



# COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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Charter Schools and How  
They Differ from  
Traditional Public Schools**

By Jennifer Braster  
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# COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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## Editorial Calendar

Cover Date	Topic	Closing Date
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	Membership Matters	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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# Come to Meet Your Judges and Promote Civility

By Paul C. Ray, Esq.

**M**ark your calendar and be sure to RSVP for the Meet Your Judges Mixer at [clarkcountybar.org](http://clarkcountybar.org). This year the big shindig will be on September 5 at the top of the World Market Center. Invite a colleague to join CCBA so that they can enjoy the CCBA membership price to attend the event. Meet Your Judges is a special opportunity to interact with your members of the judiciary.

Special event

## Meet Your Judges Mixer September 5, 2024

RSVP to the CCBA required  
by August 27

For more information, see page 10.

A few years ago, a movement developed to seek amendment of the Nevada Constitution to have our judges appointed rather than elected. The theory is that

judges are more independent, impartial, and unbiased, if they do not have to raise funds and curry favor from the public, including attorneys and parties who appear before them. Many people still believe this could improve our judicial system.

While such a plan can be worth considering, there is no rush. The conventional wisdom for now seems to be that the Nevada electorate has no appetite for such a change.

One advantage of the current system is that the judges need to meet members of the legal community. Therefore,

the judges are accessible. The judicial election system helps judges stay in touch with public preferences in a helpful way.

Similarly, the current system allows the public to know better who their judges are and to learn what judges do. For example, many judges participate in worthwhile charitable or nonprofit service organizations to positively interact with the public and to contribute to the community. The CCBA often has judges participating in our service projects.

Another benefit of having accessible judges may exist this year. Judges by profession are neutrals. In the current vitriolic political climate, judges' neutrality can have a steady influence in our public discourse.

I ask judges and attorneys alike to help bring the temperature down on the vitriol in our public conversations. We need civility more than ever this year. Let's be courteous in our dialogue.

Unfortunately, we have learned many negative facts and opinions about our political candidates this year. Of course, we should all learn and act in accordance with our First Amendment rights as we choose. Let's be constructive in our profession and in our community.

Take advantage of the September 5 Meet Your Judges event to participate with the CCBA in a respectful, enjoyable way. **G**

*Paul C. Ray serves as President of the Clark County Bar Association for 2024. Paul practices business and real estate litigation and appeals at his firm, Paul C. Ray, Chtd..*





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# Clark County Bar Association Meet Your Judges Mixer

## CCBA's Monthly Mix & Mingles

On August 22, 2024, and on the fourth Thursday of each month, CCBA plans to host casual mixers at 5:30 p.m. at Davy's, 1221 S. Main St., Las Vegas. Members of the CCBA and the State Bar of Nevada are invited to attend on their own dime and time. Location is subject to change.



### Community Outreach

## Professional Clothing Closet for Boyd Law Students

Donations of professional clothing can be made for law students of the William S. Boyd School of Law through August 2024. All clothing items must be dry-cleaned prior to donation.

Drop-off at these locations:

- **Marquis Aurbach**, 10001 Park Run Drive, Las Vegas
- **Lawrence C. Hill & Associates**, 2020 W. Sunset Road, Henderson
- **CCBA**, 717 S. 8th Street, Las Vegas
- **Craig P. Kenny & Associates**, 501 S. 8th Street, Las Vegas
- **William S. Boyd School of Law**, 4505 S. Maryland Parkway, Las Vegas

For more information, contact [StephanieAbbott@clarkcountybar.org](mailto:StephanieAbbott@clarkcountybar.org) or [Nikki Harris at nikki.harris@unlv.edu](mailto:nikki.harris@unlv.edu).



## After Bar Mixer August 1, 2024

On August 1, 2024, from 5 to 7 p.m., CCBA is hosting its 7th Annual After Bar Mixer at Davy's, 1221 S. Main Street, Las Vegas, NV 89104. Admission is free for CCBA members and features complimentary food and drink tickets while supplies last. For more information, see <https://clarkcountybar.org> or call (702) 387-6011.

*After Bar Mixer Sponsors*



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## Judging Attorney's Fees Breakfast CLE

On August 1, 2024, CCBA is hosting "Judging Attorney's Fees: A Judge's Panel on Winning Attorney Fees" at the Legal Aid Center of Southern Nevada. The event will be held from 8:00-10:00 a.m. and offers 2.0 CLE credits for Nevada lawyers. Admission is free for CCBA members to attend to this in-person event.

Panelists include:

- **Judge Deborah L. Westbrook**, Nevada Court of Appeals
- **Judge Stacy M. Rocheleau**, Eighth Judicial District Court, Family Division, Department W
- **Senior Judge Nancy L. Allf**, JAMS
- **John P. Aldrich**, Aldrich Law Firm, Ltd.

Attendees will learn directly from seasoned judges on how to win their attorney fees. This seminar will be interactive as the panel of judges provide attendees with fact patterns of prior cases in which they granted or denied attorney fees. Attendees then will be the judge and make their ruling. Followed by the judges sharing the answer and rationale behind their decision. For more information, see [clarkcountybar.org](http://clarkcountybar.org) or call (702) 387-6011.

*Breakfast CLE Sponsors*



**Activities** continued on page 10





Scene at 2024 State Bar Annual Conference in Santa Fe, New Mexico: Front row (l-r): Chief Judge Cynthia Cruz, Judge Susan Johnson, Judge April Becker, Judge Bonnie Bulla, Jacquelyn Franco, Judge Deborah Westbrook. Back row (l-r): Michael Wendlberger, Judge Amy Wilson, James T. Leavitt, Joel Henriod, Joshua Dresslove, Judge Michael Gibbons, and Paul Ray.

## Bar Conference and Bar Luncheon Highlights

In June, several CCBA members made it to Santa Fe, New Mexico for the State Bar of Nevada’s annual conference.

The week before the conference, over 75 people attended the Clark County Bar Luncheon at Morton’s The Steakhouse in Las Vegas, on June 20, 2024.

Special thanks to Rob Bare for making a special presentation of “State Bar Grievances & Complaints from the Defense Point of View” for the continuing legal education of Nevada lawyers.

The CCBA will host its next bar luncheons on August 8 and September 11, 2024.

For more information, see above.

## Bar Luncheons

### August Luncheon with CLE Program

**Speaker:** Chip Siegel, III, Chief Legal Officer, Vegas Golden Knights

**CLE Program:** “The Risk Management Playbook”

**Date:** Thursday, August 8, 2024

**Check-in & networking:** 11:30 a.m.

**Luncheon program:** 12:00 to 1:30 p.m.

**Location:** MacKenzie River Pizza, Pub & Grill, located inside City National Arena, 1550 S. Pavilion Center Dr. Las Vegas

**Entrée options:** Blacked Salmon, Vegetarian Lasagna, or Flank Steak

**Price:** \$60/CCBA member, \$75/Non-member

**Offers:** 1.0 general CLE credit included with price!

**RSVP Deadline:** Monday, August 5, 2024



### September Luncheon

**Speaker:** Jon Ralston, CEO, *The Nevada Independent*

**Topic:** 2024 General Election

**Date:** Wednesday, September 11, 2024

**Check-in & networking:** 11:30 a.m.

**Luncheon program:** 12:00 to 1:00 p.m.

**Location:** Fogo de Chão Brazilian Steakhouse, 360 E. Flamingo Rd., Las Vegas

**Price:** \$60/CCBA member, \$75/Non-member

**RSVP Deadline:** Friday, September 6, 2024



August & September Bar Luncheon Sponsors



CCBA President Paul Ray (left) with CCBA Past President Kari Stephens and special guest speaker Rob Bare.



June Bar Luncheon Sponsors



## Volunteer Opportunities

### Bar Committee Meetings

CCBA members are invited to participate on bar committees. Meetings are held monthly from 12-1 p.m. via Zoom typically. Call the CCBA at (702) 387-6011 to confirm dates and locations.

- **CLE Committee** – Plans programming for the continuing legal education of CCBA members. *Meets: 2nd Wednesdays.*
- **Community Service Committee** – Plans activities that provide outreach services to the community at large in southern Nevada. *Meets: 1st Fridays.*
- **Diversity and Inclusion Committee for Equity (DICE)** – Plans activities to facilitate constructive discussion and enhance understanding of diversity issues. *Meets: 3rd Fridays.*
- **New Lawyers Committee** – Coordinates and participates with the William S. Boyd School of Law to produce student competitions. Members volunteer to help with bar events including CCBA pub crawls, UNLV law student competitions, and the Meet Your Judges Mixer. The New Lawyers Committee is for attorneys admitted to practice in Nevada within the last seven years, regardless of age. *Meets: 2nd Thursdays, in person (with Zoom option).*
- **Publications Committee** – Plans content for upcoming issues of the bar journal *Communiqué*. *Meets: 2nd Fridays.*

**Activities** continued from page 8

## Law Practice Management Lunchtime Learning CLE program

On August 14, 2024, CCBA will host “Sunrise, Sunset: Strategies for opening your own firm from opening to closing.” The event will be held via Zoom from 12:00 to 1:15 p.m. and offers 1.0 general CLE credit for Nevada lawyers. Attendance to this live webcast is free for current CCBA members.

Guest speaker is Jennifer Braster of Naylor & Braster. Working at a law firm and operating your own law firm are vastly different roles. A law firm can give you the tools, knowledge, and experience to be a successful attorney, but it does not train you on how to run a successful law firm. This CLE will provide attendees with guidance in opening, operating, and closing their own firm, including ethical, administrative, and management tips and traps.

