Labor & Employment Law

SEPTEMBER 2024

Lunchtime Learning CLE Webcast
Free for CCBA members on September 19, October 2 & 3, 2024
See pages 12, 14

CCBA COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

Follow CCBA: clarkcountybar.org 702-387-6011 @clarkcountybar @ccbanv @ccbanv

No More Non-Competes?

By Joshua M. Dickey

See page 24

Features inside

Highlights

Table of Contents

SEPTEMBER 2024

COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

On the cover

Joshua Dickey outside the office of Bailey Kennedy.

Highlights

Features

Columns

Spotlights

Departments

GGRM

NEVADA'S
PREMIER INJURY
LAW FIRM

Workers' Comp is NOT Personal Injury.

GGRM has mastered the confusing and complex workers' compensation system since 1970, securing medical and financial awards for tens of thousands of injured Nevadans. Our litigation experience spans from the Hearing Office to the Nevada Supreme Court. We don't interfere with your personal injury cases unless you'd like our help with those, too.

Generous referral fees under NRPC 1.5(e)

WORKERS' COMP BENEFITS INCLUDE:
Compensation Benefits • Medical Benefits
Vocational Rehabilitation Benefits • Death Benefits
Police/Firefighter Benefits • Reopening Benefits
Occupational Disease Benefits

GGRM SENIOR PARTNERS
(Pictured L to R) Lisa Anderson, Jason Mills, Toby Yurek

LAS VEGAS, NV
2770 S. Maryland Pkwy.
Suite 100
Las Vegas, Nevada 89109
702-384-1616

HENDERSON, NV
2475 Village View Dr.,
Suite 190
Henderson, NV 89074
702-384-1616

LAS VEGAS, NV
2200 S Rancho Dr
Suite 140
Las Vegas, NV 89102
702-384-1616

RENO, NV
5375 Kietzke Lane
Reno, NV 89511
775-553-0000

COMMUNIQUÉ
THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

Communiqué is published eleven times per year with an issue published monthly, except for July, by the CCBA, 717 S. 8th Street, Las Vegas, Nevada, 89101-7006. Phone: (702) 387-6011. *Communiqué* is mailed to all paid members of CCBA, with subscriptions available to non-members for $75.00 per year.

Communiqué accepts advertisements from numerous sources and makes no independent investigation or verification of any claim or statement made in the advertisement. All articles, letters, and advertisements contained in this publication represent the views of the authors and do not necessarily reflect the opinions of the Clark County Bar Association, the CCBA Publications Committee, the editorial board, or the other authors. All legal and other issues discussed are not for the purpose of answering specific legal questions. Attorneys and others are strongly advised to independently research all issues.

For more information about our publication's editorial calendar, deadlines, editorial policy, author guidelines, ad rates, ad specifications, and deadlines, contact the publisher at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101-7006. Phone: (702) 387-6011.

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.

Advertisers, Sponsors

Notice of Election for 2025 CCBA Executive Board

Deadline for nominations is Tuesday, October 15, 2024

Nominations from current members to serve on the 2025 CCBA Executive Board will be accepted Monday, September 2 through Tuesday, October 15, 2024, at 4:00 p.m. Nominations should be sent to the CCBA President, Paul Ray 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 5, 2024. Get details at clarkcountybar.org or call (702) 387-6011.

Activities *continued on page 8*

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.

Premier Sponsors

Bank of Nevada
A division of Western Alliance Bank. Member FDIC.

Eglet Adams Eglet Ham Henriod

Lexitas

Michael Hua Injury Law

Rich Wightman & Company
Certified Public Accountants

Littler

Paul Padda Law
Injury Attorneys

Patron Sponsors

Advanced Resolution Management

Fennemore

First Legal

JAMS

Lawrence C. Hill & Associates, Ltd.

McDonald Carano
Celebrating Our 75th Anniversary

Prominence Health

Veritext Legal Solutions

worldwide Litigation Services

Join us at the Meet Your Judges Mixer!

https://clarkcountybar.org • (702) 387-6011

Display Sponsors

BDO

BPAC Business Process Automation Company

LAS VEGAS LEGAL VIDEO LVLV TRIAL + VIDEO PROFESSIONALS

Kermani Concierge Medicine

DILLON HEALTH

NLS NEVADA LEGAL SERVICES

REPLEC Document & Digital Solutions

Since 1958 LEGAL AID CENTER of Southern Nevada

REALTIME TRIALS REPORTING EXPERIENCE MATTERS

ReceivershipSpecialists protecting and improving your assets while justice is served

Southern Nevada SLP SENIOR LAW PROGRAM

Law Firm Sponsors

ALDRICH LAW FIRM LTD

BAILEY ❖ KENNEDY ATTORNEYS AT LAW

Collinson, Daehnke, Inlow & Grecc Attorneys at Law

HEIDARI LAW GROUP TRIAL LAWYERS

Howard & Howard law for business

Holland & Hart

Hone

KAEMPFER CROWELL

KEMP | JONES ATTORNEYS AT LAW

MARQUIS AURBACH CHTD. maclaw.com

WILSON ELSER WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

WRS S&R

Candidate Sponsors

Judge Joseph Sciscento
Las Vegas Justice Court, Dept. 2

Activities *continued from page 5*

Clothing Closet Opens at Law School

On August 1, 2024, the UNLV William S. Boyd School of Law's Career Development Office's Professional Clothing Closet held its grand opening for Boyd students. The closet is in the Career Development Office area and open year-round. Everything is free. The closet has suits, dresses, shoes, skirts, dress shirts, ties, scarves, jewelry, garment bags, and much more.

Special thanks to the law firms that helped to collect clothing donations:

- **Brownstein Hyatt Farber Schreck**
- **Craig P. Kenny & Associates**
- **Lawrence C. Hill & Associates**
- **Marquis Aurbach**

The closet was inspired by the CCBA's Community Service Committee with donations made by bar members throughout the valley. Special thanks to CCBA members **Nikki Harris, Judge Tina Talim**, and **Benjamin Gordon** for their tremendous efforts to make this community outreach program happen.

As of August 31, 2024, all donations should be made directly to the Career Development Office at the William S. Boyd School of Law located at 4505 S. Maryland Parkway in Las Vegas. For more information, contact Assistant Dean of Career Development Nikki Harris at nikki.harris@unlv.edu or Stephanie Abbott at the CCBA's office at StephanieAbbott@clarkcountybar.org.

