

April 2025

Lunchtime Learning CLE Programs

Free for CCBA members on April 30 and June 6

See pages 14 and 16



COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

The Civil Procedure Issue

Change is the Law of Life

**By Chief Justice
Douglas Herndon**

See page 22

**AREAS OF
PRACTICE
LISTINGS
OFFER
DEADLINE
5/1/2025**

See page 33

Focusing on

Discovery

**Offers of
Judgement**

**Class Action
Certification**

**Expert Witness
Retention and
Disclosure**

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COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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Chief Justice Douglas Herndon at the Supreme Court of Nevada. Photo courtesy of Stephanie Abbott.

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NEVADA'S
PREMIER INJURY
LAW FIRM

A photograph of three smiling professionals: a woman on the left with blonde hair wearing a light blue blazer, a man in the center with a grey beard wearing a dark suit and blue striped tie, and a man on the right with grey hair wearing a blue suit and orange tie. They are standing in front of a modern building with white geometric patterns.

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COMMUNIQUÉ


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Communiqué Editorial Calendar

Cover Date	Topic	Closing Date
December 2024	Pro Bono	11/1/2024
January 2025	Five Things	12/1/2024
February 2025	ADR	1/2/2025
March 2025	Family Law	2/1/2025
April 2025	Civil Procedure	3/1/2025
May 2025	Estate Planning & Probate	4/1/2025
June/July 2025	Membership Matters	5/1/2025
August 2025	First Amendment	7/1/2025
September 2025	Legislative Wrap-Up	8/1/2025
October 2025	Pro Bono	9/2/2025
November 2025	Mental Health	10/1/2025
December 2025	Science & Technology	11/1/2025

*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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Advertising opportunities

Space is available for bar members and select businesses to place an ad to showcase their accomplishments, professional services, and products in upcoming issues of the color print magazine, *Communiqué*. For more information, contact StephanieAbbott@clarkcountybar.org, (702) 387-6011.

Bar Activities

Event Calendar

Please join us for these upcoming CCBA activities:

- Apr. 4 Community Service Committee Meeting
- Apr. 10 Meet Your Law Students Mixer - Page 10, 11
- Apr. 11 Publications Committee Meeting
- Apr. 11-12 26th Annual Moot Court Competition - Page 12
- Apr. 18 DICE Meeting
- Apr. 24 7th Annual After Taxes Pub Crawl - Page 12
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- May 1 Law Day Activity at Creech Air Force Base - Pages 16, 27
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- May 8 Bar Luncheon - Page 9
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- May 15 New Lawyers Committee Meeting
- May 22 Monthly Mixer - Page 16
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- Jun. 17 Health Care Power of Attorney-a-Thon - Page 18
- Sep. 3 34th Annual Meet Your Judges Mixer - Pages 18, 21

Learn more and RSVP at <https://clarkcountybar.org/events/> or call 702-387-6011.

Bar Services

Contact the CCBA

Reach out for information and updates about CCBA activities:

- ☎ 702-387-6011
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Bar leaders (front row, left-right): Christena Georgas-Burns, Alexandra Matloff, Heather Anderson-Fintak, Jacquelyn Franco, Michael Wendlberger, Paul Lal, Josh Dresslove. Back row: James T. Leavitt, Paul Ray, Joel Henriod, Art Ham IV.



Dressed to kill: Laura Tucker, Monica Moazez, and Carmel Moazez



Toastmasters: Dara Goldsmith, John Mowbray, Bryan Scott, and Hon. Gloria Sturman

Bar Activities

CCBA's 100-ish Anniversary Party Highlights

On February 20, 2025, the CCBA hosted the “Roaring Since the 20s” special event in the Underground Speakeasy and Distillery at the National Museum of Organized Crime and Law Enforcement (AKA The Mob Museum). The event celebrated the Clark County Bar Association’s 100(ish) anniversary. Members were invited to travel back in time to the Prohibition Era when the Clark County Bar Association (FKA Las Vegas Bar Association) started serving the Nevada legal community. Over 115 people joined in the fun, with many dressed in for a night of gangster glamour and speakeasy style.

