award Nominations Due November 9, 2023

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

The Clark County Bar Association is accepting nominations for the 2023 Annual Judicial Award of Excellence. The award will be presented at the Annual Meeting and Volunteer Appreciation Luncheon, Thursday, December 14, 2023, to be held at Morton's The Steakhouse.

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

#### Previous Award Recipients:

- 2019 – Sr. Judge Nancy Oesterle
- 2020 – Judge Ken Cory
- 2021 – Justice Abbi Silver
- 2022 – Chief Judge Jerry Wiese

#### Nomination criteria:

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

#### Nominations must include:

- First and last name
- Address
- Phone number

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

Submit nominations by Thursday, November 9, 2023, to: Donna S. Wiessner, Executive Director, Clark County Bar Association, DonnaW@ClarkCountyBar.org, 717 South Eighth Street, Las Vegas, NV, Fax (702) 387-7867


## Notice of Election for 2024 CCBA Executive Board

### Deadline for nominations is November 14, 2023

Nominations from members to serve on the 2024 CCBA Executive Board will be accepted through Tuesday, November 14, 2023, at 4:00 p.m. Nominations should be sent to the CCBA President, Brandon Kemble at Prez@ClarkCountyBar.org.

The nominating committee shall consider the following criteria and characteristics as applied to each prospective nominee in their application:

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

The election will be held at the Annual Meeting & Volunteer Appreciation luncheon on Thursday, December 14, 2023. Get details at [www.clarkcountybar.org](http://www.clarkcountybar.org) or call (702) 387-6011. 





Special event!

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**Southwestern Buffet Lunch • Networking • 1.0 hour of Ethics CLE (NV)**

**Thursday, October 26, 2023  
Culinary Academy of Las Vegas**

*Check-in & Networking: 11:30 AM -12:00 • Luncheon Program: 12:00-1:15 PM*

**RSVP to the CCBA required by 10/19/2023  
<https://clarkcountybar.org/> or 702-387-6011**

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# Community Outreach Activities

CCBA members are invited to participate in planned activities to help the community at large in southern Nevada. See below for highlights on planned activities.

## Sk8 to Elimin8 Cancer™ Vegas

- **Date:** Saturday October 14, 2023
- **Time:** 4:30-5:10pm
- **Location:** City National Arena, 1550 Pavilion Center Dr. Las Vegas, NV 89135
- **About:** 2nd Annual Sk8 to Elimin8 Cancer Frozen 5K and Ice Show event at City National Arena to benefit the Scott Hamilton Cares Foundation and Cure 4 the Kids Foundation of Las Vegas.
- **Sign-up now:** Link forthcoming. Use discount registration code "CLARKBAR"

## Shine-a-Light Walk-Through

- **Date:** Saturday, October 14, 2023
- **Time:** 8:00 a.m.
- **Location:** Shine a Light Foundation, 840 S Rancho Suite 4-825, Las Vegas
- **About:** Volunteers to bring items for people sheltered in the tunnels. Bring a flashlight and backpack with items to distribute. No children/minors. No cameras or lookie-loos.
- **RSVP now:** StephanieAbbott@clarkcountybar.org

## 2023 Walk to End Alzheimer's®

- **Join the CCBA's team** in this activity to raise awareness and funds for Alzheimer's care, support and research.
- **Date:** Saturday, October 28, 2023
- **Time:** 8:00 a.m.
- **Location:** Las Vegas Ballpark
- **Sign up now:** <http://act.alz.org/goto/CCBA>

## Mark Blackman Blanket the Homeless Program

Help us to provide the gift of new rescue blankets to people experiencing homelessness.

- **Donate monies to buy new blankets:** <https://clarkcountybar.org/community-service-activities/blanket-the-homeless/>.
- **Volunteer:** Distribute blankets to people at the Las Vegas Rescue Mission on December 9, 2023.

## CCBA Volunteers at the Las Vegas Rescue Mission

- **Date:** Saturday, December 9, 2023
- **Time:** 4:15 p.m. to 6:15 p.m.
- **Location:** Las Vegas Rescue Mission, 480 W. Bonanza Rd. 89106
- **About:** Join the CCBA Community Service Committee to help serve dinner to individuals and families in need and distribute blankets to the homeless. Volunteers will serve and clean up for the community dinner. Arrive inside Building 11 (Dining Hall) promptly at 4:15 p.m. and no later than 4:30 p.m. Once you enter the dining hall, there is an area for volunteers to sign in, get an apron, hairnet, and gloves. Around 4:40, the kitchen manager will assign everyone to a position. As the meal is wrapping up around 5:50, volunteers will be asked to wipe down tables, chairs, and sweep. Volunteers should be done about 6:15 p.m.
- **Note:** Volunteers who are age 16-17 must be accompanied by an adult who serves alongside them in the dining hall. All volunteers will need to sign up online prior to the event.
- **RSVP:** Send an email to StephanieAbbott@clarkcountybar.org for more information.