Bar Activity Receives National Recognition

CCBA's New Lawyers Committee received recognition at the 2024 American Bar Association's Young Lawyer Division annual meeting in Chicago on August 1, 2024. Specifically, the CCBA's Meet Your Law Students Mixer, an annual event co-hosted by the New Lawyers and Community Service committees and DICE, earned YLD's "Affiliate Star of the Quarter" (Quarter Four). Special thanks to Christena Georgas-Burns for sharing the CCBA's community outreach efforts with legal professionals in bar associations from across the industry!

For more information about the Meet Your Law Students Mixer, call Donna at the CCBA office at (702) 387-6011.

Judging Attorney's Fees Breakfast CLE

On August 1, 2024, CCBA hosted "Judging Attorney's Fees: A Judge's Panel on Winning Attorney Fees" at the Legal Aid Center of Southern Nevada. The breakfast event was well-attended and offered 2.0 CLE credits for Nevada lawyers.

Special thanks to **Rock Rocheleau** and **Michael Wendlberger** for helping to facilitate the in-person program. Special thanks to the event sponsors: RIGHT Divorce Lawyers, Legal Aid Center of Southern Nevad,a Las Vegas Legal Video, and Dillon Health.

The presentation was recorded, and recorded materials will be made available to rent from the CCBA for a small fee. For more information, contact Donna at the CCBA office at (702) 387-6011 or donnaw@clarkcountybar.org.

Activities *continued on page 10*

EGLET ADAMS
EGLET HAM HENRIOD

TRANSFORM YOUR CASES INTO UNPRECEDENTED RESULTS

With more than 200 cases taken to verdict and only four losses, Eglet Adams Eglet Ham Henriod is renowned for its expertise in handling the toughest litigation. Having obtained $2.5 billion in settlements over the last five years alone, our results speak for themselves.

We handle:

- Wrongful Death
- Catastrophic Injury
- Automobile Accidents
- Mass Torts
- Defective Products
- Sexual Assault
- Insurance Bad Faith
- Appeals

Our record of verdicts and courtroom success has built an extensive attorney referral network. Don't spend more money and resources than necessary—leverage our expertise and form a co-counsel relationship tailored to your needs.

98%
win-rate at trial on cases referred by other lawyers

With over $1.5 billion in verdicts, our firm secured the largest single injury verdict in Nevada history at
$505 million

$7.9 million settlement
Auto Accident

$41 million verdict
Product Defect

$2.9 million settlement
Escalator Injury

$3 million verdict
Sexual Assault

$800 million settlement
Mass Shooting

EGLETLAW.COM | (702)450-5400

Chip Seigel and Paul Ray

Activities *continued from page 8*

August Luncheon Highlights

On August 8, 2024, Chip Siegel, III, Chief Legal Officer for the Vegas Golden Knights, made a special presentation for the continuing legal education of Nevada lawyers during the Clark County Bar Luncheon. Over 75 people attended the event at MacKenzie River Pizza, Pub & Grill, located inside City National Arena in Las Vegas.

Special thanks to event sponsors: Bank of Nevada, First Legal and Kermani Concierge Medicine.

Jacquelyn Franco, Joel Henriod, Paul Ray, and Sarah Guindy

Annual Attorney Memorial Service

On September 6, 2024, from 3:00 to 5:00 p.m., the Annual Attorney Memorial Service, to honor Nevada attorneys who have passed on during the last year, will be held at the Supreme Court of Nevada in Las Vegas, Nevada. 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

Dr. Ben Kermani and Paul Ray

Bar Association-Las Vegas Chapter. For more information, contact Patrick at the Clark County Law Foundation, (702) 333-8277.

September Luncheon Featuring Jon Ralston

- **Sponsors:** Bank of Nevada and First Legal
- **Speaker:** Jon Ralston, CEO, *The Nevada Independent*
- **Topic:** 2024 General Election
- **When**: Wednesday, September 11, 2024. Check-in & networking begins at 11:30 a.m.. Luncheon program will be held from 12:00 to 1:00 p.m.
- **Location:** Fogo de Chão Brazilian Steakhouse, 360 E. Flamingo, Las Vegas
- **Price:** $60/CCBA member, $75/Non-member
- **RSVP Deadline:** September 6, 2024 via phone at (702) 387-6011 or web form at https://clarkcountybar.org/bar-luncheon-rsvp-form/.

October Luncheon Featuring Barbara Buckley

- **Speaker:** Barbara Buckley, Executive Director of Legal Aid Center of Southern Nevada
- **Topic:** Legal Aid Center of Southern Nevada: Reflections on 35 years of service and vision for the future
- **Date:** Thursday, October 10, 2024, 11:30 a.m. to 1:00 p.m.
- **Location and pricing:** To be announced at ClarkCountyBar.org
- **RSVP Deadline:** Friday, October 4, 2024

Activities *continued on page 12*

Activities *continued from page 11*

Bar Services

Professional Portrait Services for CCBA Members

Members of the Nevada bar, bench, law students, and supporting legal staff are invited to sit for a professional portrait at CCBA Picture Day events. See below for information on the next event.

CCBA Picture Day

Sponsor:

Portraits to You

Date: Wednesday, September 18, 2024

Time: 9:30 a.m. to 2:00 p.m. only

Location: Clark County Bar Association, 717 S. 8th Street, Las Vegas

Drop-ins are welcome; appointments are preferred.

Special offers:

- 20% off purchases of professional portraits for CCBA members!
- No sitting fees ($49 value) for this and graduation/family portrait session

For more information and to RSVP, contact Stephanie at (702) 387-6011 or StephanieAbbott@clarkcountybar.org.

Sponsor:

Lunchtime Learning CLE

This program is produced by the CCBA's Diversity and Inclusion Committee for Equity (DICE) as part of the DICE CLE Series.

Working Towards a More Diverse Legal Profession

Course description: 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.

Speaker: Effie Sahihi, Vice President U.S. Managed Review, Diversity Equity & Inclusion Program Lead, Consilio LLC

When: Thursday, September 19, 2024, 12:00 to 1:15 p.m.

Where: Online via Zoom

Offers: 1.0 Ethics CLE Credit (NV)

Live webcast (via Zoom): FREE for CCBA Members (2024) only

Recorded materials rental: $25/CCBA Member or $50/non-member.

RSVP to CCBA by 9/17/2024: https://clarkcountybar.org/ or Donnaw@clarkcountybar.org

DICE CLE Sponsors

Consilio

LAS VEGAS LEGAL VIDEO LVLV TRIAL + VIDEO PROFESSIONALS

McDONALD CARANO CELEBRATING OUR 75TH ANNIVERSARY

MURCHISON & CUMMING LLP

worldwide LITIGATION SERVICES

Activities *continued on page 14*

We are the "OG" of ADR services for good reason.

We're still the best.