Special toasts were offered by:

- **Joel Henriod**, CCBA President (2025)
- **Dara Goldsmith**, CCBA President (2000)
- **Artemus Ham IV**, Great-grandson of the first CCBA President Artemus Ham (1927, 1934)
- **John Mowbray**, CCBA Member and President (1989)
- **Bryan Scott**, CCBA President (2005)
- **Hon. Gloria Sturman**, CCBA President (1994)

Each of the toasts were recorded on video.

To view the video and more photo highlights, view the photo album at <https://photos.app.goo.gl/YYxPFX-4QE5PFmRNM6>.

Special thanks to event sponsors:

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- Leavitt Legal Services, PC



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40 Year Club Group (front row, left to right): Mike Gibbons, Betsy Gonzalez, Jack Howard, Dan Polsenberg, Bill Skupa, Bob Apple, and Fran Fine. **Back row:** Rick Harris, Joel Selik, Ira Levine, Michael Buckley, Doug Cohen, Hon. Susan Johnson, Steve Parsons, Dan Seaton, Bruce Dickinson, Bruce Woodbury, Troy Peyton, Cam Ferenbach, Kirk Lenhard, and Andy Brignone. Photo courtesy of Hon. Deborah Westbrook.

Bar Services

Sponsorship Opportunities

Opportunities are available to select businesses to sponsor bar activities, including:

- CCBA's Anniversary Party
- 40 Year Club Luncheon
- Bar Luncheons
- CLE Programming
- Meet Your Judges Mixer
- New Admittees Reception

For more information, contact: Donna at the Clark County Bar Association, (702) 387-6011, donnaw@clarkcountybar.org

40 Year Club Luncheon Highlights

On March 13, 2025, the CCBA hosted the 40 Year Club Induction Ceremony and Luncheon at Panevino Italian Grille and Cafe. Over 145 people attended the event, including several of CCBA's past presidents. Special thanks to Dan Polsenberg for serving as Master of Ceremonies.

The annual event celebrates CCBA members admitted to practice law in Nevada for 40, 45, 50, 55, and 60 years. This year, the CCBA inducted members who were admitted in 1985 and honored members admitted in 1980, 1975, 1970, and 1965. A full list of inductees and honorees is listed in the *Communi-qué* (Mar. 2025) and is available upon request.

Photos and the slides from the program can be viewed (for a limited time) on the CCBA's website at <https://clarkcountybar.org/40-year-club-luncheon/> or requested from the CCBA at StephanieAbbott@clarkcountybar.org, (702) 387-6011.

Special thanks to event sponsors:

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— SOLUTIONS LLC —





CCBA Past President Group (front row, left to right): Nancy Allf, William Jansen, Dan Polsenberg, and Bill Skupa. **Back row:** Paul Ray, Joel Henriod, and Cam Ferenbach.

Bar Luncheon Featuring Las Vegas Mayor Shelley Berkley

In-person event May 8

On May 8, 2025, Las Vegas Mayor Shelley Berkley will provide an update about the City of Las Vegas.

- **When:** Thursday, May 8, 2025, 11:30 a.m. to 1:00 p.m.
- **Where:** The Las Vegas Country Club, 3000 Joe W. Brown Drive, Las Vegas, NV 89109
- **Entrée choice (select one):**
 - **Chicken Angelo** (boneless chicken breast with sundried tomatoes, lemon chardonnay cream)
 - **Salmon Fillet** (with lemon caper cream sauce)
 - **Portobello Stack** (large portobello mushrooms, roasted red peppers, and basil served over quinoa with balsamic)
- **Price:** \$65/CCBA member, \$80/Non-member
- **RSVP deadline:** Friday, May 2, 2025
- **RSVP required to CCBA:** clarkcountybar.org or (702) 387-6011



Special Event

Meet Your Judges Mixer

- **When:** Thursday, September 4, 2025, 5:30 p.m. to 9:00 p.m.
- **Where:** Worldview atop the World Market Center

Sponsorship opportunities available

Special thanks to May luncheon sponsors:





Pet Supply Drive to Benefit Street Dogz

Drop off items at select locations through May

Bar members are invited to donate pet food and supplies to benefit Street Dogz—a local non-profit organization helping homeless pets and their humans with pet food and supplies, spay and neutering, medical treatment, emergency boarding/housing, etc.