The live webcast will be recorded. Recorded materials rental fee is \$25/CCBA member or \$50/non-member. RSVP to CCBA to [Donnaw@clarkcountybar.org](mailto:Donnaw@clarkcountybar.org) or (702) 387-6011 by August 12, 2024.



## Meet Your Judges Mixer

On September 5, 2024, from 5:30 to 9:00 p.m. CCBA will host its 33rd Annual Meet Your Judges Mixer at Worldview atop the World Market Center and features a drink ticket, appetizers, networking, and silent auction.

Admission fee is \$72/CCBA Member, \$99/Non-member, and free for Nevada local, state, and federal judges. RSVP is required to the CCBA by August 27, 2024.

For more information, see announcement on pages 11 and 13, visit <https://clarkcountybar.org/>, or contact the CCBA at (702) 387-6011.

## Annual Attorney Memorial Service

On September 6, 2024 from 3:00 to 5:00 p.m., the Clark County Law Foundation will host the Annual Attorney Memorial Service at the Supreme Court of Nevada in Las Vegas, Nevada. The service starts at 3 p.m. sharp with reception immediately following.

Members of the bench and bar are invited to attend a special event to honor Nevada attorneys who have passed on during the last year.

The annual attorney memorial services are produced by the Clark County Law Foundation in conjunction with the Clark County Bar Association, State Bar of Nevada, Eighth Judicial District Court, U.S. District Court, and the Federal Bar Association-Las Vegas Chapter. For more information, contact Patrick at the Clark County Law Foundation, (702) 333-8277.

**Activities** continued on page 12



33rd Annual

# MEET YOUR JUDGES MIXER

Worldview atop the World Market Center  
Thursday, September 5, 2024 • 5:30 p.m. to 9:00 p.m.

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## Jon Ralston Presents Election Overview at Bar Luncheon

On September 11, 2024, political journalist and commentator Jon Ralston will make a special presentation relevant to the 2024 General Election during the Clark County Bar Luncheon at Fogo de Chão Brazilian Steakhouse in Las Vegas.

Jon is the founder and CEO of *The Nevada Independent*. He has been covering politics in Nevada for more than 35 years. His blog, *Ralston Reports*, launched in 2012 and now lives on *The Nevada Independent* website. Jon wrote for the *Las Vegas Review-Journal* for 15 years, the last seven as a freelance columnist. In 1999, Greenspun Media Group purchased his political newsletter, *The Ralston Report*, and hired him as a columnist for the *Las Vegas Sun* where his byline appeared until September 2012. He was also a columnist for the *Reno Gazette-Journal* from January 2015 until November 2016, when he left to start *The Indy*.

Over the years, Jon has hosted several TV programs, including “Ralston Live” on Vegas PBS and “Ralston Reports” on KSNV News 3. He also writes and publishes a Nevada-centric email newsletter called “Flash” that frames the political agenda for the day, breaks news, and offers analysis and snark. In 2012, Politico named Jon one of the Top 50 “Politicos to Watch.” He frequently appears on MSNBC and he has also appeared on NBC’s long-running “Meet the Press.”

Bar members are invited to attend and learn what this dynamic speaker has to say about the politics and candidates relevant to the 2024 general election.

The event is sponsored by Bank of Nevada and First Legal.

Check-in and networking begin at 11:30 a.m. with the luncheon program to be held from 12:00 to 1:00 p.m.

The event will be held at Fogo de Chão Brazilian Steakhouse, 360 E. Flamingo Rd., Las Vegas. Admission fee is \$60/CCBA member, \$75/non-member. Admission will be limited to people who RSVP to the CCBA by the published deadline. RSVP with payment to the Clark County Bar Association is required no later than September 6, 2024.



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

### Bar Luncheon Sponsors



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Activities continued on page 14

Clark County Bar Association presents

## Picture Day at CCBA

Wed., September 18, 2024  
9:30 a.m. - 2:00 p.m. only

Sit for a professional portrait  
at this special portrait session

Drop-ins are welcome  
Appointments are preferred

See [clarkcountybar.org](https://clarkcountybar.org)  
or call 702-387-6011

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33rd Annual

# MEET YOUR JUDGES MIXER

Worldview atop the World Market Center  
Thursday, September 5, 2024 • 5:30 p.m. to 9:00 p.m.



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**Holly Stoberski for Judge,  
Las Vegas Justice Court - Dept. 4**



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## Bar Services

### Baseball Tickets Special Offer

The CCBA holds a limited number of tickets to select home games for the 2024 Las Vegas Aviators season schedule. CCBA is pleased to offer\* use of our available tickets to current and paid CCBA members on a first come, first served basis.

To request use of the CCBA tickets, CCBA members will need to submit a request, via email to DonnaWV@clarkcountybar.org, with the following information:

CCBA member name  
Email address – the email address associated with the Las Vegas Aviators' Ticketmaster account.  
1st, 2nd, and 3rd choices of home game day (select from list below)  
Let's go, Aviators!

Send requests via email to CCBA Executive Director Donna Wiessner at [Donnaw@clarkcountybar.org](mailto:Donnaw@clarkcountybar.org).

\*Restrictions apply. Use of tickets are restricted to paid CCBA members. CCBA's tickets are not available for use by persons with a free membership type (e.g. law student members). Participating members may only attend one game per season. For more information, see <https://clarkcountybar.org/ccba-baseball-tickets-special-offer/> or call (702) 387-6011.



Activities continued from page 12

### Military Pensions Lunchtime Learning CLE Program

On September 12, 2024, from 11:30 a.m. to 12:45 p.m. the CCBA will host "A Bird's-Eye View of Military Pensions" via Zoom. Featured speaker Marshal Willick of Willick Law Group will make a presentation to feature a quick overview of topics related to military pensions including: Military retirement benefits, Frozen Benefit Rule of National Defense Authorization Act (NDAA) 2017, Military Disability, and Blended Retirement System Effective 2018.



The program offers 1.0 CLE credit for Nevada lawyers and active USAF attorneys and legal office personnel. Attendance to this live webcast is free for current CCBA members. The live webcast will be recorded. Recorded materials rental fee is \$25/CCBA member or \$50/non-member. RSVP to CCBA to [Donnaw@clarkcountybar.org](mailto:Donnaw@clarkcountybar.org) or (702) 387-6011 by September 9, 2024.

CLE Programming Sponsors



### DICE CLE Lunchtime Learning Program

On September 19, 2024, from 12:00 to 1:15 p.m., CCBA will host "Working Towards a More Diverse Legal Profession" via Zoom. Featured speaker will be Effie Sahihi, Vice President U.S. Managed Review, Diversity Equity & Inclusion Program Lead, Consilio LLC.



Regardless of how fair-minded we believe ourselves to be, most people have some degree of implicit bias—unconscious thought patterns and associations that can influence our attitudes towards others and how we make decisions. This program explores these thought patterns, how they impact the workplace, and strategies for identifying and minimizing their impact.

The program offers 1.0 CLE Ethics credit for Nevada lawyers. Attendance to this live webcast is free for current CCBA members. The live webcast will be recorded. Recorded materials rental fee is \$25/CCBA member or \$50/non-member. RSVP to CCBA to [Donnaw@clarkcountybar.org](mailto:Donnaw@clarkcountybar.org) or (702) 387-6011 by September 17, 2024. 📍

DICE CLE Sponsors



# LIFE'S BETTER AT LAS VEGAS BALLPARK



- Every Tuesday - Reyes De Plata
- Every Wednesday - Bark In The Park
- Every Thursday - \$2 Beer Night
- Thursday, August 1 - Country Night
- Friday, August 2 - Marvel Night & Post-game Fireworks
- Saturday, August 3 - Back to School Backpack Giveaway
- Sunday, August 4 - 6PM Night Game
- Friday, August 16 - What If? Night #2
- Saturday, August 17 - Windbreaker Giveaway
- Sunday, August 18 - 6PM Night Game

	S	M	T	W	T	F	S
					1 ABQ 7:05pm	2 ABQ 7:05pm	3 ABQ 7:05pm
4 ABQ 6:05pm	5	6 SL	7 SL	8 SL	9 SL	10 SL	
11 SL	12	13 OKC 7:05pm	14 OKC 7:05pm	15 OKC 7:05pm	16 OKC 7:05pm	17 OKC 7:05pm	
18 OKC 6:05pm	19	20 RNO	21 RNO	22 RNO	23 RNO	24 RNO	
25 RNO	26	27 SAC	28 SAC	29 SAC	30 SAC	31 SAC	

AUGUST

	S	M	T	W	T	F	S
1 SAC	2	3 RR 7:05pm	4 RR 7:05pm	5 RR 7:05pm	6 RR 7:05pm	7 RR 7:05pm	
8 RR 6:05pm	9	10 ABQ	11 ABQ	12 ABQ	13 ABQ	14 ABQ	
15 ABQ	16	17 ELP 7:05pm	18 ELP 7:05pm	19 ELP 7:05pm	20 ELP 7:05pm	21 ELP 7:05pm	
22 ELP 12:05pm							

SEPTEMBER



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## Civil Bench-Bar Meeting

- **Host:** Eighth Judicial District Court - Civil Department
- **When:** September 10, 2024, 12:00 to 1:00 p.m.
- **Where:** Regional Justice Center, Courtroom 10D and Zoom
- **Contact:** EJDCBenchBar@gmail.com

## Eighth Judicial District Court Announces Jury System Overhaul

On June 26, 2024, the Eighth Judicial District Court announced planned changes to their jury system.