We're Private Trials™, the first private alternative to the public judicial system in Nevada; first with a courtroom to accommodate full-scale jury trials; and among the first to provide mediation/arbitration services in the state, delivering over 20 years of exceptional resolution results.

The Honorable Gene T. Porter (retired), founder of Private Trials™, brings more than 43 years of litigation experience to the table with an uncanny legal perspective and a successful settlement record that is unmatched. He is also the only person in Nevada who has served as both a Chief District Court judge and as Majority Leader of the Nevada State Assembly.

Howard J. Russell, Esq., has spent over two decades establishing himself as a successful litigator in tort and commercial matters. His combined extensive trial experience and years of handling insurance coverage and bad faith issues, and his innovative mediation approach to successfully negotiate complex matters with sensible solutions, have earned him his stellar reputation.

Our credentials are unmatched. So are our results. Call us today to discuss your next mediation, arbitration or jury trial.

It's our experience that sets us apart from all the others.

PRIVATE TRIALS™

701 E. Bridger Ave. #570, Las Vegas, NV 89101
702.932.2600
Learn more at **privatetrials.com**

Lunchtime Learning CLE

This program is produced by the CCBA's Diversity and Inclusion Committee for Equity (DICE) as part of the DICE CLE Series.

Bystander Intervention: Promoting a Safer and More Inclusive Environment

Course description: This course provides an in-depth exploration of bystander intervention strategies tailored for the workplace. Participants will gain an understanding of the psychological principles behind the bystander effect, including diffusion of responsibility, ambiguity in situations, perceived cost, and evaluation apprehension. Through interactive discussions and real-life scenarios, attendees will learn how to effectively intervene in instances of workplace misconduct, harassment, or discrimination. The course aims to equip participants with the skills and confidence to act as proactive allies, fostering a safer, more inclusive, and respectful work environment. By the end of the session, participants will be able to identify barriers to intervention and apply practical techniques to overcome them, ensuring they can support their colleagues and uphold ethical standards.

Speakers:

- **Kenadie Cobbin-Richardson**, Certified DEI & ESG Consultant
- **Karyna Armstrong**, Attorney, McDonald Carano LLP, Vice Chair of McDonald Carano's DEI Committee

When: Wednesday, October 2, 2024, 12:00 to 1:15 p.m.

Where: Online via Zoom

Offers: 1.0 Ethics CLE credit (NV)

Live webcast (via Zoom): FREE for CCBA Members (2024) only

Recorded materials rental: $25/CCBA Member or $50/non-member

RSVP to CCBA by 10/1/2024: https://clarkcountybar.org/ or Donnaw@clarkcountybar.org

DICE CLE Sponsors

McDONALD CARANO
CELEBRATING OUR 75TH ANNIVERSARY

LAS VEGAS LEGAL VIDEO
LVLV
TRIAL + VIDEO PROFESSIONALS

MURCHISON & CUMMING LLP

worldwide
LITIGATION SERVICES

Lunchtime Learning CLE

Navigating AI In Law Practice: Practical Skills, Professional Challenges, & Economic Impacts

Course description: This CLE course will delve into AI's potential, from basic chat skills with ChatGPT to advanced proprietary skills and systems. The course provides practical examples of AI in the operation of a law practice, insights into balancing AI benefits with ethical considerations, and understanding its economic impacts. It also addresses the ethical challenges and implications for the legal labor market, offering practical advice based on real-life experiences.

Speaker: Jeff Bolender, Esq., Bolender Law Firm, PC

When: Thursday, October 3, 2024, 12:00 to 1:15 p.m.

Where: Online via Zoom

Offers: 1.0 CLE credit (NV)

Live webcast (via Zoom): FREE for CCBA Members (2024) only

Recorded materials rental: $25/CCBA Member or $50/non-member

RSVP to CCBA by 10/1/2024: https://clarkcountybar.org/ or Donnaw@clarkcountybar.org

CLE Sponsors

BANK OF NEVADA
A division of Western Alliance Bank. Member FDIC

LAS VEGAS LEGAL VIDEO
LVLV
TRIAL + VIDEO PROFESSIONALS

Southern Nevada SLP SENIOR LAW PROGRAM

SLP Salutes SENIOR ADVOCATES

APPETIZERS - WINE/SPARKLING WATER - SILENT AUCTION

You are INVITED

OCTOBER 23, 2024

5PM-7:30PM

Emerald at Queensridge

891 S. Rampart Blvd. Las Vegas, NV 89145

Honoring:

Justice Kristina Pickering and Marriteresa Rivera-Rogers, Esq.

SLP Salutes Senior Advocates is a special event celebrating the exceptional compassion of the dedicated attorneys who have answered our call to action by volunteering pro bono this year.

Thank you to our sponsors!

Retired Justice MIRIAM SHEARING

TASTING TABLE SPONSORS:

LYMAN WEALTH ADVISORS

Goldsmith & Guymon Attorneys-at-Law

BLG
Bellon Law Group, Ltd.
Peter J. Bellon, Esq.
732 South 6th Street, Suite 102
Las Vegas, Nevada 89101
(702) 452-6299 • (702) 452-6298 Fax
bellonlaw.groups.com | peter@bellonlaw.groups.com

ProCare HOSPICE OF NEVADA

BETSY & RICHARD KOLKOSKI

Fox Rothschild

CARLYON CICA CHTD.
WWW.CCCLAW.VEGAS

McDONALD CARANO
CELEBRATING OUR 75TH ANNIVERSARY

EVENT SPONSOR:

ENTERPRISE BANK & TRUST

DIAMOND SPONSOR:

NEW YORK LIFE

For more information please contact Adilene Plancarte at aplancarte@snslp.org

Preserving Judicial Branch Integrity: Why the Courts Must Control Their Own Workforce

By Chief Judge Jerry A. Wiese II and Andres Moses

On July 1st, I officially began my second term as Chief Judge of the Eighth Judicial District Court. Looking back on my first two years, one of the greatest privileges has been the responsibility of overseeing the numerous dedicated public servants who make up the administrative personnel of the District Court. One thing I have learned is the importance of the judiciary's ability to control its own workforce independently and without interference from external pressures.

Separation of powers is a fundamental principle that is designed to prevent any one branch of government from becoming too powerful. Judicial independence is essential for ensuring courts make decisions based solely on the law and facts, free from political pressures or interests. When other branches have the ability to exert control over court personnel, there is a risk of undue influence that can compromise judicial impartiality and integrity.