- **When:** Now through May 2025
- **Where:** Drop-off locations:
 - **CCBA** - 717 S. 8th St., Las Vegas, NV 89101
 - **Legal Aid Center of Southern Nevada** - 725 E. Charleston Blvd., Las Vegas, NV 89104
 - **Naylor & Braster** – 10100 W Charleston Blvd, Suite 120, Las Vegas, NV 89135
- **Suggested items for dogs and cats:** Dry food, wet food with flip top, dog sweaters and coats (all sizes, especially XXL), dog beds, pillows, blankets, harnesses (XL), collars, leashes, treats, bones, toys for all sizes, wagons, strollers, gallon-size baggies, dog shoes, umbrellas, spray bottles, cooling scarves, kiddie pools, litter boxes, and litter.

For a full list of items, see clarkcountybar.org or call Stephanie at the CCBA office at (702) 387-6011.

Meet Your Law Students Mixer

Special event April 10

Special event for managing/hiring partners and judges from courts in southern Nevada to meet law students in a social indoor/outdoor setting before students start summer internships and externships.

- **When:** Thursday, April 10, 2025, 5:30 to 7:30 p.m.
- **Where:** Claggett & Sykes Law Firm, 4101 Meadows Lane, Suite 100, Las Vegas, NV 89152
- **Featuring:** Complimentary food and drink tickets while supplies last
- **Admission fee:** Free to UNLV Law Students and CCBA members
- **RSVP required to CCBA:** StephanieAbbott@clark-countybar.org, (702) 387-6011.

Special thanks to event sponsors:

- Bailey Kennedy
- Claggett & Sykes Trial Lawyers
- Lexitas
- Michael T. Hua Law
- Naylor & Braster
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- Aldrich Law Firm, Ltd.
- Backus Burden
- McDonald Carano LLP
- UNLV William S. Boyd School of Law

Clark County Bar Association (CCBA) Presents

4th Annual

Meet Your Law Students Mixer

Thursday, April 10, 2025

5:30 to 7:30 p.m.

Claggett & Sykes Law Firm

Featuring complimentary food and drink tickets while supplies last.
Free admission to UNLV Law Students and CCBA Members only.
Space will be limited. RSVP to the CCBA required by 3/27/2025

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Special Offer

Ballet Ticket Special Offer

The CCBA has partnered with Nevada Ballet Theatre for the 2024-2025 season. See below for an offer for CCBA members!

Nevada Ballet Theatre presents:

Peter Pan

April 19 to 27

Exhilaration! Fly through the starlit night into a magical adventure!

Families are welcome!

Reynolds Hall, The Smith Center
for the Performing Arts

Special CCBA Discount – 15% off
the best seats

Code: NBT2425PERK

Link: <https://thesmithcenter.com/tickets/2425/peter-pan?promo=NBT2425PERK>

*Restrictions apply. For more information, see <https://clarkcountybar.org/about/member-benefits/ccba-ballet-tickets-special-offer/> or call (702) 387-6011.

NEVADA BALLET THEATRE

NBT

Moot Court Competition

Volunteers needed April 11 and 12

Volunteers are needed to judge the 26th Annual Moot Court Competition:

- **When:** Friday April 11, 2025, 5:30–8:30 p.m. and Saturday April 12, 2025, 9:00–10:30 a.m.
- **Where:** UNLV William S. Boyd School of Law
- **Who:** Volunteers should be Nevada attorneys, judges or mediators. Judging the competition qualifies as pro bono service. Sign up at clarkcountybar.org

The competition provides 1L students at Boyd their first opportunity to practice their oral argument skills through an appellate case.

This year, 1L students are currently drafting an appellate brief for their Lawyering Process II class that will serve as a foundation for their oral arguments. This is a semester-long assignment that requires dedication and great preparation.