Scan the QR code to open a page at ClarkCountyBar.org that lists links and information to volunteer now.

For more information about the CCBA's community outreach services, contact CCBA Community Service Committee Chair Benjamin Gordon at Naylor & Braster or Stephanie Abbott at the CCBA office.

Thank you!



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# Landlord Tenant Law CLE Free for CCBA Members on November 2, 2023

Public interest lawyers Alex Cherup and Nick Haley will make a special presentation for the continuing legal education of Nevada lawyers in a lunch-time learning program produced by the Clark County Bar Association. The live webcast of “Moving In or Moving Out: Landlord-Tenant Law in NV” will be free for CCBA members on Thursday, November 2, 2023.


Alex Cherup is the Deputy Director of Nevada Legal Services, Nevada’s statewide legal services organization. NLS receives funds through the Legal Services Corporation and other sources to assist communities and low-income Nevadans in the state’s seventeen counties to obtain access to justice. NLS has a Tenant’s Rights Center, a Consumer Law Project, and a Clean Slate Law Project, among others. Previously, Alex directed the Nevada Legal Services offices in Reno, Carson City, Elko and Yerington. Also, he represents Nevadans in different areas of law, including in protected persons guardianship proceedings.

Prior to his time at Nevada Legal Services, Alex has worked as a Public Defender in New Mexico; as the Director of Transition Services for Nevada PEP, our state’s Parent Training and Information Center; and as a Program Manager for the AmeriCorps VISTA Youth Transition Project and People First Project with the Nevada Center for Excellence in Disabilities.

Nick Haley is a Housing Justice Program attorney with Legal Aid Center and a lifelong resident of southern Nevada. He lives in downtown Las Vegas, where he can be seen walking to work, court, Main Street, and around the neighborhood.

To participate in the live webcast, CCBA members must RSVP by October 17, 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](mailto:donnaw@clarkcountybar.org) or (702) 387-6011. 

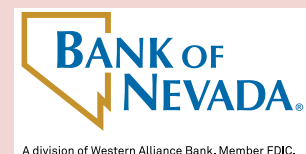


*Alex Cherup and Nick Haley*

## “Moving In or Moving Out: Landlord-Tenant Law in NV”

- **Speakers:** Alex Cherup, Esq. of Nevada Legal Services and Nick Haley, Esq. of Legal Aid Center of Southern Nevada
- **Date:** Thursday, November 2, 2023
- **Time:** 12 to 1:15 pm
- **Where:** Online via Zoom
- **Credits:** 1.0 General CLE Credits (NV)
- **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 to CCBA by 10/17/2023.

The CCBA’s CLE programming is sponsored by Bank of Nevada and Las Vegas Legal Video.





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# Similar, But Not the Same

By Chief Judge Cynthia Cruz

Civil practice in Justice Court often varies from the practice in District Court. Here, I will illuminate some differences between the courts.

First, awards of prevailing-party costs and attorney’s fees in District Court are governed by NRS 18.010 and NRS 18.020 and are not automatic. In Justice Court, NRS 69.020 and NRS 69.030 provide that the prevailing party “is entitled to costs” and “shall receive . . . a reasonable attorney fee.”

Second, discovery in District Court is governed by complex procedures in the Nevada Rules of Civil Procedure (NRCPP). However, discovery in Justice Court is more streamlined under the Justice Court Rules of Civil Procedure (JCRCPP). For example, JCRCPP 25A(b) declares that “[w]here all parties are represented by counsel, no leave of court to conduct discovery is required by any party to:

- (1) Conduct no more than one deposition not to exceed one hour in length.
- (2) Propound up to a total of 10 written interrogatories, including all discreet subparts.
- (3) Request the production of up to 10 documents.
- (4) Request up to 10 written admissions.
- (5) Conduct depositions in accordance with the notice provisions under the requirements of JCRCPP 30(b)(2).