*A new jury services system will streamline the jury selection process and improve the experience for potential jurors. The changes begin with a new post card summons that offers three QR codes that link potential jurors to web pages with directions on how to respond to the notice, what to do the night before reporting and what to do on reporting day. Jurors will also now be paid with a debit card that can be loaded with their pay for being a juror. An online portal shows juror status updates and enables view of juror history. So potential jurors can see online if their excusal request has been granted. Potential jurors can select if they prefer to be contacted by text or email. Those reporting for jury duty can get directions to the courthouse from their address. The new system also enables printing of jury summons copies and attendance letters for proof of service.*

*The jury process will also be expedited by 15 new kiosks that will function similarly to those found at the airport. The kiosks are equipped with scan systems that enable users to check-in using their postcard summons. The kiosks are expected to expedite the check-in process.*

*The Nevada legislature passed a pay bump for jurors in January 2024. Each person summoned to attend as a grand juror or a trial juror in the district court or justice court, or a trial juror in the municipal court, is entitled to be paid \$65 for each day after the second day of jury selection that the person is in attendance in response to the venire or summons, including Sundays and holidays. Each grand juror and trial juror in the district court or justice court, or trial juror in the municipal court, actually sworn and serving is entitled to \$65 a day as compensation for each day of service. Jurors were paid \$40 a day prior to this change. The legislature approved the change in January of 2024.*

*Jurors are essential to our justice system. When we improve the experience for jurors we are improving the foundation of our justice system,” said District Court Chief Judge Jerry Wiese. Our judges realize how essential jurors are, we value their service and we want jury service to be a rewarding experience.*

*The average jury trial is three to five days. The Constitution guarantees: “the accused shall enjoy the right to a speedy and public trial, by an impartial jury.” Jury service is widely recognized as an essential pillar of our justice system.*

*Fifty-eight judges preside over nearly 100,000 criminal, civil and family cases that are filed each year in District Court. The Eighth Judicial District Court*

*of Nevada judges and staff continuously work to develop new ideas, maximize efficiencies and improve access to justice.*

For more information, visit [clarkcountycourts.us](http://clarkcountycourts.us) or <https://eighthjdcourt.wordpress.com>.

## Las Vegas Justice Court Caseload Assignment Changes Effective July 2024

On June 24, 2024, Judge Melissa Stratton (FKA Judge Melissa Saragosa) retired from Las Vegas Justice Court, Department 4, effective July 2, 2024.

Judge Melisa De La Garza, Department 15, will be assuming Judge Stratton’s Resort Corridor Court caseload, which will continue to be heard in Courtroom 7D.

Judge De La Garza will also continue to preside over Community Court, but those proceedings will now occur in Courtroom 7D and at the Community Impact Center. Any appearances previously scheduled for Courtroom 6B will now be moved to Courtroom 7D.

Additionally, Judge De La Garza’s current Civil caseload will be assigned to LVJC Department 4 after July 1, 2024. Related civil hearings will be conducted in Courtroom 6D.

Any questions relating to these calendar changes may be addressed to Staff Attorney Joe Tommasino at (702) 671-3424 or [Joe.Tommasino@clarkcountynv.gov](mailto:Joe.Tommasino@clarkcountynv.gov).

**Court** continued on page 18





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## Las Vegas Justice Court Seeks Pro-Tempore Judges

The Las Vegas Township Justice Court is now accepting applications for the following separate Pro Tempore lists for the 2025-2026 calendar years:

- **Justices of the Peace Pro Tempore (NRS 4.032)** preside on an as-needed basis over various types of criminal, civil, eviction, and traffic matters when judicial officers are unavailable.
- **Small Claims Justices of the Peace Pro Tempore (NRS 4.032/NRS Chapter 73)** preside on an as-needed basis in small-claims hearings when judicial officers are unavailable.

An applicant may apply and be selected for one or both of these categories and is expected to sit at least once per calendar year.

Pro Tempore compensation is \$43.96 per hour or a minimum of \$50.00 per day. Policies regarding Las Vegas Township Justices of the Peace Pro Tempore can be found on the Las Vegas Justice Court website in Administrative Order #22-02.

### All applications must include:

1. A resume, which outlines professional knowledge, skills, and years of experience.
2. A cover letter, which specifies the position(s) of interest.
3. A completed affirmation form, which will be provided upon submission of the resume and cover letter.
4. A completed form entitled "Confidentiality Waiver for the State Bar of Nevada," which will also be provided upon submission of the resume and cover letter.

### The cover letter must indicate:

- Why the applicant desires to serve;
- The number of years of experience in the area of interest;
- Any public discipline imposed by the State Bar of Nevada and/or the Supreme Court of Nevada in the preceding 5 years;
- Familiarity with Odyssey and Judge Edition to be able to handle a paperless caseload;
- Ability to accept assignments on short notice; and
- How often the applicant has presided as a Pro Tempore in the past, if applicable.

By submitting to the application process, the applicant agrees that the Court may conduct a criminal background check as well as a Bar status check with the State Bar of Nevada.

**All applications must be received via email by 5:00 p.m., Thursday, August 15, 2024, to: Staff Attorney Joe Tommasino, [joe.tommasino@ClarkCountyNV.gov](mailto:joe.tommasino@ClarkCountyNV.gov).**

Direct questions or requests for additional information to: Staff Attorney Joe Tommasino at (702) 671-3424.

## Public Hearing Regarding Adoption of Rules Governing Informal Family Law Trials Set for August 1, 2024

On August 1, 2024, at 3:00 p.m., the Supreme Court of Nevada will conduct a public hearing on a petition to adopt and implement the use of informal family trials in pre-judgment and post-judgment family law proceedings. The petition was originally filed on April 22, 2024, by Supreme Court Justice Patricia Lee on behalf of the Family Law Sub-Committee of the Judicial Council of the State of Nevada (JCSN). For more information, see ADKT 0619 at <https://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=69133>.

## Significant Changes to Nevada Rules of Appellate Procedure Effective August 15, 2024

On June 7, 2024, the Supreme Court of Nevada filed an order amending the Nevada Rules of Appellate Procedure. See ADKT 0680.

Per the order,

*The revised Nevada Rules of Appellate Procedure contain significant changes. Some of the changes are pragmatic. For example, the amendments move the forms previously included in the NRAP to the Supreme Court website, where they can be updated as needed and downloaded electronically. Others are stylistic, while others are substantive. Under NRS 2.120(2), the existing NRAP must remain in effect for at least 60 days from the date of this order. Consistent with NRS 2.120(2), the revised*

NRAP will take effect on August 15, 2024, and apply to matters pending or filed on or after that date.”

For the benefit of the bench and the bar and to facilitate the transition from the existing rules to the new rules, attached as Exhibit A is a redline of the revised NRAP against the existing NRAP. A clean copy of the revised NRAP is attached as Exhibit B. The Exhibits will be filed in ADKT 0580 and will be available, along with the Commission’s agendas and minutes, on the Nevada Appellate Courts’ website located at [https://nvcourts.gov/aoc/committees\\_and\\_commissions/nrap/overview](https://nvcourts.gov/aoc/committees_and_commissions/nrap/overview).

For more information, please read the 359-page order (document 24-19925) at <https://caseinfo.nvsupremecourt.us/public/caseView.do?c-sIID=61591>.

## Tina Talim to Serve as Judge for Eighth Judicial District, Department 14

On June 17, 2024, in an historic moment for Nevada, Governor Joe Lombardo appointed Tina Talim, the first South Asian person to hold a judicial position in the state of Nevada, to Department 14 of the Eighth Judicial District Court. Talim, who served as the Team Chief of the High Intensity Drug Trafficking Unit in the Clark County District Attorney’s Office, immigrated to the United States from India as a young child.



After graduating from the University of California, Los Angeles, Judge Talim earned a juris doctorate from Pepperdine Caruso School of Law. Judge Talim began her career in civil litigation then spent nearly two decades representing the state of Nevada as a prosecutor, where she led the prosecution of all fentanyl overdose death cases. In 2023, Judge Talim was appointed the first director of Diversity and Community Outreach in the history of the Clark County District Attorney’s Office, helping to bridge the gap between the District Attorney’s Office and historically underrepresented minorities.

“We welcome newly appointed Judge Talim to the Eighth Judicial District Court bench,” said Chief Judge Jerry Wiese. “She plans to take the bench next week, and I anticipate with her wealth of experience that she will have an immediate impact at our very busy court.” Learn more at <http://www.clarkcountycourts.us/nevada-governor-makes-historic-selection-to-fill-judicial-seat/>.

# endless back-and-forth?



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# Las Vegas Justice Court's Eviction Diversion Program: A Collaboration Helping Our Community

By Chief Judge Cynthia Cruz

**M**any attorneys do not realize how evictions can pop up suddenly in their legal practice. Evictions can intersect with probate, civil, and family law. Because of that, I wanted to take the opportunity to provide information on a program that may help with non-payment-of-rent eviction situations: **Las Vegas Justice Court's Eviction Diversion Program (EDP)**.

EDP initially launched in 2022, but the Las Vegas Justice Court encountered delays and challenges in its roll-out. Once it rolled out, it did not have the anticipated results of connecting tenants with rental assistance. In the later part of 2023, the Las Vegas Justice Court, Clark County leadership, Legal Aid of Southern Nevada, the Supreme Court of Nevada, Clark County Social Services, and various community partners got back to the table to redevelop and rework the program to better serve tenants facing evictions for non-payment of rent. Refined criteria were established to provide fast-tracked resources to a defined subset of tenants, to make the program more effective and accessible.

EDP was re-launched in late December of 2023 and has since had 785 referrals to the program as of May 31, 2024, with 689 dispositions. Landlords participating in EDP have received disbursements of \$1,417,277, resulting in 78.5 percent of EDP eviction cases being either denied


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*Currently, EDP targets tenants facing eviction for non-payment of rent, who are either over 62 years of age, on disability, or both.*


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



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or dismissed. No-show rates for tenants referred to EDP have dropped from over 80 percent to 24.6 percent since re-launch.