Students have been assigned the role of Appellant or Appellee for purposes of their brief. However, for the competition, they will prepare arguments for both sides. Preliminary rounds will be on-brief and advanced rounds could be off-brief. Students will have the opportunity to speak for 12 minutes, which will include presenting arguments and answering the questions of judges.

It is the role of judges to observe students assigned to them, question their arguments during presentation, and score them according to their performance. After both sides have presented, judges will have a few minutes to score the students and provide them with constructive feedback.

7th Annual After Taxes Pub Crawl

- **When & Where:** Thursday, April 24, 2025, 5-9 PM – Hop on at any point at these times and locations:
 - **1st Stop (5-5:45 p.m.):** Nevada Brew Works, 1327 S Main St., Ste 160
 - **2nd Stop (6-6:30 p.m.):** Horse Trailer Hideout, 1506 S Main St.
 - **3rd Stop (6:45-7:15 p.m.):** Voodoo Brewing Company, 1415 S Commerce St., Ste. 130
 - **4th Stop (7:30-8 p.m.):** Liquid Diet, 1415 S Commerce St #105
 - **5th Stop (8:15-9 p.m.):** ReBar, 1225 S Main St
- **Featuring:** Complimentary drink ticket (one per person) available at each venue and snacks at Nevada Brew Works and ReBar while supplies last for members of the Clark County Bar Association (CCBA). Complimentary treat to CCBA members who provide proof of reservation for a ride home with a ride share service or designated driver.
- **RSVP required to the CCBA by 4/22/2025:** <https://clarkcountybar.org/events/pubcrawl/>

Special thanks to event sponsors:

- Henriod Law, PLLC
- Leavitt Legal Services, P.C.
- Las Vegas Legal Video
- WestPac Wealth Partners
- Lexitas



Nevada Ballet Theatre Presents
A WORLD PREMIERE PRODUCTION

Peter ♦ Pan

APRIL 19-27, 2025

Music by Sir Edward Elgar
Choreography by Trey McIntyre

NEVADA BALLET THEATRE

NBT

NEVADABALLET.ORG • (702) 749-2000

FEATURING NBT COMPANY ARTIST JACK GROHMANN. PHOTO BY JERRY METELLUS.

Bar Services

Baseball Tickets Special Offer

The CCBA holds a limited number of tickets to select home games of the Las Vegas Aviators this season. The 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 the following information:

- CCBA member's name
- Email address—the email address associated with the Las Vegas Ballpark app
- 1st, 2nd, and 3rd choices of home game day (select from list at [ClarkCountyBar.org](https://clarkcountybar.org))

Submit requests via email to StephanieAbbott@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. Available tickets will be provided electronically via a transfer from our account to the CCBA member's account via the Las Vegas Ballpark app. Participating CCBA members will need to access tickets using their account for the Las Vegas Ballpark app. For more information, see <https://clarkcountybar.org/ccba-baseball-tickets-special-offer/> or call (702) 387-6011.



Out of Darkness Las Vegas Walk

Charity walk April 26

CCBA members, family, and friends are invited to participate in the Out of Darkness Las Vegas Walk to support the American Foundation for Suicide Prevention:

- **When:** Saturday, April 26, 2025
- **On-site registration starts:** 9:00 a.m.
- **Program Starts:** 10:00 a.m.
- **Where:** Sunset Regional Park, 2601 Sunset Rd., Las Vegas, NV 89120
- **Who:** CCBA members, friends, and family are invited to join CCBA's team
- **Join our team:** <https://supporting.afsp.org/team/ccba>

Cross-Court Series: Part 2

Lunchtime learning CLE April 30

Members of the CCBA and the WCBA are invited to attend the live webcast of the lunchtime learning CLE program Cross-Court Series: Part 2:

- **Speakers:** Chief Judge Jones of the Second Judicial District Court and Judge Hoskins of the Eighth Judicial District Court
- **When:** April 30, 2025, noon to 1:00 p.m.
- **Where:** Online webcast hosted by the Washoe County Bar Association
- **Offers:** 1.0 general CLE credit for WCBA & CCBA members
- **RSVP:** wcbar.org or ashley@wcbar.org

Special Offer

CCBA Group Night at Aviators Game

Discounted group tickets for Aviators game on May 1

Join the Clark County Bar Association for a group outing to the Las Vegas Ballpark! Family and friends are welcome to attend with a CCBA member. We're gathering on Thursday, May 1st for an action-packed evening as the Aviators take on the Tacoma Rainiers. Come early for pregame festivities and drink specials in the Plaza starting at 5 p.m.. Whether you're a die-hard baseball fan or just looking for a fun night out, this event is a home run!