Third, in District Court, NRCPP 16.1(b)(2)(A) requires that an early case conference “must be held within 30 days after service of an answer by the first answering defendant.” However, in Justice Court, JCRCPP 16.1 does not actually require the parties to meet in an actual “early case confer-

ence.” Instead, JCRCPP 16.1(a) merely requires the exchange of certain documents and witness lists. JCRCPP 16.1(b) mandates that, “[w]ithin 10 days of the exchange, the parties shall file with the court an early case conference report containing a list of the documents exchanged and attaching the respective lists of persons exchanged.”

Finally, many attorneys are unaware that the Las Vegas Justice Court has two sets of local rules. The first is entitled “Justice Court Rules of Las Vegas Township” (JCRLV), and the second is titled “Las Vegas Justice Court Local Rules of Practice” (LVJCLRP). The Court is currently migrating all rules from the JCRLV into the LVJCLRP, but, for now, both sets of rules are in effect.

**View** *continued on page 16*



*Chief Judge Cynthia Cruz was elected to Las Vegas Justice Court Department 5 in 2012 and re-elected in 2018.*

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View continued from page 14

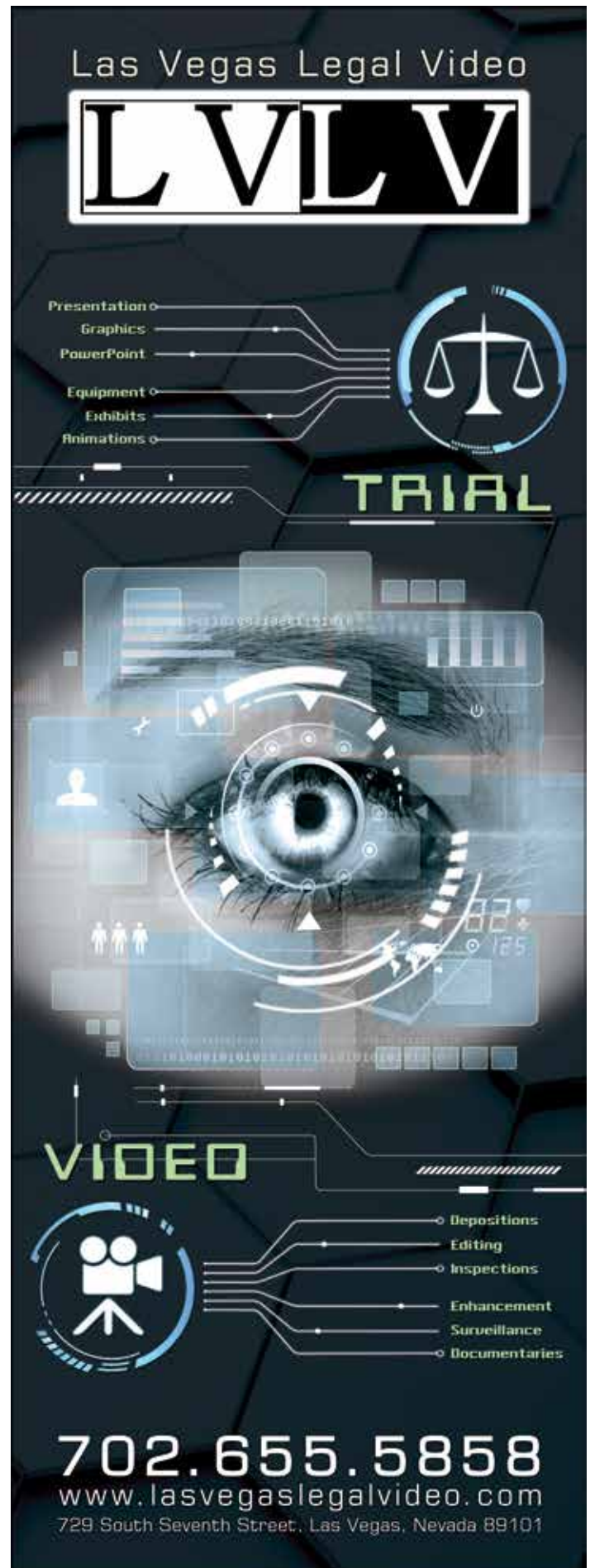
One of the most commonly overlooked local rules is JCRLV 22.5 which generally requires all motions to contain a notice of motion that contains this language in bold print and capital lettering:

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Attorneys should remember that the LVJCLRP contains specific rules that are controlling for Small Claims (Part 5) and Summary Evictions (Part 6).