Currently, EDP targets tenants facing eviction for non-payment of rent, who are either over 62 years of age, on disability, or both. The program is voluntary. EDP participants are identified through responses in their tenant answer to an eviction notice. Once identified, they are immediately referred to one of the Las Vegas Justice Court's EDP intake specialists to get them an appointment with Clark County Social Services, explain the EDP process, identify documentation needed, and help start the appropriate applications for assistance. The tenant is connected with Legal Aid of Southern Nevada to speak with a tenant's rights advocate. Once at Clark County Social Services, same-day eligibility determinations are made. If the tenant qualifies for rental assistance, the landlord is contacted to see if they are willing to participate in EDP and how much is owed. If the landlord is willing to participate in EDP, a check can be released to the landlord in approximately ten days.

Tenants participating in EDP can also seek assistance with relocation or applying for other assistance, such as Medicare/Medicaid, or accessing other resources like Meals on Wheels. The Las Vegas Justice Court is hoping to


expand the scope of EDP to include households with children who are four years of age or under and facing eviction for non-payment of rent.

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*EDP offers a collaborative solution, benefiting landlords, tenants, and our community by helping participants maintain stable housing during difficult times.*

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EDP offers a collaborative solution, benefiting landlords, tenants, and our community by helping participants maintain stable housing during difficult times. This means fewer people who are unhoused, landlords who do not incur unpaid accounts receivable, the overall creation of positive community impact, and chipping away at the ongoing housing crisis.

Las Vegas Justice Court has dedicated staff for EDP to answer questions via phone and/or email at: (702) 671-3322 or [LVJCEDP@clarkcountynv.gov](mailto:LVJCEDP@clarkcountynv.gov). 

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# Benefits of 529 Plans in Estate Planning

By Cody R. Noble

**F**or individuals interested in planning for their children to attend college, Internal Revenue Code (“IRC”) Section 529 authorizes tax-favored savings for future expenses of higher education through a qualified savings plan (“QSP”), commonly known as a 529 Plan. IRC Section 529 allows individuals to contribute funds, within limitations, into a QSP that can be used for future higher education expenses of the QSP’s designated beneficiary. While many people have heard of 529 Plans, a benefit not often fully understood is the role tax-advantaged 529 Plans can play in estate planning. This article discusses benefits and considerations for establishing, funding, and using QSPs in an estate plan.

## Income tax considerations

Funds contributed to a QSP qualify for certain federal income tax benefits. Although there is no federal income tax deduction allowed upon contribution, earnings on QSP assets are not currently taxed. In addition, distributions from a QSP to the QSP’s beneficiary for the beneficiary’s qualified higher education expenses are received by the beneficiary income tax-free. *See* IRC §§ 529(c)(3)(B). However, QSP distributions that are not for qualified higher education expenses will trigger income tax on the earnings, plus a ten percent penalty. *See* IRC §§ 529(c)(3)(A) and 529(c)(6).

## Gift tax considerations

Funds contributed to a QSP carry unique federal gift tax attributes. Gifts made during life are generally subject to federal gift tax unless a statutory exclusion applies. *See* IRC § 2501, *et. seq.* Pursuant to IRC § 2503(b), gifts up to \$18,000 in 2024 can qualify for the gift tax annual exclusion only if the gift is of a “present interest,” meaning the donee controls the gifted property immediately. Under these rules, contributions to QSPs would not qualify for the exclusion and would be subject to federal gift tax.

Fortunately, federal law provides exceptions to the present interest rules for contributions to QSPs. Specifically, even though the contributor of funds to a QSP remains in control of the contributed funds, IRC § 529(c)(2)(A) treats contributed funds as being in the beneficiary’s control. Further, while QSP funds would generally only be available for the beneficiary’s use in the future, IRC § 529(c)(2)(A) treats the beneficiary as having immediate access to the funds. Contributions to QSPs, therefore, qualify for the annual exclusion. Additionally, IRC § 529(c)(2)(B) allows contributors to front-load a QSP with up to five times the annual exclusion amount without incurring gift tax.

**Cody R. Noble** is a Partner in McDonald Carano’s Las Vegas office. For more than 20 years, Mr. Noble’s practice has focused on assisting high net worth individuals with their comprehensive trust and estate planning, including charitable giving goals. He also advises on trust, estate, and tax aspects of litigation matters.



## Estate tax considerations

QSP funds also qualify for federal estate tax benefits. Pursuant to IRC § 529(c)(4)(A), funds in a QSP are not included in any individual's taxable estate. Thus, all QSP funds escape federal estate taxation in the contributor's estate. While federal law is unclear regarding estate tax consequences if the designated beneficiary of a QSP dies, this issue is often moot as estates of QSP beneficiaries are seldom subject to federal estate tax.

## Protection from creditors

Creditor protection is an important issue in gift planning. Pursuant to NRS 21.090(1)(r)(5), funds in a Nevada QSP up to \$1,000,000 are exempt from execution by all creditors if the funds will be used by a beneficiary to attend a college or university. Accordingly, Nevada QSP funds are protected from creditors of the contributor and the beneficiary.

## Transferability and rollovers

Avoiding the ten percent tax penalty if the beneficiary does not use all the funds for qualified purposes is a significant concern for contributors. Fortunately, federal law provides options for use or rollover of funds under these

circumstances. One option is to change the designated beneficiary, which can be done tax-free under IRC § 529(c)(3)(C) if the new beneficiary is a member of the prior beneficiary's family. For federal gift tax purposes, a notable exception applies if the new beneficiary is in a lower generation than the prior beneficiary.

Another option is to roll QSP funds into a Roth IRA for the benefit of the designated beneficiary. *See* IRC § 529(c)(3)(E). The rollover amount is subject to Roth IRA annual contribution limits, and the beneficiary must have earned income at least equal to the amount rolled over in any year. Additionally, a lifetime limit of \$35,000 applies to each beneficiary. Due to annual contribution limits, it is not possible to transfer the entire \$35,000 lifetime limit in one year. However, transfers could be made over multiple years until the lifetime limit is reached.

## Conclusion

To help individuals and families save for future college expenses, QSPs offer income, gift, and estate tax benefits as well as creditor protection benefits not available through other vehicles. Therefore, QSPs can be a powerful tool to include in a comprehensive estate plan. **■**

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**Daniel Aquino**

Dan is Co-Chair of our Employment & Labor Law Practice. He provides preventive guidance and operations advice to employers and handles a wide range of litigated employment law matters. As a member of our Commercial & Complex Litigation Practice, Dan's litigation experience also includes contract disputes, business torts, and anti-SLAPP matters. He has first-chaired bench trials, administrative trials, and arbitrations. Dan has represented clients in appeals before the Ninth Circuit Court of Appeals and the Nevada Supreme Court. Dan also volunteers as a pro bono attorney for the Legal Aid Center of Southern Nevada.

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# The Critical Role of an Educational Decision Maker for a Child in Foster Care

By Gillian S. Barjon

**H**istorically foster children experience more negative educational outcomes on average than non-foster students. See “Fast Facts: Foster Care and Education Data at a Glance,” ABA Center on Children and the Law, January 2022. Nevada’s laws reflect the federal mandates to ameliorate educational problems facing children in foster care; such as the requirement for immediate enrollment, or the “school of origin” presumption. See 42 USC § 675(1)(G)(ii); 20 USC § 1111 (g)(1)(E)(i).

One Nevada provision that implicates multiple foster education laws is the requirement that an Educational Decision Maker (EDM) be appointed to every foster child. NRS 432B.462. Because the EDM serves as the legal parent for education purposes, their participation and consent is explicit or implied in most steps that government stakeholders must take to help foster pupils. For example, an EDM should weigh-in on the academic plans required by NRS 388, which require schools to identify foster children, link them with school-based support staff, and create specific support plans for them. NRS 388.155, 388.165, 388.205. An EDM must also participate in disciplinary meetings, such as those where school administrators must examine a foster student’s unique circumstances when considering disciplinary removal for a behavioral infraction. NRS 388.466.

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*[T]he Nevada EDM law is significant because it specifies who can and cannot be appointed, and details that person’s rights, duties, and limitations.*

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Since a parent’s right to make educational decisions regarding their children is established by federal precedent (e.g., *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)), the Nevada EDM law is significant because it specifies who can and cannot be appointed, and details that person’s rights, duties, and limitations. Parents or guardians are presumptively the EDM, with the statutory preference being the person identified as the permanent placement resource/goal, unless they are: 1) unwilling or unable; or 2) it is not in the child’s best interest. NRS 432B.462(2). If the parent or guardian is not appropriate for the role, the court can appoint a relative, foster parent or care provider, a fictive kin, the guardian *ad litem*, or another qualified person. *Id.* at 462(3). In Clark County, that other qualified person is usually a community layperson called a Volunteer Education Advocate (VEA) who dedicates their time to defending a foster student’s educational rights and is trained by the Legal Aid Center of Southern Nevada.



*Gillian S. Barjon is Team Chief of the Education Advocacy Program at Legal Aid Center of Southern Nevada. The program provides advice, advocacy, legal representation, and training in special education to indigent families in the community and to educational decisionmakers and volunteer education advocates for foster children.*



The “who” matters a great deal to the trajectory of many foster children’s education because addressing their issues typically requires informed parental consent, ongoing communication, and consistent involvement. An absent or uninvolved EDM can also be as detrimental as one who doesn’t understand the child’s needs or who is ill-equipped to advocate for that child. Thus, the statute lays out a litany of responsibilities for the role, including advocating for the child’s special education rights as the surrogate parent (if the EDM is not the biological parent or guardian). *Id.* at 462(7, 9). An EDM must meet with the child and participate in any school meetings. For example, there might be a special education meeting where the EDM must agree or disagree with placement and accommodations or a discipline meeting where the EDM must accept or appeal an expulsion recommendation. *Id.* at 462(7).