Decisions from the Supreme Court of Nevada have reinforced that the judiciary is empowered to manage its workforce. In *Harvey v. Second Judicial District Court*, 117 Nev. 754, 32 P.3d 1263 (2001), the Court held that a district court lawfully assumed the supervision and control of the operation of a court clerk's office from the county clerk. Then, in the landmark decision of *Sparks v. Sparks Municipal Court*, 129 Nev. 348, 302 P.3d 1118 (2013), the Court expressly recognized the judiciary's exclusive authority over the management of its employees, including administrators, marshals, court clerks, interpreters, and other employees who are essential to fulfilling the court's duties.

Decisions from the Supreme Court of Nevada have reinforced that the judiciary is empowered to manage its workforce.

In Clark County, there has been a steady movement towards greater judicial autonomy over personnel management during the past several decades. On July 1, 2022, a Memorandum of Understanding (MOU) was implemented between Clark County and the Eighth Judicial District Court, recognizing the court's complete autonomy over personnel management and leading to the creation of our own Employee Handbook. This change has significantly improved court operations' efficiency and cohesiveness. With direct management of our staff, we have streamlined hiring practices, ensuring that we can bring in the best can-

View *continued on page 17*

Chief Judge Jerry Wiese *serves in Department 30 of the Eighth Judicial District Court Bench. Since taking the bench in January of 2011, Judge Wiese has presided over numerous trials, both civil and criminal, and has presided over many settlement conferences. He coordinates the Judicial Settlement Conference Program and presides over the Medical Malpractice Sweeps. He was elected Chief Judge by his peers and has served as the Chief Judge of the District Court since July 2022.*

Andres Moses *serves as Assistant Court Administrator for the Eighth Judicial District Court.*

JAMS Nevada

Highly Skilled Neutrals with Deep Subject Matter Proficiency

Hon. Nancy L. Allf (Ret.)

Hon. Stewart L. Bell (Ret.)

Hon. Jim Crockett (Ret.)

Hon. Mark Gibbons (Ret.)

Floyd A. Hale, Esq.

Hon. Carl W. Hoffman (Ret.)

Eleissa Lavelle, Esq.

David S. Lee, Esq.

Hon. Peggy A. Leen (Ret.)

Hon. Philip M. Pro (Ret.)

Hon. David Wall (Ret.)

Mediation, Arbitration and Custom ADR Processes

jamsadr.com/lasvegas
702.457.5267

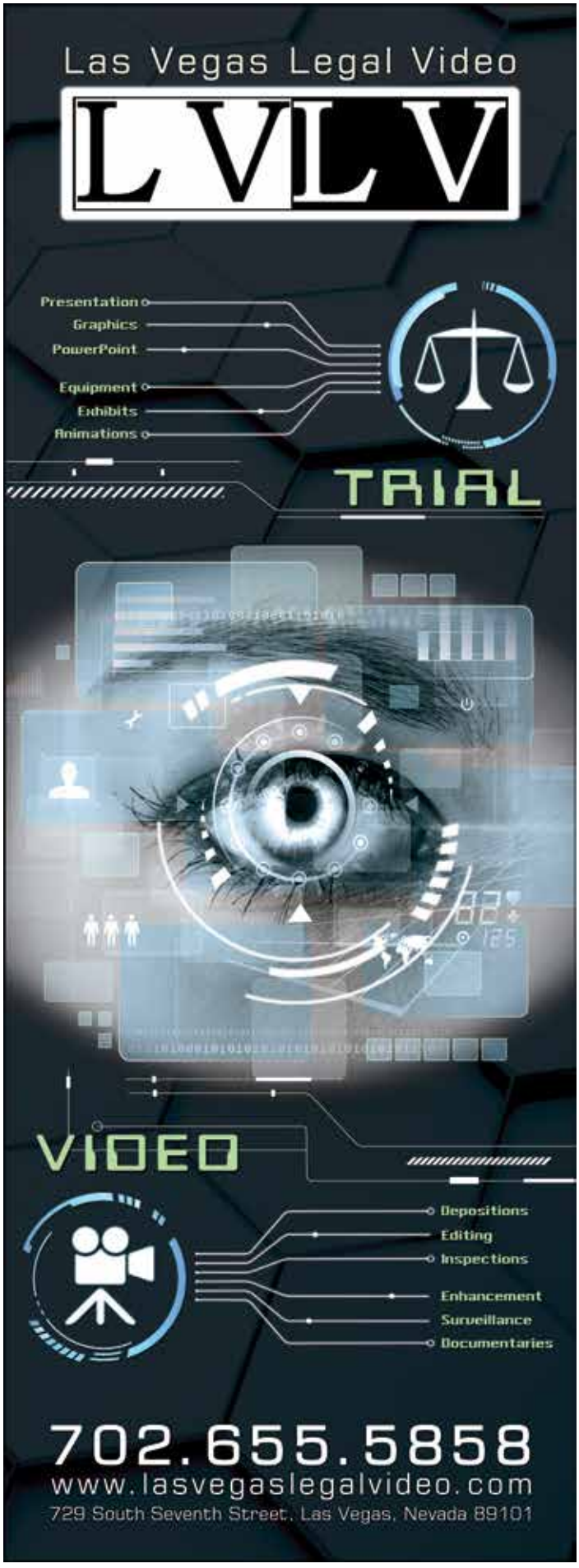
Local Solutions. Global Reach.®

JAMS®

View *continued from page 16*

didates quickly and effectively. The MOU also recognizes that the court operates within a unique environment requiring specialized knowledge and skills. Judges and court administrators best understand the specific needs of the judiciary. With workforce control, we can ensure that employees have the necessary skills, training, and dedication to support the judicial process, aligning with our core values and mission.

Judicial autonomy in workforce management also fosters accountability and high ethical standards. When courts set their own policies and procedures for hiring, performance evaluation, and disciplinary actions, they uphold the highest standards of professionalism and integrity. This internal oversight swiftly addresses misconduct or inefficiency, free from external political considerations. An independent judiciary, in control of our own workforce, free from outside interference, is essential for the effective administration of justice and maintaining public trust in our legal system. By safeguarding this aspect of judicial independence, we uphold the rule of law and ensure our courts can continue to serve as impartial arbiters of justice for all. **C**



Western Alliance Bank®

BANK OF NEVADA

NewLaw Banking Solutions **for the Legal Industry**

Bank of Nevada, a division of Western Alliance Bank, has a long history of serving the legal community. Our NewLaw banking experts understand the complete banking needs of law firms, legal technology providers and other businesses that are adapting to - and driving - change in the market for legal services. We offer comprehensive banking services, from partner buy-in loans for large and boutique law firms to assistance with early-stage financing for legal techs. Our solutions are delivered with a deep understanding of the legal landscape and a white-glove approach to client service.

Trusted banking right where you are, powered by the strength of Western Alliance Bank.