Both the JCRLV and the LVJCLRP can be found at this link: [https://www.lasvegasjusticecourt.us/laws\\_and\\_rules\\_\\_\\_administrative\\_orders.php](https://www.lasvegasjusticecourt.us/laws_and_rules___administrative_orders.php). 



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# FTC Takes Action and Fines Angie's List \$7.2 Million After Committing to Protect Gig Workers

By Jennifer L. Braster

Approximately 16% of Americans have reported earning money through an online gig platform, with the gig economy generating approximately \$455 billion in annual sales this year. *FTC Policy Statement on Enforcement Related to Gig Work* (“FTC Gig Work Policy Statement”) at 1, 2 (adopted Sept. 15, 2022). Gig workers include ride-share drivers, food delivery drivers, pet sitters (including those found through online apps), and “taskers” (those hired through apps to run errands, for example).

Touted as an easy way to make money in one’s spare time and without having to have set hours, gig workers have routinely not been classified as employees and with that, have very little protections. Gig workers are often subject to onerous contracts (e.g., terms of service for using the app), making it difficult to unite in actions against the companies for unfair practices. Often these terms of service also have arbitration provisions, making these cases likely more expensive and outside the public record.

With the FTC Gig Work Policy Statement, the Federal Trade Commission has made a conscious effort to protect gig workers from deceptive trade practices (such as misrep-

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***By recognizing gig workers as consumers of gig platforms, the FTC can protect them under its consumer protection mandate.***

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resentations over the terms of the work), little bargaining power (largely from not being classified as employees), and unlawful price fixing. By recognizing gig workers as consumers of gig platforms, the FTC can protect them under its consumer protection mandate.

The FTC Gig Work Policy Statement noted the increase in gig workers over the past few years—especially with the COVID pandemic—and the abuses that have occurred against these workers, including misclassifying their status and saddling the workers with “inordinate risks” (such as costs of supplies or equipment) while at the same time using algorithms to capture more revenue from the end customers’ payments than the customers or gig workers understand. *FTC Policy Statement* at 4-5.



*Jennifer L. Braster is a founding partner at Naylor & Braster, a commercial litigation firm in Las Vegas, Nevada. Jennifer routinely practices in both the federal and state courts in Nevada and in the areas of commercial litigation, consumer finance, and appellate law. She can be reached at 702-420-7000.*

After the FTC Gig Work Policy Statement was adopted, FTC Commissioner Bedoya made a statement on April 10, 2023, that gig workers should be permitted to organize and collectively bargain for better wages. Since the FTC Gig Work Policy Statement, there has also been an uptick in gig worker class actions, including cases against Uber, GrubHub, and Doordash pertaining to the classification of gig workers. It is too early to determine the success of these lawsuits, but if they track the FTC Gig Work Policy Statement, more protections will be afforded gig workers.

Then, on April 20, 2023, the FTC issued an order requiring Angie's List (nka HomeAdvisor or Angi Leads) to pay \$7.2 million for misrepresentations to service providers. FTC previously issued a complaint against Angie's List for dishonest practices in misrepresenting leads to service providers, among other illegal acts. Complaint, *In the Matter of HomeAdvisor, Inc. dba Angi Leads*, Case No. 9407 before Federal Trade Commission (March 11, 2022). For example, Angie's List would tell its service providers that the leads resulted in more jobs than its own data supported. *Id.* The leads provided also would not match the service provider's type of work. *Id.* Further, contrary to Angie's List's representations, the leads it would sell to service providers would be purchased from affiliates and pertain

**After the FTC Gig Work Policy Statement was adopted, FTC Commissioner Bedoya made a statement on April 10, 2023, that gig workers should be permitted to organize and collectively bargain for better wages.**


to individuals who did not knowingly seek Angie's List's assistance. *Id.* Per the consent order, FTC found Angie's List engaged in multiple illegal acts, resulting in an order requiring the company to pay \$7.2 million.

While this is one of the first large cases to be concluded after the FTC Gig Work Policy Statement, it appears the FTC is keeping its commitment in protecting gig workers from exploitation and abuse. It remains to be seen when, and if, the protections keep up with the technologies that allow companies to earn more and more off of gig workers.