An EDM or VEA should also appear at juvenile dependency court hearings to communicate recommendations and express concerns to the court about the educational services provided to the child, the child’s educational placement, and, when appropriate, services for transitioning to independent living for a child over age 14. *Id.* The statute requires similar communications between the EDM or VEA and other stakeholders, like the child’s Children’s Attorneys Project (CAP) attorney or Department of Family Services (DFS) Permanency Specialist (case worker). *Id.* To fulfill these communication duties, it is clear, though not written, that the EDM or VEA needs to keep contact with the student’s teachers to stay abreast of how the student is doing and have access to the student’s educational records.

The EDM is not alone in their duties to ensure the educational wellbeing of the child in care. At multiple stages of the dependency process, the court is required to review the educational wellbeing of the child. NRS 432B.410 to 432B.590. These hearings create crucial opportunities for the attorneys to provide feedback to the court about the successes, struggles, or barriers facing the EDM and the foster child on the educational front. Attorneys can also opine on whether the EDM is appropriate for the role, or whether a new EDM or VEA would be in the child’s best interests. NRS 432B.462(2,8). While the juvenile court judge has the ultimate power to appoint EDMs and enforce foster children’s educational rights, it is the EDM, the CAP attorney, the parent’s counsel, and the District Attorney for DFS who must help the court understand the educational landscape for a particular child.

While the primary and urgent legal step is the official appointment of an EDM or VEA at the very beginning of the dependency process NRS 432B.462(1), an EDM

or VEA may subsequently need the court to enforce their role because of common road blocks that other foster-related laws were created to address. For instance, a school could fail to identify a struggling child as a student in care, and then deny the court-appointed EDM or VEA access to school meetings and educational records—resulting in the foster child’s educational concerns going unaddressed and the student’s educational placement being threatened. In this scenario, a CAP attorney could inform the court of the violation through the hearing process, thus giving the dependency judge the opportunity and basis to review the evidence, and order compliance with the EDM order and foster-related laws.

In summary, upholding the fidelity of this law rests in the hands of the officers of the court just as much as in the appointed EDM or VEA’s hands, and ultimately requires: a) prompt and careful appointment of an EDM or VEA to help students have an educational advocate from the start; b) ongoing involvement and monitoring to combat risks like chronic absenteeism and more frequent suspensions; and c) communication between dependency professionals and the EDM to enable to all stakeholders to further the child’s educational success. **■**

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# Understanding Nevada Charter Schools and How They Differ from Traditional Public Schools

By Jennifer Braster

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*\*About the CCBA's Article #18: "Understanding Nevada Charter Schools and How They Differ from Traditional Public Schools" 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 August 2024 issue of Communiqué. See pp. 26-31. The CCBA is an Accredited Provider with the NV CLE Board.*

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A few years ago, I was approached to be on the board of a potential charter school to open in downtown Las Vegas. Candidly, I knew very little about charter schools and how they differed from other types of schools. But, having always been an advocate for equality and choices in education, I was intrigued. Now, I am proud to say we are wrapping up our second year of operations for Sage Collegiate Public Charter School at the former Elks Lodge on Charleston Boulevard.

People are often confused over whether a charter school is a public school, private school, magnet school, or some combination of the three. Charter schools are their own unique model. In 1997, the Nevada Legislature authorized charter schools. Now there are over 90 charter schools in Nevada.

Charter schools are public schools, are completely free, and are open to all students like traditional public schools. The difference is a potential charter school must "apply" to have their charter approved by the governing body, the Nevada State Public Charter School Authority (the "Authority"). While in the last several years the Authority has typically been the only authorizer actively accepting applications for new public charter schools, that stands to change with the passage of new legislation in 2023. AB 400 granted cities and counties the ability to authorize public charter schools as well, and the Nevada Department of Education is currently establishing an application process and framework for these new authorizers.

Potential charter schools go through a rigorous approval process, comprised of a lengthy and intricately detailed



*Jennifer Braster is a managing partner with Naylor & Braster, a boutique commercial litigation firm. Jennifer is also the board chair for Sage Collegiate Public Charter School, a K-8 collegiate preparatory charter school that opened in August 2022.*

application for the “committee to form a charter school,” as well as interviews by the Authority of the potential principal or executive director of the school and proposed board members. NRS 388A.246 contains 37 different areas that must be contained in the application. These include detailed plans for academics, teacher evaluations, measuring performance, enrollment, finances, budgeting, size, and facilities, for example. The committee to form a charter school must include at least one teacher or school administrator as a board member, and at least two members in the areas of accounting, financial services, law, or human resources.

If approved, the charter school enters into a “contract” with the Authority and its operations are governed by that contract. With limited exceptions, charter contracts are for six years. Charter schools must follow the framework set forth in their charter, such as the size of the school, grades offered, length of school day, and their mission or focus. Once the application is approved, the governing body of the charter school, often called the board of trustees or directors, also must include a parent or legal guardian of a pupil enrolled. The Authority is tasked with oversight of Nevada’s charter schools, ensuring compliance with Nevada laws, adherence to its charter contract, and fiscal responsibility. The Authority requires regular and in-depth reporting by each charter school. If a parent or guardian has a complaint regarding their child’s charter school, they could submit a complaint with the Authority for investigation.

**Understanding** *continued on page 28*

## Instructions for CCBA’s CLE Article #18

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

1. Read the article, “Understanding Nevada Charter Schools and How They Differ from Traditional Public Schools” on pages 26–29;
2. Take the quiz on page 30; and
3. Complete the order form on page 31 and submit it AND the completed quiz page (p. 30) to receive CLE Credit from the CCBA.

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



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**Understanding** *continued from page 27*

Neither the Clark County School District Board of Trustees nor CCSD's Superintendent have jurisdiction over charter schools. Charter schools do not report to the Board of Trustees, but instead report to the Authority. A charter school may be part of an overall charter management organization or an independent school.

Charter schools within Nevada have diverse student populations and focuses, including schools established for collegiate preparatory, solely online instruction, geared towards student athletes, and for older high school students with non-traditional educational paths. Other charter schools concentrate more on vocational programs. Charter schools may deviate from the requirements of traditional public schools, providing for more school choice in Nevada.

Charter schools, like traditional public schools, receive funding on a per pupil basis. However, unlike traditional public schools, they do not receive facility funding (which comes from property taxes) and usually the facility funding is one of the biggest issues facing charter schools.

The governing body of the charter school must meet at least quarterly, and the meetings are public and subject to open meeting laws. The principal or executive director of the school reports to the governing body, which is tasked with ensuring compliance with the school's charter and fiduciary oversight.

Pupils are admitted to charter schools on a lottery basis, with certain preferences given to children who are deemed at risk, in a high-risk area, or zoned for a one- or two-star school. Charter schools may not charge fees or tuition for enrollment or otherwise give preference to potential families who donate. Charter schools must remain nonsectarian and are governed by the same laws and regulations regarding discrimination as traditional public schools. As with traditional public schools, by law, charter schools must accommodate students with IEPs or individualized education plans or programs.

Teachers at charter schools are considered public employees in that they receive PERS (Public Employees' Retirement System) benefits, much like teachers at traditional public schools. However, unlike teachers of the district, charter school teachers are not unionized nor are the charter schools governed by any collective bargaining agreements. Each charter school can set the terms and conditions of employment, including salaries and PTO.

NRS Chapter 388A and NAC 388A govern the operations of charter schools. Various legal issues and problems have arisen in the short history of charter schools in Ne-

vada. For example, recently, litigation ensued between the Authority and a potential charter school when the charter school's application was denied. Nevada law prohibits an existing public school or home school from converting into a charter school. Further, charter schools may not be supported or affiliated with any religious organization. Thus, if it appears that an existing public or religious school is simply trying to convert to a charter school, that is a basis for the denial of the charter application. In recent years, the Authority has denied the application of potential charter school that sought to operate at a closing religious-based lower school, resulting in litigation.

Other issues have recently arisen over the financial wherewithal of a local charter school and its compliance with NRS Chapter 388A. For example, the majority of the board of this school resigned, leaving one board member, which is in violation of Nevada law. The Authority learned the school did not pay into PERS for several months, leaving a large liability. If the school's enrollment dips too low as a result, this also could lead to issues if the enrollment is not within the parameters of the charter contract. The Authority has been actively monitoring and at this stage, it remains to be seen if the school can right its ship.

Other legal issues arise when charter schools need to apply for an amendment to their charter contract, such as modifying the years of schooling offered, location of the school, or number of students. Perceived unequal approvals of charter contract amendments has led to further litigation over the reasonable application of NRS Chapter 388A and NAC 388A.

Having only been operating in Nevada for a relatively short time frame, there is a dearth of case law and legal authority over the application of various provisions of NRS Chapter 388A and NAC 388A. There are also very few practitioners who specialize in this niche area of law, which encompasses transactional work, administrative law, and litigation. It is a burgeoning practice area and will likely continue to expand with the passage of AB 400, permitting cities and counties to authorize charter schools. It remains to be seen how AB 400 will impact the expansion of charter schools in Nevada and the current oversight by the Authority. **■**



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# CCBA CLE Article #18

## Quiz

### **“Understanding Nevada Charter Schools and How They Differ from Traditional Public Schools” Offers 1.0 General CLE Credit (NV)**

Complete the quiz. Each question has only one correct answer. Circle “True” or “False.”