TRUSTED. PROVEN. RELIABLE.

- Deposit and IOLTA Accounts[1]
- Loans and Financing[2]
- Settlement Services
- Digital Disbursements[3]
- Treasury Management Solutions[4]

Connect with us at
bankofnevada.com/plus

Sarah Guindy
Senior Director
NewLaw Banking
(702) 252-6452
sguindy@bankofnevada.com

1. Refer to the disclosures provided at account opening and the Schedule of Fees and Charges for additional information. 2. All offers of credit are subject to credit approval, satisfactory legal documentation, and regulatory compliance. 3. Digital Disbursement is a subsidiary of Western Alliance Bank. 4. All offers of credit subject to approval. Some products and services may be subject to prior approval or fees. Please contact a Treasury Management Advisor and Relationship Manager for additional details that may apply based on products and services. selecte selected.

"Some Harm" – A New Standard in Discriminatory Job Transfers

By Jennifer K. Hostetler

An employee does not have to meet a "significant" or heightened-injury standard to establish a claim under Title VII of the Civil Rights Act of 1964 ("Title VII") for a discriminatory job transfer, just "some harm" respecting the employee's terms and conditions of employment, the Supreme Court of the United States held in *Muldrow v. City of St. Louis, Missouri*, 601 U.S. __ (2024).

Background on *Muldrow*

Sgt. Jatonya Clayborn Muldrow was a female police officer who was transferred to another unit following nine years of service in the St. Louis Police Department's specialized intelligence division. In her former unit, Muldrow investigated public corruption and human trafficking cases, oversaw the gang unit, served as head of the gun crimes unit, and was deputized as a task force officer with the FBI. Her role granted her FBI credentials, an unmarked take-home vehicle, and authority to pursue investigations outside of St. Louis.

Despite her objections, Muldrow was transferred out of the unit because she is a woman. A new intelligence division commander requested the transfer because a male police officer seemed a better fit for the division's "very dangerous" work. Muldrow's responsibilities shifted from working with high-ranking officials on intelligence cases to supervising day-to-day activities of neighborhood police officers, going on patrol, and handling administrative matters, such as reading arrest reports. Although Muldrow did not experience a reduction in pay or rank, she alleged that the transfer moved her to a less prestigious and more administrative role, resulting in loss of perks, networking opportunities with commanding officers, and the ability to work on high-profile investigations. Some of the benefits Muldrow lost were her FBI credentials, take-home vehicle, ability to wear plain clothes, and a regular Monday-to-Friday, nine-to-five schedule.

Muldrow sued the City of St. Louis ("City") alleging sex discrimination under Title VII for her transfer. The district court granted the City summary judgment, and the Eighth Circuit affirmed, holding that Muldrow could not show that the transfer caused her a "materially significant disadvantage," and emphasized that the transfer did not result in a diminution to her title, salary, or benefits. However, the standard applied for whether a transfer resulted in harm to the employee varied among the circuits.

The Supreme Court of the United States granted certiorari to resolve a circuit split over whether an employee challenging a transfer under Title VII must meet a heightened threshold of harm.

Jennifer K. Hostetler *is a partner at Lewis Roca. Jennifer defends employers in state and federal court against claims brought by their employees including claims of wrongful termination and discrimination. Jennifer also counsels and advises employers with respect to their employment decisions and policies.*

The Supreme Court's ruling

Writing for the Supreme Court of the United States, Justice Elena Kagan vacated the judgment of the Eighth Circuit and remanded, writing that courts must "use the proper Title VII standard, and not demand that Muldrow demonstrate her transfer caused 'significant' harm,'" as Title VII requires an employee to show that the transfer results in some "disadvantageous" change to employment. The Court held that an "employee challenging a job transfer under Title VII must show that the transfer brought about some harm with respect to an identifiable term or condition of employment, but that harm need not be significant" or exceed some heightened bar. In citing several cases where lower courts rejected employee claims where there was no "significant" change in employment conditions, Justice Kagan wrote that these "claims were rejected solely because courts rewrote Title VII, compelling workers to make a showing that the statutory text does not require."

As to Muldrow, the Court noted the transfer must have left her worse off (but not significantly worse off), and if she could prove her allegations, Muldrow had satisfied the appropriate harm standard "with room to spare" as "she was left worse off several times over."

What the ruling means

The ruling clarified that an employee is not required to meet a heightened standard of harm to establish a claim under Title VII for a discriminatory job transfer—just some injury or harm. The ruling, however, left open the question of what is sufficient to demonstrate "some harm." It is too early to tell how the district courts will apply this new lower standard. However, it is expected that courts will look beyond title, salary, and benefits to all aspects of a job transfer including associated perks, schedule, and career prospects, to determine whether an employee is worse off than before the transfer.

Additionally, while the Supreme Court's holding is narrowly tailored to job transfers, it remains to be seen whether courts will now apply this lower standard to Title VII discrimination claims outside the transfer context. **C**

Top 5 FAQs Re: Damages Caps on Intentional Discrimination in Employment

By Kristen Gallagher

For employers with 15 or more employees, Title VII of the Civil Rights Act (Title VII), the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA) impose federal statutory caps on certain compensatory and punitive damages in cases of intentional discrimination in employment. State statutory and common law claims might not impose caps and plaintiffs may be able to recover under multiple theories in their jurisdiction. Employers frequently ask five questions about the federal caps.

1. Will damages caps be increased or eliminated?

The caps have not increased since the enactment of the Civil Rights Act of 1991. The amount and/or existence of caps are currently under scrutiny. On May 8, 2024, Representative Suzanne Bonamici and others introduced the Equal Remedies Act of 2024. The bill proposes to amend Title VII by eliminating caps on punitive and compensatory damages. Additionally, the bill proposes amending the Age Discrimination in Employment Act (ADEA) to provide for remedies consistent with those available under Title VII because the ADEA provides for remedies available under the Fair Labor Standards Act (FLSA).

2. What damages are capped?

Title VII, the ADA, and GINA impose caps on certain compensatory and punitive damages. 42 USC §§1981a(a)(1), 2000ff-6(a)(3). Section 1981a, governing damages in cases of intentional discrimination in employment, specifies caps for these three statutes that apply to damages for:

- Future (but not past) pecuniary losses.
- Emotional pain, suffering, inconvenience, and mental anguish.
- Loss of enjoyment of life.
- Other non-pecuniary losses.
- Punitive damages.

There is no monetary damages cap for race discrimination claims under 42 USC §1981 (often referred to as "Section 1981"); however, other limitations may apply to claims asserted under Section 1981.

3. How are damages caps assessed and applied?

Caps are based on the number of employees. Caps applicable to Title VII, ADA, and GINA apply per complaining party, not per claim.