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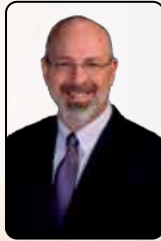
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# Benefits and Pitfalls of the Gig Economy

By Mark D. Rich, CPA, CFF

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*\*About the CCBA's Article #15: "Benefits and Pitfalls of the Gig Economy" offers 1.0 general Continuing Legal Education (CLE) credit to Nevada lawyers who complete the test and order form per the offer described in the October 2023 issue of Communiqué. See pp.20-26. The CCBA is an Accredited Provider with the NV CLE Board.*

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## Historical perspective

I was a "gig" worker in the '60s; the platform consisted of advertisements targeting kids for hire on the back page of comic books; the product was a popular weekly newspaper sold door-to-door. Most of my earnings from that gig work went towards more comic books. In college, I was literally working gigs as a drummer for a few different bands. I never thought about why we called them gigs, I just knew that gig opportunities didn't pay very well, especially after the band split the money at least four ways. My experience as a gig worker was indeed fun, but not very profitable. There just wasn't a good cost-efficient way to get the word out to advertise talent and availability. A lot of things have changed in that regard. Gig work in today's economy utilizes many available computerized platforms and apps to promote and match talent with the need for talent.

So, what exactly is this "Gig Economy" that many of us have participated in over the course of our lifetime? Historically, the term "gig" has been used by musicians putting together a group to play at one-time engagements

called a gig for short. Businesses in need of professionals are moving towards the gig approach as an option because the workforce is now able to work virtually to pick and choose various times, various projects with various businesses. Technically, the term "gig worker" is just another name for an independent contractor. The classification as "self-employed" is a general term the IRS commonly uses.

Gig work can be arranged by simply utilizing a social media account to put your talent out to the public; or a formal platform that matches a worker with a customer (such as arranging a driver to pick you up and take you to specific locations); or a general platform that provides a list of potential workers with job-specific talents.

## Benefits of the gig economy

The advantages of a law firm utilizing the services of a gig worker are pretty obvious. A contracted job for special projects such as quick professional assistance, website creation, repair services, creative services, IT consultations, and so many other services can be contracted without the



*Mark D. Rich, CPA, CFF has been licensed for over 40 years and is Founding Partner of Rich Wightman & Company CPAS. Contact Mark at [markr@richwightman.com](mailto:markr@richwightman.com).*

long-term commitment and costs of hiring additional employees. Gig workers also do not qualify for benefits, and an assortment of payroll taxes are not applicable. This is especially helpful when a law firm, or essentially any business, is in the early stages of development and/or expanding rapidly.

From the perspective of individual licensed legal professionals, there are many high-end freelance jobs available in the gig economy. On-demand legal service platforms, speaking engagements, freelance writing, creating CLE/educational materials, and renting out office space are only a few. There are also some possible opportunities for deducting expenses.

## Deducting expenses Such as the Following:

- Travel
- Auto
- Business expenses, computer, internet, cell phone, licensing, CLE
- Home office deduction

The home office deduction was once considered by tax professionals as a lightning rod for IRS scrutiny; however, since there has been a “work at home” phenomenon from the COVID19 era, it has become more common place and is not considered so out of the ordinary. Adequate record keeping is always the best policy when it comes to contracting gig work or participating in the gig economy. Always maintain detailed records of income and expenses to support your tax return filings. When in doubt about deducting an expense, ask yourself if what you plan to deduct would be considered “ordinary and necessary” to complete your job as a gig worker.

## Some of the pitfalls of working in the gig economy

- No guarantee of steady freelance work
- Exposure to tax nexus
- Record keeping
- Self-employment taxes
- Responsible for setting aside funds to pay quarterly estimated tax payments

**Benefits** *continued on page 22*



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# Instructions for CCBA's CLE Article #15

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

1. Read the article, "Benefits and Pitfalls of the Gig Economy" on pages 20-24;
2. Take the quiz on page 25; and
3. Complete the order form on page 26, and submit it with the completed quiz page (page 25) to receive CLE Credit from the CCBA.

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

## Benefits *continued from page 21*

- Gig anxiety from all added responsibilities

During the pandemic, the benefits of working in the gig economy became clearer than ever. Working from home, choosing your own hours, and choosing different jobs *a la carte* are a few of the perks of working in the gig economy. On the other hand, during an economic downturn, freelance jobs can be difficult to find resulting in more competitive pricing. Gig workers are also responsible for submitting their income taxes and self-employment taxes quarterly, using a Form 1040ES. Additionally, state tax nexus can be a significant issue. Similar to state labor laws, each state has its own unique laws governing income tax nexus. Accordingly, be sure to consider state income tax laws before performing gig work that involves any particular state. Many states have been changing their nexus standards to a broader method of determining taxation of business income based on the location of the revenue source. In other words, you may be subject to state taxation based on the income derived from your client in that particular state.