- 1. True or False:** Charter schools may charge tuition for students.
- 2. True or False:** Charter schools may deny applicants with IEPs if they do not have the necessary resources at the school.
- 3. True or False:** A charter school may not be affiliated with a religious organization.
- 4. True or False:** Applicants of a school can receive a priority in the lottery process if their neighborhood school is low performing.
- 5. True or False:** Charter schools are part of Clark County School District.
- 6. True or False:** Charter schools are subject to the same collective bargaining agreements that apply to the Clark County School District.
- 7. True or False:** Charter schools are public schools.
- 8. True or False:** A traditional public school may convert to a charter school.
- 9. True or False:** Charter schools receive additional funding for their facilities.
- 10. True or False:** Parents or guardians of charter school students may not serve on the school’s governing body.
- 11. True or False:** Once approved, a charter school enters into a six-year contract with the Authority.
- 12. True or False:** Charter schools receive more per-pupil funding than traditional public schools.
- 13. True or False:** The Authority is the only authorizing body for charter schools.
- 14. True or False:** If an application is denied, the potential school’s only legal recourse is an appeal with the Authority.
- 15. True or False:** Charter schools have to pay into PERS for their teachers.
- 16. True or False:** Charter schools report to Clark County School District’s Board of Trustees.

## **Instructions for CCBA’s CLE Article #18**

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

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2. Take the quiz on page 30; and
3. Complete the order form on page 31 and submit it AND the completed quiz page (p. 30) to receive CLE Credit from the CCBA.

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

# CCBA CLE Article #18 Order Form

## **“Understanding Nevada Charter Schools and How They Differ from Traditional Public Schools”**

### **Offers 1.0 General CLE Credit (NV)**

Complete the order form and submit it with the completed quiz page (p. 30)  
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Phone: 702-387-6011, Fax: 702-387-7867, or e-mail: [Donnaw@clarkcountybar.org](mailto:Donnaw@clarkcountybar.org)

\*Note: Do NOT e-mail credit card info. Call it in to 702-387-6011.

**Upon receipt of the completed order,** the CCBA’s staff will record the attorney’s participation directly with the Nevada Board of Continuing Legal Education and provide verification of that transmission to the e-mail address provided in the completed order form.

# Nevada Appellate Court Summaries (7-3-24)

By Joe Tommasino, Esq.

## Supreme Court of Nevada

**Adoption:** Grandparents do not have standing to move to set aside an adoption involving a grandchild solely on the basis of familial relationship. Finality plays an elevated role in adoption proceedings because adoptions provide stability to children and adoptive families. Accordingly, only parties to the proceeding, entities in privity with those parties, or nonparties whose rights are directly affected by the court order have standing to seek NRCP 60(b) relief from an adoption decree. A prospective interest such as that created by a pending petition for guardianship does not confer standing. *In re: Petition of Katherine Anne P.*, 140 Nev. Adv. Op. No. 37, \_\_\_ P.3d \_\_\_ (June 6, 2024).

**Community redevelopment agencies:** (1) The Labor Commissioner correctly concluded that she had jurisdiction to decide whether prevailing-wage provisions apply under NRS 279.500; (2) the plain language of NRS 279.500 did not require the application of the prevailing-wage provisions to the underlying agreement between a redevelopment agency (RDA) and the developer; and (3) it was error to conclude that the RDA created a financial incentive to the developer worth more than \$100,000 and to assess an administrative penalty. Under Nevada's Community Redevelopment Law, if a redevelopment agency transfers property to a developer

for less than its fair market value or provides financial incentives to a developer worth more than \$100,000, then the agency's agreement with the developer must include a clause requiring payment of prevailing wages. In this case, the Labor Commissioner considered a transaction where a redevelopment agency transferred property to the developer of an apartment project in exchange for the developer agreeing to a deed restriction obligating it to maintain free public parking on the property for the next 50 years. The parties structured the transaction this way because, while the developer preferred a cash-for-property exchange, the agency could not afford to lose public parking in the downtown redevelopment area. Appraisers valued the property and the 50-year public parking obligation as an equivalent exchange, and the Labor Commissioner made no finding that the agency transferred the property for less than its fair market value. Although NRS 279.500(2)(a) did not apply, the Labor Commissioner nonetheless determined that, because the redevelopment agency received "future compensation" as opposed to cash for the property, it provided the developer a "financial incentive" worth more than \$100,000, so NRS 279.500(2)(c) applied. On this basis, the Labor Commissioner assessed a penalty against the redevelopment agency for not requiring the developer to pay prevailing wages on the project. On appeal, the Supreme Court of Nevada concluded that the Labor Commissioner's decision did not square with the plain language

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of NRS 279.500(2). The statute does not reference “future compensation,” much less equate its receipt with a redevelopment agency giving a developer “financial incentives [worth] more than \$100,000.” Without a finding that the present value of the parking obligation was less than the fair market value of the property, or evidence of a financial incentive worth more than \$100,000, the penalty against the redevelopment agency cannot stand. *The Redevelopment Agency of the City of Sparks v. Nev. Labor Comm’r*, 140 Nev. Adv. Op. No. 44, \_\_\_ P.3d \_\_\_ (June 27, 2024).

**Corporations:** (1) Officers and directors of a parent company can be individually liable where those officers and directors have knowledge of proposed action by a wholly owned subsidiary that is adverse to the parent company and intentionally implement or knowingly permit the adverse action; and (2) that liability is not dependent upon piercing the corporate veil and is not limited to wholly owned subsidiaries directly beneath the parent company. Officers and directors of a parent company who allow a wholly owned subsidiary to take action adverse to the parent can be held liable without use of the alter ego doctrine. Such liability is imposed because directors and officers have a fiduciary duty to act in the best interests of the parent company and its stockholders

and thus cannot intentionally cause, or knowingly fail to stop, adverse actions by a wholly owned subsidiary company. Moreover, shareholders may file derivative suits against officers and directors of a parent company based on wrongful actions that occurred at a wholly owned subsidiary of a wholly owned subsidiary without asserting alter ego. Fiduciaries at a parent company have a duty not to intentionally implement, or knowingly permit, a wholly owned subsidiary to effect a transaction that is unfair to the parent company on whose board they serve, regardless of the presence of intermediate subsidiaries between the parent and the subsidiary where the challenged action is alleged to have taken place. *Capital Advisors, LLC v. Cai C/W 85378*, 140 Nev. Adv. Op. No. 34, \_\_\_ P.3d \_\_\_ (May 23, 2024).

**Criminal procedure:** Counsel may not waive a petitioner’s right to be present at an evidentiary hearing on a postconviction habeas petition where the record does not indicate that the petitioner personally waived the right to be present. A postconviction habeas petitioner has a statutory right to be present at an evidentiary hearing on the merits of the petition. Once the district court decides to hold an evidentiary hearing on a petitioner’s

**Summaries** continued on page 34

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claims, the district court is “required by statute to grant the writ, to order [the petitioner] to be produced for the hearing, and to permit [the petitioner] an opportunity to deny, controvert, or present evidence to demonstrate that [the petitioner’s] imprisonment was unlawful.” The State suggested that relief was not warranted here because postconviction counsel did not intend to call appellant to testify. However, appellant was not able to communicate with counsel regarding the testimony presented, assist counsel in cross-examining witnesses, or inform counsel of his account of material events, which appellant represents would contradict the accounts of his previous attorneys. Further, postconviction counsel acknowledged that he had not intended to question pretrial and trial counsel and that it was appellant who had subpoenaed them. This reinforces the importance of appellant’s presence and indicates that his perspective may have illuminated elements of prior counsels’ representation that postconviction counsel did not appreciate. While counsel represented that *he* did not intend on calling appellant as a witness, that does not speak to what appellant may have desired to do. Because appellant was not present, it is unknown whether appellant, at the time of the hearing, may have intended to testify or would have desired to testify after evaluating the testimony of the State’s witnesses and consulting with counsel. While the Supreme Court of Nevada had not previously addressed whether postconviction counsel may waive a petitioner’s statutory right to be present at a postconviction habeas evidentiary hearing, the Court agreed that only *the petitioner*, not counsel, may waive the right. For a waiver to be effective, it must be clear in the record that the petitioner personally waived the right to be present at the hearing. Where counsel purports to waive a petitioner’s right to be present in the petitioner’s absence and the record does not show that the petitioner had personally waived the right, the waiver may be effective if the petitioner subsequently acquiesces. District courts must “exercise due care to ensure that an inmate is allowed to attend an evidentiary hearing held on a timely postconviction habeas petition, unless the court has ascertained from the inmate a clear intention to waive that right.” *Harris (Barry) v. Warden*, 140 Nev. Adv. Op. No. 35, \_\_\_ P.3d \_\_\_ (May 30, 2024).

**Equity expropriation claims: Most equity expropriation claims are “exclusively derivative” claims rather than direct claims.** A *derivative* claim is one brought by a shareholder on behalf of the corporation to recover for

harm done to the corporation. Alternatively, shareholders have standing to bring suit for *direct* injuries they have suffered that are separate from any injury the corporation may have suffered. Nevada has adopted the “direct harm test” to determine whether an action is direct or derivative. This test asks “(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?” Equity expropriation claims involve a controlling shareholder or director’s expropriation of value from the company, causing other shareholders’ equity to be diluted. In *Brookfield Asset Management v. Rosson*, 261 A.3d 1251 (Del. 2021), the Delaware Supreme Court concluded that “when a corporation exchanges equity for assets of a stockholder who is already a controlling stockholder for allegedly inadequate consideration, the dilution/overpayment claim is *exclusively derivative*.” However, these claims may become direct if the transaction results “in a shift in control from a diversified group of public equity holders to a controlling interest,” a circumstance where *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986) “already provides for a direct claim.” *In re: Parametric Sound Corp. Shareholders’ Litig. C/W 84971, 85358*, 140 Nev. Adv. Op. No. 36, \_\_\_ P.3d \_\_\_ (June 6, 2024).