- 15 to 100 employees: $50,000
- 101 to 200 employees: $100,000
- 201 to 500 employees: $200,000
- More than 500 employees: $300,000

4. Can a plaintiff aggregate an employer's multiple facilities to access a higher cap?

Section 1981a is silent about how to identify the employer. A plaintiff often seeks to aggregate an employer's multiple facilities and consider them

***Kristen Gallagher** is Co-Chair of McDonald Carano's Employment & Labor Law Practice and a member of the Commercial & Complex Litigation Practice. She represents clients before the Nevada Supreme Court and Ninth Circuit Court of Appeals, as well as before state and federal employment and labor regulatory agencies and boards.*

a single employer for purposes of counting employees so a higher cap applies. While a court cannot inform a jury of the caps applied to combined compensatory and punitive damages (42 USC §1981a(c)(2)), if a jury awards damages in excess of the cap, the court then reduces the award in conformity with the applicable cap.

5. Are back pay and front pay capped under federal law?

Back pay and front pay are not capped; however, there are various bases to defeat or reduce these categories of damages.

- **Back pay** is generally awarded for the period of time between the discriminatory conduct and a judgment or other event remedying the discrimination. An employer can try to reduce or defeat a back pay award based on (1) an employee's failure to mitigate damages, (2) after-acquired evidence of employee misconduct, or (3) an employer's unconditional offer of reinstatement that the employee rejected. Back pay is reduced by interim earnings or amounts the individual with reasonable diligence could have earned. There may be special circumstances that could reduce a back pay award, such as (1) an award that places a plaintiff in a better position than if the plaintiff remained in the position and the discrimination did not occur, (2) the employer filed for bankruptcy, or (2) the employee was planning to voluntarily terminate employment to open their own business. Other offsets or deductions from a back pay award may be available to employers, including interim earnings, post-termination benefits, or collateral source payments, which varies by jurisdiction.

- **Front pay** has generally been limited by courts based on the circumstances of the case. While plaintiffs are expected to mitigate damages by finding appropriate comparable employment, estimating front pay is not exact and can result in differing outcomes. Generally, courts typically award front pay for one to two years, however, some front pay awards have represented 25 years of lost wages. Cases that award higher front pay damages are fact dependent, but involve situations like a niche profession where the plaintiff has difficulty finding a comparable position, plaintiff is nearing retirement, expert testimony established difficulty in finding a similar position, or circumstances of the case resulted in a serious medical condition that made it difficult for the plaintiff to mitigate their damages. C

No More Non-Competes?

By Joshua M. Dickey

Non-competes—restrictive covenants in which one party agrees to refrain from competing with another—have long been enforceable in Nevada, even in the healthcare field, so long as they are reasonably necessary to protect the legitimate business interests of the beneficiary of the non-compete and do not contravene the public interest. *See Ellis v. McDaniel*, 95 Nev. 455, 459, 596 P.2d 222, 225 (1979); *see generally* NRS 613.195. Consequently, non-competes are a relatively common tool used by Nevada businesses seeking to protect their business interests against competition from former employees.

In recent years, efforts have been made, in Nevada and elsewhere, to limit non-competes. For instance, NRS 613.195 has been amended to impose limitations on non-competes, including the prohibition of non-competes for workers paid an hourly wage. *See generally* NRS 613.195. In 2023, the Nevada Legislature passed AB 11, a bill that would have prohibited non-competes between hospitals and medical providers, but it was vetoed by Governor Lombardo.

The FTC rule

In April 2024, the Federal Trade Commission ("FTC") issued a final rule that prohibits—nationwide—most non-competes for employees (the "Rule"). *See* 16 CFR § 910 (2024). The Rule is scheduled to become effective on September 4, 2024 (the "Effective Date"). Once effective, employers must provide notice to their employees that their non-competes, except those that fall within the Rule's exceptions, are no longer enforceable. *Id.* § 910.2(b).

Once effective, employers must provide notice to their employees that their non-competes, except those that fall within the Rule's exceptions, are no longer enforceable.

The Rule includes only entities and activities that are subject to the FTC's enforcement jurisdiction. For instance, banks and non-profits may not be subject to the Rule. *See generally* Non-Compete Clause Rule, 89 Fed. Reg. 38342, 50-54 (May 7, 2024). Moreover, the Rule includes some limited exceptions. It does not apply to:

- Non-competes with senior executives *existing prior to* the Effective Date. However, no new non-competes with senior executives are permitted after the Effective Date. A "Senior Executive" is a worker in a policy-making position whose total annual compensation is at least $151,164.00. 16 C.F.R. § 910.1.
- Non-competes "entered into by a person pursuant to a bona fide sale of a business entity, of the person's ownership interest in a business entity, or of all or substantially all of a business entity's operating assets."
- "A cause of action related to a non-compete clause accrued prior to" the Effective Date. *Id.* § 910.3(a)-(c).

Joshua M. Dickey *is a partner at Bailey Kennedy. His litigation practice focuses on complex civil disputes in legal areas such as healthcare, commercial, corporate, and business torts/ competition. In addition, he frequently advises clients on matters concerning healthcare, corporate governance, and non-competes. Joshua can be reached at jdickey@baileykennedy.com.*

Beyond its limited exceptions, FTC guidance indicates that the Rule does not inhibit the enforcement of intellectual property rights, including trade secret laws. The Rule also does not prohibit *reasonable* non-disclosure/confidentiality agreements, non-solicitation agreements, invention assignment agreements, or "garden leaves" that do not act as de facto non-competes. (A "garden leave" is an arrangement in which the worker technically remains an employee for a period of time, does not work during this period, but continues to be compensated).

The Rule will effect a significant change to the employment law landscape ***if*** it goes into effect. At the time of this writing, the Rule is subject to numerous legal challenges. At least one court has issued a preliminary injunction enjoining its enforcement against the plaintiff in that action while another court has denied a similar request for preliminary injunction. *Compare Ryan LLC v. FTC*, 2004 WL 3297524 (N.D. Tex. July 3, 2024) *with ATS Tree Services, LLC v. FTC*, 2024 WL 3511630 (E.D. Pa. July 23, 2024). Expect more to come on the legal front.

Suggestions given recent trends, including the FTC rule

Given the Rule, employers should immediately evaluate existing non-competes. And, whether the Rule survives legal challenge, recent legislative and regulatory hostility towards non-competes should serve as a cue to employers to implement or shore-up other avenues to protect their legitimate business interests.