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## How does the Internal Revenue Service (IRS) view the gig economy?

Don't let the popular term "gig worker" fool you into thinking there are no regulations and governing rules. The IRS plays a major role in classifying a gig worker (self-employed contractor) for the purposes of federal taxation. The IRS 's definition of gig work is therefore a good place to start. The following is an excerpt from the Internal Revenue Service's definition of gig work: "Gig work is certain activity you do to earn income, often through an app or website (digital platform)."

The determination of whether an individual is providing services as an employee or as an independent contractor requires consideration of the degree of control and independence. The IRS applies "Common Law Rules" as somewhat of a litmus test for the degree of control and independence (an excerpt from the IRS common law rules can be found below).

## Common law rules

Facts that provide evidence of the degree of control and independence fall into three categories:

- Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
- Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- Type of Relationship: Are there written contracts or employee type benefits (i.e., pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Businesses must weigh all of these factors when determining whether a worker is an employee or independent contractor.

**Benefits** *continued on page 24*



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## Gig workers in the state of Nevada

Each state has their own criteria for determining who is an independent contractor (gig worker). You may notice that in most states the criteria are similar to that of the IRS. However, it is possible for a state to make a different determination than the IRS.

The Nevada Administrative Code refers to an independent contractor as follows:

[...] ‘[i]ndependent contractor’ means a self-employed person who agrees with a client to do work for the client, for a certain fee, according to the means or methods of the self-employed person and not subject to the supervision or control of the client except as to the result of the work.

(NAC 608.155 (4)).

## The danger of misclassification

The IRS generally has the authority to propose reclassifying your payments to a gig worker as employee wages. In a similar fashion, if a gig worker does not meet the criteria as set forth at the state level, the gig worker may also be reclassified as an employee and subject to state employment taxes.

If there are significant conflicting deciding factors, the gig worker or law firm should consider filing a Form SS-8. Form SS-8 is a request for the IRS to issue a decision on a gig worker’s classification as employee verses subcontractor. In the event that gig workers are subsequently reclassified as employees, the employer will be retroactively subject to all of the taxes associated with employment. Filing Form SS-8 should not be taken lightly, as raising one’s hand to get the IRS’s attention is not necessarily the best alternative. Getting a timely answer can also be a challenge when trying to move forward. Waiting for a response to the SS-8 request can often take more than six months.

Be sure to keep good records regarding all gig workers that are contracted throughout the year. Law firms should always obtain a W-9 before making payments to gig workers. This will make issuing 1099s and other required documentation much easier at the end of the year and in the event of an audit. Contracting with foreign gig workers can be even more complicated and requires that the law firm obtain a W-8 to determine possible federal withholdings. Reporting requirements for foreign gig workers can be an especially complex area that will most likely require the advice of a tax professional.

## Additional reference materials:

- IRS Publication 5369 (11-2019), entitled “Gig economy and your taxes: things to know” is general reference material for gig workers.
- The IRS provides additional resources at its website: [IRS.gov/businesses/small-businesses-self-employed/manage-taxes-for-your-gig-work](https://irs.gov/businesses/small-businesses-self-employed/manage-taxes-for-your-gig-work)
- The Nevada Office of the Labor Commissioner provides on its website an Independent Contractor-Information Sheet: <https://labor.nv.gov/uploadedFiles/labornv.gov/content/Employer/Independent%20Contractor%20-%20Information%20Sheet.pdf> **e**