- **When:** Thursday, May 1, 2025, 6:35 p.m.
- **Game:** Tacoma vs. Las Vegas Aviators
- **Location:** BERM
- **Price of ticket:** \$12
- **Order tickets:** <https://fevo-enterprise.com/event/CCBANight2025>
- **Deadline to order:** 8:35 p.m. (two hours after first pitch)



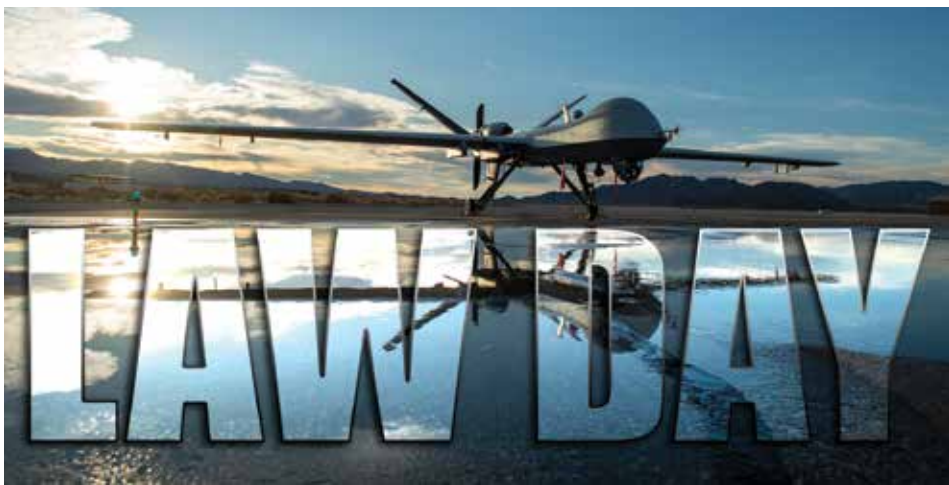
Scan QR code
with your mobile
phone to open
link and order
tickets to game
on May 1, 2025

BASEBALL IS 90% MENTAL,
THE OTHER HALF IS PHYSICAL.

Get tickets to the action.

AVIATORSLV.COM





Law Day - Image courtesy of the Creech Legal Office for editorial use by the Clark County Bar Association.

Law Day Activity at Creech Air Force Base

Volunteers needed May 1

- **When:** Thursday, May 1, 2025, 9:30 a.m. to 12:30 p.m.
- **Where:** Creech Air Force Base, Owl's Nest
- **Who:** Nevada Bar members
- **All volunteers will need to:**
 - Pass a security clearance by USAF security forces in advance of the event
 - Participate in a short training (via Teams) at noon on Thursday, April 17, 2025
- **Deadline to sign-up to volunteer:** April 4, 2025

To sign up, contact Stephanie at the CCBA office at (702) 387-6011 or StephanieAbbott@clarkcountybar.org.

Monthly Mixer

Attend on your own dime May 22

CCBA members are invited to attend our monthly mixer on their own dime and time:

- **When:** Thursday, May 22, 2025, 7:00 p.m. to 8:30 p.m.
- **Where:** Davy's, 1221 S. Main St., Las Vegas, NV 89104
- No RSVP needed

Location of monthly mixers subject to change. Mix and mingle responsibly.