Employers should implement or reassess policies, procedures, and agreements concerning the protection of confidential and proprietary information. Without non-competes as an option for employers to protect their business interests against competition from former workers, trade secret law may become of heightened importance; an essential element of a claim for misappropriation of trade secrets is that the employer undertook efforts reasonable to maintain the secrecy of the information. *See* NRS 600A.030(5).

In addition, employers should consider, where appropriate, implementing or reassessing existing non-solicitation agreements and invention assignment agreements. Moreover, employers should consider whether garden leaves make business sense in appropriate circumstances.

Given recent legislative and regulatory scrutiny of non-competes, failure by businesses to explore other means of protecting their interests could lead to competitive disadvantages. **C**

Dawn of a New Day: How Businesses Can Reduce Delay and Risk of Liability for an NLRB Unfair Labor Practice Claim

By Mark J. Ricciardi

Over the past year, the National Labor Relations Board (Board) has made it much easier for a union to organize at a new workplace. Through a series of coordinated actions, the Board has drastically changed how employers should respond to union recognition demands while creating an entirely new framework requiring employers to bargain regardless of the results of a representation election. Lawyers who practice employment law but may not be conversant in labor law should be aware of these new developments and should be ready to appropriately counsel their business clients or reach out to an experienced labor counsel.

- The Board's August 2023 decision in *Cemex* 372 NLRB No. 130 (2023) started the ball rolling. It essentially puts the onus on an employer confronting a union recognition demand to timely petition for a representation election, and forces them to the bargaining table in response to unfair labor practices that would otherwise have warranted setting aside that election. That decision swept away over 50 years of precedent that entitled employers to decline union recognition demands based on claims of majority status (typically in the form of signed authorization cards), pending the outcome of a secret-ballot election monitored by the NLRB.
- Within a week, the Board issued two more decisions—*Wendt* 372 NLRB No. 135 (2023) and *Tecnocap* 372 NLRB No. 136 (2023)—that limit the power of employers to implement changes during first contract negotiations and upon expiration of collective bargaining agreements, respectively. These decisions severely limit the changes that employers can unilaterally make once a union is in the picture. No longer can businesses rely on past practices developed prior to the onset of union representation or pursuant to management rights clauses that have expired thereafter.
- In the waning days of 2023, the Board's so-called "quickie election" rule (29 CFR Part 102) took effect, greatly accelerating the time period between union petitions and elections and making life that much harder for employers responding to a union organizing campaign.
- And this past summer, the Board overturned three Trump-era rules that had made it easier for workers to undo union representation via the decertification process.

The early returns show that these initiatives have achieved the intended effect, as illustrated by the 35% increase in union election petitions in the first half of 2024 relative to the same period in 2023. More evidence comes

Mark Ricciardi *is the regional managing partner of Fisher Phillips in Las Vegas. He has been practicing labor and employment law in Las Vegas since 1987. Mark's practice consists primarily of advising and representing large employers in collective bargaining and in the planning and execution of complex labor strategy.*

from the thirteen-fold increase in "RM" petitions filed by employers this year relative to the preceding decade, thanks to the new *Cemex* standard that requires employers to affirmatively request secret-ballot elections for purposes of contesting recognition demands.

So what steps can businesses legally take before a union is in the picture? Here's how they can reduce their risk of liability for potential Unfair Labor Practice (ULP) claims while safeguarding the opportunity for employees to make informed decisions on the issue of union representation.

1. **Train supervisors and managers.** While the NLRB is increasingly regulating their ability to lawfully respond to union activity, employers technically retain statutory "free speech rights" on the subject of union representation. Employees may not always receive a complete picture of what it means to select a union as their exclusive representative from the organizer alone. Against the backdrop of the new *Cemex* remedial framework, it is more important now than ever for statutory supervisors to understand what can be said lawfully, the role they play in maintaining a positive employee relations infrastructure, and the importance of avoiding ULPs. Supervisors are often the first line of exposure in such cases, but one that is properly trained can instead serve as the first line of defense, while serving as an indispensable part of any employer's effort to lawfully keep employees fully informed.

2. **Create positive relationships with employees**. Human Resources and frontline managers should commit to developing a positive workplace culture by regularly interacting with, seeking input from, listening to, and resolving employee concerns well before the onset of any organizing effort. By the same token, employers should consider implementing a regular process for auditing and confirming that wages remain competitive, while maintaining a robust communication process for reinforcing the "hidden value" of their benefits package.

3. **Recognize that a "one size fits all" approach may not be best.** Rather, employers are encouraged to collaborate with their internal stakeholders and labor counsel to tailor an appropriate compliance strategy around the unique aspects of their workplace cultures. C

Integrating Pro Bono Work for Employment Cases into Practice

By Andre Lagomarsino, Esq.
Kaylee Heiny, Law Clerk, Boyd 2L
Alicia Lay, Law Clerk, Boyd 2L

Facing the justice system without the aid of an attorney is intimidating and complicated. Countless individuals with employment law claims face this process alone because they cannot afford an attorney. These members of our community are shuffled around the justice system while the clock ticks. Employment law can be especially difficult to navigate because it involves agency processes. Legal advice greatly eases this burden.

We have the unique opportunity to clear the bottleneck created by potential employment claims lacking direction. Lending an empathetic ear for free to a potential client at intake ensures the client does not get lost in a perpetual legal shuffle. If their case is not likely to be successful, we can let them know at that moment, avoiding time-consuming work that does not deliver legal relief.

Employment Law Processes

Employment law claimants are on a tight schedule. In Nevada, they must first file a complaint with either the Equal Employment Opportunity Commission (EEOC) or the Nevada Equal Rights Commission (NERC). This filing is subject to strict deadlines from the final day of discrimination. Claimants may only file a lawsuit after they receive a right to sue notice from the agency, which is subject to a 90-day deadline. Walking claimants through this process is crucial in preventing vital claims from expiring. Regularly checking in and advising claimants of their options–including participating in mediations or filing a formal lawsuit– helps clients achieve their legal goals.

Advantages of Pro Bono Work

Integrating pro bono employment work into practice is a rewarding experience. Clients are appreciative and grateful to receive guidance in a complicated process. If employment law is not a firm specialty, diving into an unfamiliar area can provide valuable education. Our duty as attorneys is to bring to light issues that others fail to remedy. An individual's lack of funds is not indicative of their claim's merit. All individuals need fierce advocacy regardless of their ability to pay. Pro bono representation in employment claims allows us to meet a community need and seek justice for those without access.