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# CCBA CLE Article #15

## Quiz

### ***Benefits and Pitfalls of the Gig Economy Offers 1 General CLE Credit (NV)***

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

- Gig worker is just another name for which of the following:
  - Independent contractor
  - Sub-contractor
  - Self-employed individual
  - All of the above
- Which of the following gig economy revenues must be reported on a tax return?
  - Revenue earned from temporary side jobs
  - Revenue from work paid in virtual currency
  - Revenue from a gig work client totaling under \$600
  - All of the above must be reported as revenue on a tax return.
- What Form can a gig worker or law firm submit to the IRS to determine whether the worker can be classified as independent contractor?
  - Form 1099
  - Form W-8
  - Form SS-8
  - Form W-9
- The IRS is the only government agency that can determine whether an individual is an “Employee” or an “Independent contractor.” States must follow the IRS determination of status.
  - True
  - False
- In reference to IRS worker classifications, the three basic categories of Common Law Rules are:
  - Type of Relationship, Behavioral, and Financial
  - Relationship, Income and Hourly wage
  - Behavioral, Work history and Type of contracted work
  - Behavioral, Filing status and Location of work
- In the state of Nevada, which of the scenarios below could cause a gig worker to be reclassified as an employee?
  - The gig worker owns the computer used to perform the contracted work.
  - The gig worker provides services to more than one client.
  - The gig worker holds a professional license necessary to perform the gig work.
  - The gig worker must be in the client’s office between specified hours M-F.
- Because a gig worker will most likely receive a Form 1099 from each client it is not necessary for that worker to keep records on their income and expenses.
  - True
  - False
- According to the IRS, “Generally, you do not have to withhold or pay employment taxes on payments to independent contractors” that are US Citizens, but you must obtain a W-9.
  - True
  - False
- In a scenario where a business owner utilizes the services below, which is most likely not classified as a gig worker by the IRS?
  - Licensed landscaping service
  - Part time assistant
  - IT consulting firm
  - Website design firm

# CCBA CLE Article #15 Order Form

## ***Benefits and Pitfalls of the Gig Economy Offers 1 General CLE Credit (NV)***

*Complete the order form and submit it  
with the completed quiz page (page 25)  
to receive CLE Credit from the CCBA.*

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# Embracing AI: Shaping the Future of Law Practice in Nevada

By *Kenny Eliason and Dean Tingey, Esq.*

**C**ould ignoring artificial intelligence (AI) soon be considered legal malpractice? Nevada leads in legal innovation, making use of AI tools not just an option but a necessity. AI is revolutionizing tasks like legal research and client management, becoming indispensable to delivering the best client outcomes.

In this article, we explore how AI is shaping the future of law practice in Nevada, offering attorneys unprecedented tools to enhance their practice.

## Revolutionizing legal research

AI has revolutionized legal research, dramatically reducing the time and effort required by attorneys. By leveraging AI-powered platforms like Casetext's CARA AI [<https://casetext.com/>], lawyers can now analyze vast amounts of case law and legislation with unparalleled speed and accuracy. These platforms use NLP and machine learning to identify relevant precedents, streamlining research and decision-making.

## Enhancing legal analysis

Legal analysis has also been enriched by AI. By synthesizing information from multiple sources, AI-powered

software provides a comprehensive view of pertinent legal issues. Like Bloomberg Law's Brief Analyzer [<https://pro.bloomberglaw.com/brief-analyzer/>], this technology analyzes patterns and draws connections between seemingly unrelated cases, enabling attorneys to uncover novel arguments and perspectives. As a result, legal strategies become more robust and effective.

## Transforming document drafting

AI has similarly transformed the drafting of legal documents. Platforms like LawGeex [<https://www.lawgeex.com/>] and LegalSifter [<https://www.legalsifter.com/>] use AI to review and analyze contracts, identify potential issues, and suggest revisions. This saves time and minimizes the likelihood of errors and omissions, resulting in higher-quality legal documents that better protect clients' interests.

## Streamlining case management

AI-driven tools have also improved client communication and case management. Platforms like Filevine [<https://www.filevine.com/>] that leverage AI offer a seamless way for attorneys to manage cases. Such tools automate routine tasks, allowing attorneys to focus on the more nu-



*Kenny Eliason is a startup founder who runs RECORD (<https://www.getrecord.com>), a personal injury client management tool that leverages AI to improve case outcomes and streamline client communication. Dean Tingey, Esq., is a practicing personal injury attorney at Tingey Injury Law Firm (<https://www.tingeylawfirm.com>) with over 30 years of experience. Dean has always sought to harness technology to enhance his practice and achieve better results for his clients. They combine their expertise to offer valuable insights into the intersection of law and technology.*

anced aspects of their cases and provide a higher level of personalized service.

## Predicting legal outcomes

AI also has begun to play a role in predicting legal outcomes, helping attorneys and clients make more informed decisions about their cases. By analyzing historical data and identifying trends, AI can provide valuable insights into the likelihood of success for a particular legal strategy or the potential settlement value of a case.

## Expanding access to justice

While there is no substitute for the personal attorney-client relationship, AI also promises to expand access to legal services by making legal knowledge and expertise more available and less expensive.