**Evidence: The rule of completeness under NRS 47.120(1) is a rule of admission, not of exclusion.** “When any part of a writing or recorded statement is introduced by a party, the party may be required at that time to introduce any other part of it which is relevant to the part introduced, and any party may introduce any other relevant parts.” The rule functions as a mechanism for an adverse party to *introduce* additional statements to complete portions of a written or recorded statement. Thus, a party’s failure to move for admission of additional statements under NRS 47.120(1) will not render the initial statements *inadmissible*. Since the State’s exhibits were otherwise admissible, the district court did not err in admitting them. Separately, the Supreme Court of Nevada emphasized that the prosecution has “a right to comment upon the testimony and to ask the jury to draw inferences from the evidence, and has the right to state fully [its] views as to what the evidence shows.” The prosecution may “argue inferences from the evidence and offer conclusions on contested issues.” Here, the prosecution did not commit misconduct in its closing argument by arguing that gaps in text messages indicated that the minor victim and the defendant had met in person. Finally, the Court concluded that the district court

did not err in failing to instruct the jury regarding the edited nature of the State's exhibits. *Rodriguez (Isaac) v. State*, 140 Nev. Adv. Op. No. 47, \_\_\_ P.3d \_\_\_ (July 3, 2024).

**Fictive kin:** (1) A fictive kin is a person who has a significant emotional and positive relationship with a child; (2) the legislature's inclusion of fictive kin as an alternative placement to relatives recognizes the significant role certain unrelated people can play in a child's life and indicates an intent for children to be placed, when possible, into a home uniquely interested in a child's well-being; and (3) no preference for placement with extended biological family over fictive kin exists in Nevada. Nevada law describes the procedure required to place a child in need of protection outside the home. Historically, the child-welfare statutes provided preference for relative placement only; however, the statutory placement preference now includes fictive kin. When consistent with a child's best interest, placement preference should be given to an adult with a preexisting relationship with the child. Here, the district court ordered the placement of a child based on blood relations alone. The Supreme Court of Nevada clarified that the term "fictive kin" requires an evaluation of the relationship from the perspective of the child and the adult and makes clear that blood relatives do not enjoy a legal placement preference over fictive kin. Placement decisions must be based on a child's best interest, and a child must be meaningfully represented in all stages of a placement proceeding. *In re: Matter of J.B.*, 140 Nev. Adv. Op. No. 39, \_\_\_ P.3d \_\_\_ (June 13, 2024).

**Foreclosure:** (1) This appeal involves a dispute between the first deed of trust holder and the purchaser of a property at a homeowners' association (HOA) lien foreclosure sale; (2) the issue presented implicates the parameters of *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 76, 459 P.3d 227, 228 (2020), which provided for allocation of a defaulting homeowner's partial payments to an HOA superpriority lien; (3) under *Cranesbill*, a court must look at any allocation by the homeowner at the time of payment, application of the payment by the HOA prior to any dispute about allocation, and the equities involved; (4) in the instant case, the Supreme Court of Nevada made clear that absent express direction of the homeowner to the contrary, the HOA may not apply a payment in a way that jeopardizes the first deed of trust holder's interest and deprives the homeowner of the security on

the homeowner's mortgage; and (5) principles of justice and equity presume a superpriority lien is satisfied first, unless the court has a compelling reason to conclude otherwise. Courts applying *Cranesbill* must look first for direction of the homeowner allocating payment at the time payment was made. Then, if the homeowner fails to provide direction, a court must determine if the HOA allocated the payment prior to the dispute over the allocation. The HOA may not, without express direction from the homeowner, allocate the payment so as to forfeit the first deed of trust holder's interest and deprive the homeowner of the security in the home. If allocation by neither the homeowner nor the HOA resolves the question, the court considers principles of justice and equity, which presume that the superpriority lien is paid first, unless the court has a compelling reason to conclude otherwise. Here, under *Cranesbill*, the homeowner's partial payments to the HOA satisfied the HOA's superpriority lien, so the foreclosure did not extinguish Deutsche Bank's first deed of trust.

*Deutsche Bank Tr. Co. Americas v. SFR Invs. Pool 1, LLC*, 140 Nev. Adv. Op. No. 43, \_\_\_ P.3d \_\_\_ (June 27, 2024).

**Guardianship:** Here, the district court manifestly abused its discretion when it failed to consider an NRS 159A.053 temporary guardianship despite the proposed guardians' showing of good cause. Temporary court-ordered guardianships allow minors to obtain emergency care or protection pending a formal decision on a petition for general guardianship. In Nevada, such temporary guardianships may take either of two forms. NRS 159A.052 provides for temporary guardianships of minors who need immediate medical attention, and NRS 159A.053 provides for temporary guardianships of minors for other good cause. Although the district court here concluded that temporary guardianship over petitioner was not warranted under NRS 159A.052 because no medical emergency existed, the court failed to consider whether temporary guardianship was warranted under NRS 159A.053. Thus, the district court manifestly abused its discretion. *B.S. v. Dist. Ct. (Simek)*, 140 Nev. Adv. Op. No. 46, \_\_\_ P.3d \_\_\_ (June 27, 2024).

**Inventory searches:** (1) When a warrantless inventory search does not comply with department policies and procedures, it may be constitutional if it is reasonable under the totality of the circumstances; (2) an investigatory motive does not necessarily invalidate an

**Summaries** continued on page 36

inventory search so long as the search that occurred is the same as the inventory-based search that would have happened even absent any investigatory or other intent or motivation; and (3) a court deciding a suppression motion must determine the search's reasonableness under the totality of the circumstances by evaluating:

(a) the extent to which law enforcement departed from standardized procedure,

(b) whether the scope of the search was as expected in light of the underlying justifications for inventory searches, and

(c) whether the inventory produced served the purposes of an inventory search.

Here, a law-enforcement deputy pulled over appellant because the car appellant was driving had no operating license-plate light. The deputy arrested appellant on an active warrant. During the subsequent warrantless search of the vehicle, the deputy made statements indicating the deputy hoped to locate incriminating evidence. While searching, the deputy found a handgun. Appellant was charged with ex-felon in possession of a firearm and moved to suppress the evidence on the basis that the search was not a true inventory search, but rather a ruse to conduct an investigatory search. The Supreme Court of Nevada affirmed. The investigatory motive here does not invalidate the inventory search because the search that occurred was the same as the search that would have occurred absent the impure motivation. Because the deputy properly stopped appellant for the nonfunctioning license-plate light and arrested appellant on the outstanding warrant, the deputy was required under police policy to tow the car appellant was driving. Therefore, the search that uncovered the gun would have occurred pursuant to the inventory-search policy even absent the deputy's investigatory motives. The inventory search here passes constitutional muster because it was reasonable under the totality of the circumstances. *Gilbert (Jesse) v. State*, 140 Nev. Adv. Op. No. 33, \_\_\_ P.3d \_\_\_ (May 9, 2024).

**Jurors:** A district court does not abuse its discretion in denying a motion for a mistrial, construed as a motion to strike a venire for cause, based on a prospective juror's comments during voir dire unless the comments are so prejudicial that they could not be cured by an admonition. Here, because the district court found that the prospective juror's statement was equivocal and vague, any prejudice was neutralized by the curative admonition given

by the district court. *Mariscal-Ochoa (Manuel) v. State*, 140 Nev. Adv. Op. No. 42, \_\_\_ P.3d \_\_\_ (June 27, 2024).

**Name changes:** The name-change statutes permit incarcerated felons to change their names, regardless of the offense for which they were convicted, as long as good reason exists for the change. A reviewing court must consider an applicant's criminal record, in addition to any other relevant evidence, to determine whether "good reason exists" for the name change. The Supreme Court of Nevada declined to define "good reason," "as that is a decision best left, in the first instance, to the discretion of the district courts based on the facts and circumstances present in a given case." The Court also noted that "the name-change statutes require that an applicant's criminal history follows them to their new identity." *In re: Application for Change of Name (Lowry)*, 140 Nev. Adv. Op. No. 38, \_\_\_ P.3d \_\_\_ (June 6, 2024).

**Professional negligence:** (1) A professional-negligence claim requires a supporting affidavit from a medical expert under NRS 41A.071; and (2) the common-knowledge exception enunciated in *Estate of Curtis v. South Las Vegas Medical Investors, LLC*, 136 Nev. 350, 466 P.3d 1263 (2020) no longer applies. The Legislature has constructed a strict scheme for professional negligence actions in Nevada, and that scheme includes a definition of professional negligence and exceptions to the affidavit requirement that are intentionally narrow. To distinguish professional from ordinary negligence, the relevant question is whether the claim pertains to an action that occurred within the course of a professional relationship. If it does not, it is for ordinary negligence. If it does, it sounds in professional negligence and requires an affidavit under NRS 41A.071, unless it falls under the statutory exceptions in NRS 41A.100. The sole question for distinguishing professional and ordinary negligence relates to the nature of the conduct in the claim; specifically, whether it arises from services rendered in the course of a professional relationship. The complexity of a claim that involves a provider of health care rendering services cannot be used to transform a professional-negligence claim into an ordinary-negligence claim. Also, only the circumstances of *res ipsa loquitur* enumerated in NRS 41A.100 are exceptions to the affidavit requirement. Therefore, the Supreme Court of Nevada overruled the common-knowledge exception created in *Curtis*. The Court also reiterated that an affidavit satisfies NRS 41A.071 even when it is filed after the complaint, if it was incorporated by reference in

the complaint and executed before the complaint was filed. *Limprasert v. PAM Specialty Hosp. of Las Vegas LLC*, 140 Nev. Adv. Op. No. 45, \_\_\_ P.3d \_\_\_ (June 27, 2024).