Andre Lagomarsino *is the founder of Lagomarsino Law, a law firm based in Henderson, Nevada. The firm represents clients in employment, civil rights, injury, and commercial litigation matters.*

Kaylee Heiny *is a second-year student at Boyd School of Law. She received her bachelor's degree in finance at the University of Nevada, Reno. Kaylee is a law clerk at Lagomarsino Law.*

Alicia Lay *is a second-year student at Boyd School of Law. She received her bachelor's degree in English at the University of Nevada, Las Vegas. Alicia is a law clerk at Lagomarsino Law.*

Community Outreach Opportunity

Pro Bono Project

Legal Aid Center of Southern Nevada is the agency of last resort for many low-income individuals and families who face critical legal problems that affect their basic needs.

Please consider becoming a volunteer to help with the:

- Pro Bono Project
- Partner in Pro Bono Program
- Ask-A-Lawyer Program
- Federal Pro Bono Program
- Education Advocate Program
- Interpreter Program

Sign up at https://www.lacsnprobono.org/.

LEGAL AID CENTER of Southern Nevada Since 1958

The Marketplace

SERVICES

Jan Seaman Kelly, Forensic Document Examiner, accepts civil and criminal cases. Thirty years' experience in document examinations. ABFDE certification since 1993, annual proficiency testing, testified in State, Federal, and Administrative courts. Retired from Las Vegas Metropolitan Police Forensic Laboratory. SWGDOC guidelines followed in holistic examinations of handwriting, indented writing, mechanical impressions, and restoration of shredded, obliterated or altered documents. Fully equipped forensic laboratory. Free onsite one-hour Forensic Document Examination presentation to interested law firms. Website: https://www.forensicdynamics.org Contact Jan Seaman Kelly at **702-682-0529** or email to **forensicdynamicsllc@gmail.com.**

Real Estate Expert Witness Scope of expertise includes: Standard of Care, Duties Owed by a Nevada Real Estate Licensee, Nevada Laws on Property, Agency, and Transaction Disclosures, Brokerage Agreements, Contracts, Leases, Property Management, Broker Supervision and Responsibilities, and Ethics of the Profession. CV, Fee Schedule, & List of Cases available upon request. Contact **Steven Kitnick 702-326-8722** or email to: StevenKitnick@NVRExpert.com visit: **www.NVRExpert.com**.

The Marketplace

Need to hire staff? Renting office space? Providing professional services? Place a classified ad. For more information about advertising in The Marketplace, see https://clarkcountybar.org/marketplace/classified-advertising-rates-specs/.

Bar Services

Advertising Opportunities

CCBA Members get discounted pricing and can benefit from complimentary design for their boxed or full page display ad!

Place a display ad to showcase:

- Firm announcements
- Achievement awards
- Events
- Office, retail space
- Luxury and office products for legal professionals, law firms
- Professional services

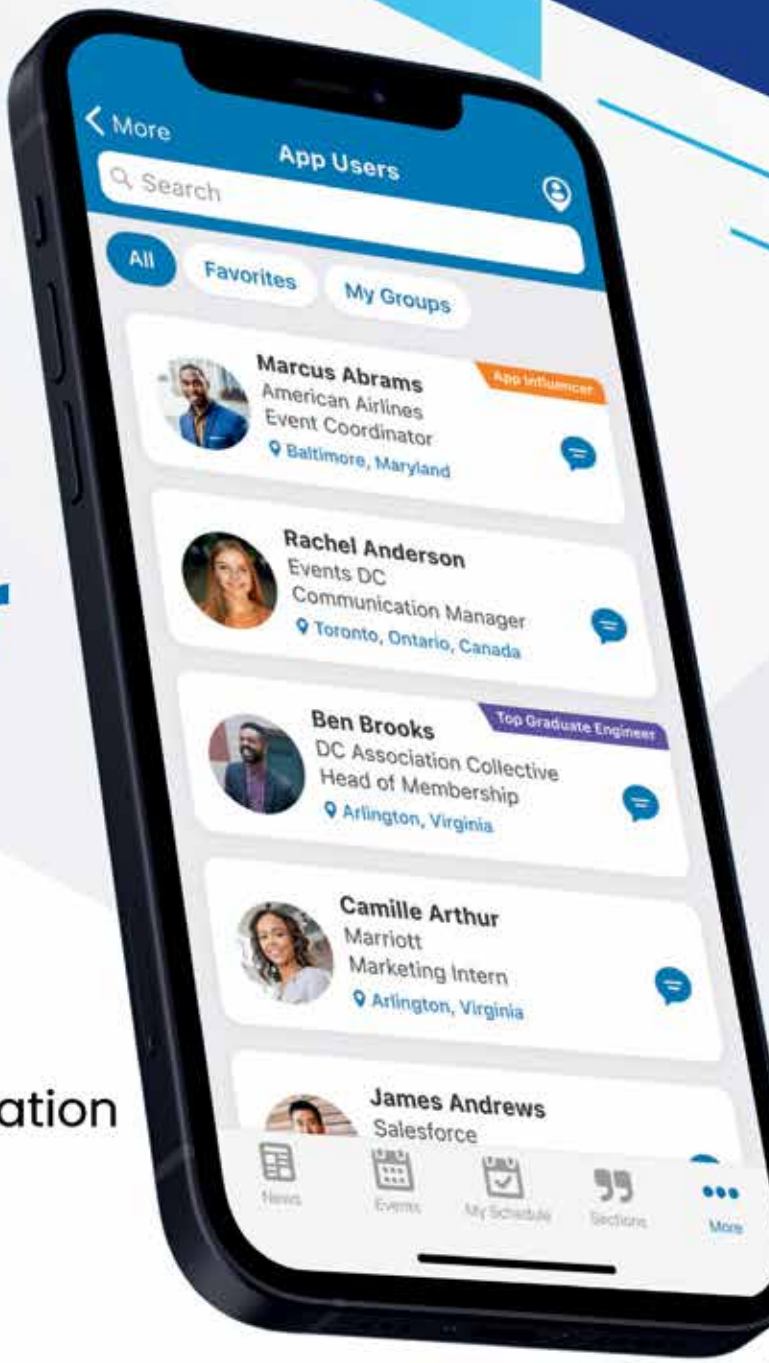
Request a quote today!

Please include the size, format (color or grayscale), and cover date(s) for your ad placement. For more information, contact Stephanie at the CCBA office at 702-387-6011 or StephanieAbbott@clarkcountybar.org.

Now Introducing

SBN GO

The State Bar of Nevada's Official App



Features of SBN Go include:

- Event Calendar & Registration
- Attorney-to-Attorney Messaging
- Discussion Topics & Engagement
- News Feed & more!

Download on the App Store

GET IT ON Google play

SCAN ME

Clark County Bar Association
717 S Eighth St
Las Vegas NV 89101

PRSRT STD
U.S. POSTAGE
PAID
Las Vegas, NV
PERMIT NO. 734