AI Made Easy: Transforming Your Practice with Simple, Affordable Tools

In-person CLE Program

June 6

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- **Speaker:** Jeff Bolender, Esq. of Bolender Law Firm, PC
- **When:** Friday, June 6, 2025, 2:00 p.m. to 4:15 p.m.
- **Where:** UNLV Boyd School of Law, 4505 S. Maryland Parkway, Complimentary parking at the Cottage Grove Garage: <https://www.unlv.edu/maps/pkg-1>
- **Offers:** 2.0 general CLE credits for Nevada lawyers. Attendance will be taken and reported to the NV CLE Board for only those members in attendance who registered with the CCBA in advance of the event.
- **Fee:** \$25/CCBA Member
- **RSVP to the CCBA by 6/4/2025:** <https://clarkcountybar.org/marketplace/cle-programs/ai-made-easy-cle-program/>

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Health Care Power of Attorney-a-Thon

Volunteers needed June 17

CCBA members are needed to volunteer for the community outreach activity Health Care Power of Attorney-a-Thon:

- **When:** Tuesday, June 17, 2025, 9 a.m. to noon
- **Where:** MLK Senior Center, 2420 N. Martin Luther King Jr. Blvd., Building B, North Las Vegas.
- **About:** The Health Care Power of Attorney-a-Thon involves guiding a senior through the process of executing a health care power of attorney. The clients will be preregistered and scheduled for one-hour appointments with the volunteer attorneys.
- **Offers:** 1 hour CLE credit for 3 hours of pro bono service
- **CLE training before event:** A one-hour pre-recorded CLE video and PowerPoint presentation called "Health Care Power of Attorney" are available on demand for non-estate planning attorneys. An optional Zoom meeting to cover logistics and answer any questions for the volunteer attorneys will be held on June 16, 2025, at noon.
- **Registration:** Contact Cesar Hernandez, Pro Bono Coordinator at chernandez@snslp.org by June 6, 2025. 



34th Annual Meet Your Judges Mixer

Special event set for September 4

- **When:** September 4, 2025, 5:30 p.m. to 9:00 p.m.
- **Where:** Worldview atop the World Market Center
- **About:** The CCBA's Meet Your Judges Mixer is the premier networking event for members of the Nevada legal community, including Nevada's judges, attorneys, legal support staff, law students, merchants, and candidates. This is a private cocktail reception; no minors allowed. Business casual attire acceptable. Join us at this special event featuring a drink ticket, appetizers, networking, and silent auction! All proceeds to benefit the CCBA. Sponsorship opportunities available
- **Event registration required prior to Wednesday, August 20, 2025:** <https://clarkcountybar.org/meet-your-judges-mixer/>

For more information, contact Donna at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101. Phone: (702) 387-6011.

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Judge Adriana Rincon White Appointed to Family Court

On February 21, 2025, Governor Joe Lombardo appointed Domestic Violence Protection Order Hearing Master Adriana Rincon White to serve as judge in Department Y in the Family Division of the Eighth Judicial District Court. As hearing master, she presided over applications for protection orders, conducted initial hearings, and determined whether to issue protective orders.

Source: https://gov.nv.gov/Newsroom/PRs/2025/2025-02-21_governor_lombard_appoints_judge_adriana_rincon_white/.

US District Conference

The U.S. District Court for the District of Nevada will be hosting their conference at the Renaissance Reno Downtown Hotel and Spa on May 7, 2025. The theme for the conference is "Bridging the Divide." This engaging event promises to challenge perspectives and foster meaningful connections across the legal community. Explore the challenges and opportunities in bridging divides between legal theories and practical applications, federal and state practices, and diverse perspectives within the judiciary and legal professions. Attend-

ees will engage in discussions on collaborative solutions, inclusivity in the legal system, and innovations shaping the future of federal court practice.

For more information and to register for the event, visit <https://nevadadistrictconference.azurewebsites.net/>.

Civil Bench-Bar Meeting

- **Host:** Eighth Judicial District Court - Civil Department
- **When:** Noon to 1:00 p.m. on the following dates:
 - April 8, 2025
 - June 10, 2025
 - Sept 9, 2025
 - Oct 14, 2025
 - Dec 9, 2025
- **Note:** May, July, August, and November are dark
- **Where:** Regional Justice Center, Courtroom 10D and Zoom
- **Contact:** denmanl@clarkcountycourts.us



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Change is the Law of Life

By Chief Justice Douglas Herndon

As I write this article, it seems appropriate that Bob Seger's *Travelin' Man* started playing on the radio. It's been a busy year, especially with the 83rd Session of the Nevada Legislature in full swing, and I'm collecting a lot of Southwest flight miles. I really do enjoy traveling around the state, however, and it offers a constant reminder of how honored I am to serve as Chief Justice, and how thankful I am for the support that Nevada's legal community continually provides to the judiciary. Your hard work and the integrity you bring to your roles is greatly appreciated.