## Ethical considerations

However, integrating AI into the practice of law also raises ongoing ethical and regulatory concerns. Legal professionals must confront questions related to the unauthorized practice of law by non-lawyers and ensure the confidentiality of client information in an era of data breaches and cyber threats. There's also a growing concern about the verifiability of AI-generated results, underscoring the need for AI systems to disclose their data sources for enhanced transparency and validation.

As the legal community grapples with these concerns, scholarly research, such as the UNLV paper titled "Digging into Algorithms: Legal Ethics and Legal Access" [<https://bit.ly/digging-into-algos>], explores the implications of AI and algorithms on legal ethics and access to justice. Although no specific guidelines have been issued by the Supreme Court of Nevada and the State Bar of Nevada, attorneys can turn to such research to better understand the ethical considerations surrounding AI in legal practice.

As AI continues to reshape the legal landscape, it is crucial for attorneys to approach these technological advancements with a proactive mindset. Lawyers should not shy away from ex-

perimenting with AI-driven tools and incorporating them into their practices, as these tools can greatly enhance efficiency and effectiveness.

However, it is equally important for attorneys to ensure the confidentiality and security of client information when using AI. By striking a balance between embracing AI technology and maintaining the highest standards of client confidentiality and ethical practice, attorneys can unlock the full potential of AI to revolutionize their work and better serve their clients in the evolving legal landscape.

## The future is AI-driven

As we look to the future, AI's impact on law practice in Nevada promises to be both significant and long-lasting. By understanding and embracing the power of AI, legal professionals can better serve their clients and ensure that the legal system continues to adapt and evolve in response to the challenges of the gig economy and beyond. As AI technology progresses, its influence on the legal profession will only increase, making it increasingly vital for attorneys to stay informed and adapt to the ever-changing landscape.

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## An Emotionally Rewarding Side Gig

By Dr. Bonnie Verlaine Smith, Esq.

A gig is loosely defined as “a job, especially one that is temporary or freelance and performed on an informal or on-demand basis” See <https://www.google.com/>, “Oxford Languages” (9/15/2023). In the universe of the immigration population in the United States, individuals with deferred action under Deferred Action for Childhood Arrivals (DACA) or Temporary Protected Status (TPS), hold temporary gigs as their immigration status dictates they do not have permanent legal residence in the United States. For an immigrant, “the opportunity to work legally in the United States comes from gaining legal work authorization, which overcomes [stigma] from the public perception that immigrants are gaining from illegal work in the United States but not paying into the system.” See “An Analysis of Deferred Action Policy: Benefit or Detriment Through Perceptions of Recipients,” A Doctoral Thesis Proposal by Bonnie V. Smith, Esq. (2022), citing Abramitzky & Boustan, 2017 and Zaretsky, 1997). For an estimated 1.5 million combined DACA and TPS recipients, a gig is a welcomed opportunity for survival as they maneuver through the labyrinth of immigration policies to, hopefully, reveal a pathway to permanency via naturalized citizen-

ship in the United States.

I have had the great fortune to serve many of these individuals by preparing and filing their temporary benefit petitions. In May of this year, I returned to the for-profit legal sector. However, I still longed to be a contributor to the non-profit community and continue to serve those in need in the immigration sector. I refer to my *pro bono* efforts as my “side gig.” A gig without monetary compensation but with a wealth of reward through the emotional joy and satisfaction I receive from helping an immigrant in need. I believe it is both an honor and a duty to give back and *pro bono* work provides that opportunity. *Pro bono* opportunities are available in almost every legal sector. *Pro bono* work can either teach you a new legal platform you always yearned to explore or in a sector where you already perform and excel. Allowing you to share your knowledge with individuals in need. Either concept provides a great benefit, and the choice is yours to join me by starting a *pro bono* side gig. I highly recommend every practicing attorney participate and contribute to become a change maker through *pro bono* work.

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*Dr. Bonnie Verlaine Smith, Esq., is a practicing Immigration attorney with a JD from Arizona Summit Law School and a doctorate in Law and Policy from Northeastern University. She holds two U.S. Embassy badges in recognition of her work in human rights for the U.S. Embassy in Lebanon and Ethiopia. She is a fellow for the Program on Human Rights and the Global Economy. Bonnie enjoys traveling and studied and worked abroad in Paris, London, New Delhi, Shenzhen, and Mexico City.*

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### Meet Your Judges Highlights

Special thanks to all who attended our special event on September 7, 2023. Look for Meet Your Judges Highlights in next month's issue! More highlights can be seen in the photo album at <https://photos.app.goo.gl/EdameL3EZaXLYXCD9>.



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