**Tolling:** (1) NRS 41A.097(5) allows a plaintiff to sue healthcare providers on behalf of a child for brain damage or a birth defect as late as the child’s 10th birthday; (2) here, a pair of gubernatorial emergency directives issued during the COVID-19 pandemic tolled the applicable limitations period in NRS 41A.097(5) for 122 days; and (3) therefore, the complaint was timely. The complaint was filed 72 days after the child’s 10th birthday. Directive 009 “tolled” limitations periods for “any legal action,” a clear order that limitations periods for “any” pending legal action stop running. Directive 026 then recommenced the tolled limitations periods beginning August 1, 2020. Thus, the Directives’ plain, unambiguous language tolled the applicable limitations period for 122 days. *Dignity Health v. Dist. Ct. (Gohari)*, 140 Nev. Adv. Op. No. 40, \_\_\_ P.3d \_\_\_ (June 20, 2024).

## Nevada Court of Appeals

**Public trials:** (1) Before a court may exclude members of the public from a criminal trial, it must satisfy the test articulated by the Supreme Court of the United States in *Waller v. Georgia*, 467 U.S. 39, 46 (1984) and adopted by the Supreme Court of Nevada in *Fezell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995); and (2) here, the trial court violated the defendant’s right to a public trial by excluding the defendant’s family from the courtroom during the complaining witness’s testimony based on her nonspecific “concern” about their presence. The following test must be met before a court can completely exclude the public from criminal-trial proceedings:

(1) The trial court must find that “the party seeking to close the hearing [has advanced] an overriding interest that is likely to be prejudiced;”

(2) The closure must be “no broader than necessary to protect [the overriding] interest;”

(3) The trial court must consider “reasonable alternatives to closing the proceeding;” and

(4) The trial court “must make findings adequate to support the closure.”

When a court only partially closes the proceedings, the court must find a “substantial reason” to justify the closure, instead of an “overriding interest.” *Palmer (Christopher)*

*v. State*, 140 Nev. Adv. Op. No. 41, \_\_\_ P.3d \_\_\_ (June 27, 2024).

## Resources

- “Advance Opinions” are viewable at this link: [http://nvcourts.gov/Supreme/Decisions/Advance\\_Opinions/](http://nvcourts.gov/Supreme/Decisions/Advance_Opinions/)
- A list of “Forthcoming Opinions” is available at this link every Wednesday: [http://nvcourts.gov/Supreme/Decisions/Forthcoming\\_Opinions/](http://nvcourts.gov/Supreme/Decisions/Forthcoming_Opinions/)
- “Supreme Court Unpublished Orders” are viewable at this link: [http://nvcourts.gov/Supreme/Decisions/Unpublished\\_Orders/](http://nvcourts.gov/Supreme/Decisions/Unpublished_Orders/)
- “Court of Appeals Unpublished Orders” are viewable at this link: [http://nvcourts.gov/Supreme/Decisions/Court\\_of\\_Appeals/Unpublished\\_Orders/](http://nvcourts.gov/Supreme/Decisions/Court_of_Appeals/Unpublished_Orders/). **G**



<b>Filing/Messenger Service: Option #2</b> Dispatcher: Tina (702) 384-0015 ext 109	<b>Document Services: Option #4</b> Production: Adriana (702) 384-0015
<ul style="list-style-type: none"><li>♦ Court Filing</li><li>♦ Court Research</li><li>♦ ROC's</li><li>♦ Attorney Signature</li><li>♦ Deliveries</li></ul>	<ul style="list-style-type: none"><li>♦ Legal &amp; Corporate Copying</li><li>♦ Trial Support</li><li>♦ Trial Exhibits</li><li>♦ Exhibit Boards</li><li>♦ High-Volume Copying</li><li>♦ Color Laser Copies</li><li>♦ Oversized Copies</li><li>♦ Audio &amp; Video Tapes</li><li>♦ X-Rays</li><li>♦ Standard &amp; Custom Tabs</li><li>♦ Binding</li><li>♦ Drilling</li><li>♦ Document Scanning</li><li>♦ Archiving to CD</li><li>♦ Digital Printing</li><li>♦ Bates Labeling</li><li>♦ Onsite Copying</li><li>♦ Quality Control</li><li>♦ 24/7 Service</li></ul>
<b>Process Service: Option #3</b> PILB License #389	
<ul style="list-style-type: none"><li>♦ One Step: Issue/Serve/File AOS</li><li>♦ Las Vegas</li><li>♦ Henderson</li><li>♦ Clark County</li><li>♦ Nevada</li><li>♦ Nationwide</li><li>♦ Skip Tracing</li><li>♦ Subpoena/Eviction Preparation</li></ul>	
<b>Investigations: Option #5</b> Cathy (702) 384-0015 ext 113	
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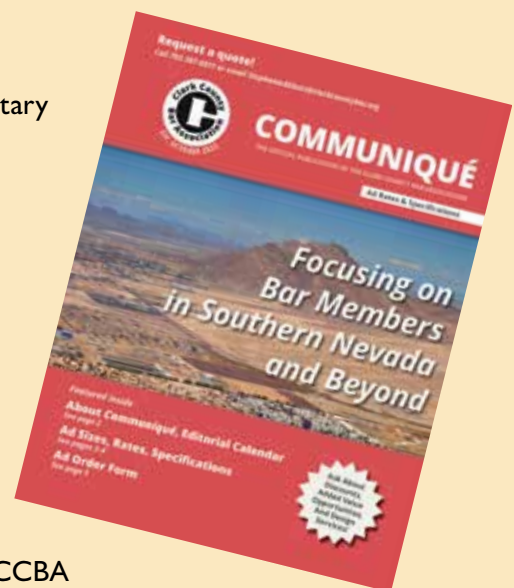
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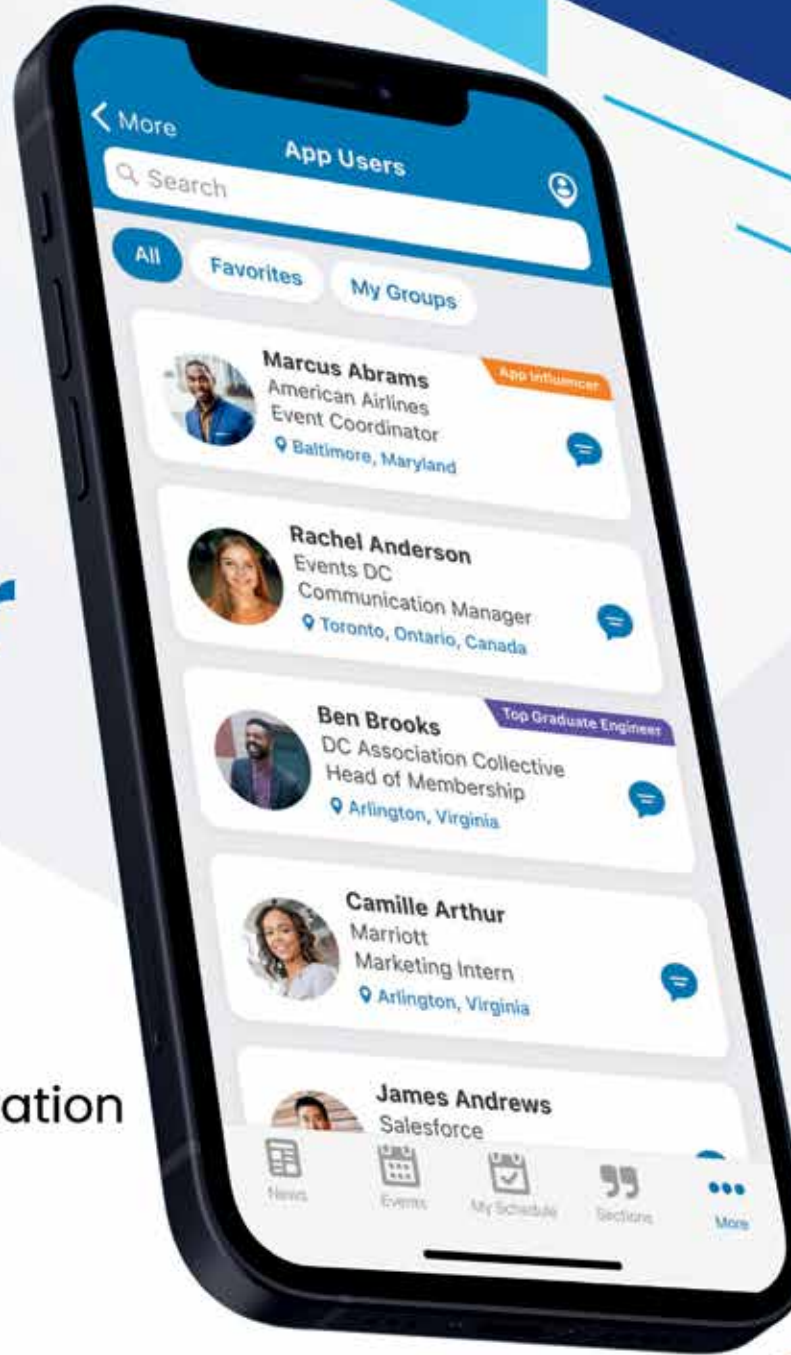


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