We've made some operational changes at the Supreme Court of Nevada, and I want to update you on some of those while also providing a snapshot of where we are in case filings.

One adjustment we made is to a two-year term for the Chief Justice. Historically, the term was one year, and this change allows for greater continuity in leadership, more time to implement initiatives and foster relationships with stakeholders, statewide and nationally, and more flexibility in overseeing the court's operations.

Additionally, we have eliminated written split decisions in panel cases. Split panel decisions were relatively rare, but over 70 percent of them involved the filing of petitions for en banc reconsideration—and over 70 percent of those petitions were granted. This high rate of en banc review speaks to our commitment to ensuring that important issues receive appropriate deliberation and that the law is applied fairly and consistently. However, it was not an efficient process. By eliminating written dispositions when a panel is not unanimous, these cases are able to quickly proceed to the en banc court and we should be able, on

average, to render final decisions up to six months sooner. We hope this change provides a crucial benefit—saving both attorneys and litigants time and money that would otherwise be spent waiting for the panel writing process to unfold and then navigating the petition process.

Lastly, case filings continue to approach our pre-Covid pandemic levels. Our 90,000th case was recently filed and a total of 2,054 cases were filed with the court in 2024. Of those, 739 were transferred to the Nevada Court of Ap-

peals. During this time, the two courts disposed of a combined total of 2,126 cases.

I am incredibly proud of the work of everyone involved in the appellate courts, including the tremendous individuals in our

Central Staff, Court Clerk's office, and the Administrative Office of the Courts. The changes we've made mark an important evolution in how we serve the people of our state, and we will continue to refine and improve our processes to ensure justice is both efficient and fair for all. Thank you for your continued support of our appellate court system.

●

Chief Justice Douglas Herndon was elected to the Nevada Supreme Court in 2020, beginning his first term in January 2021. He assumed the role of Chief Justice on January 6, 2025. He previously served as a district judge in the Eighth Judicial District Court from 2005 to 2020.

Change is the law of life.

~ John F. Kennedy



The Nevada Court of Appeals, Moving Forward into the Next Decade

By Chief Judge Bonnie Bulla

As the Nevada Court of Appeals moves forward into its next decade, we are embracing positive changes in our court. I am honored to serve as chief judge, during this time of transition, and excited to share some of those changes. During the calendar year of 2024, our court resolved 708 appeals. The time to disposition, or the time to resolve an appeal after transfer from the Supreme Court of Nevada, varied depending on the type of case. Approximately 72 percent of civil appeals, 98 percent of criminal appeals, and 82 percent of original (writ) proceedings were resolved within six months of transfer. By implementing certain changes, we hope to continue improving on our time to disposition.


Changes in the structure of the court of appeals

Recently, we began making some significant changes to our court structure. We hired a division director, responsible for managing central staff attorneys and coordinating staff assignments, to increase efficiency. We also hired, and plan on continuing to hire, additional staff attorneys to increase productivity and further reduce the time to disposition. To do this, the judges have given up their permanent judicial chambers' attorneys, and one of their two chambers' law clerks. To bridge the gap created by these changes, each judge's chamber has been assigned an experienced central staff attorney to assist in handling cases assigned to chambers. The judges also have a dedicated administrative assistant for support.

Key changes in the Nevada Rules of Appellate Procedure (NRAP) affecting the court of appeals

NRAP 17 governs the assignment of cases to the court of appeals. Changes to this rule include presumptive assignment of tort cases, where damages are between \$1 and \$250,000, and cases involving contract disputes up to \$150,000. The routing statement also now permits parties to request where their cases will be assigned, if applicable. Significantly, Nevada Court of Appeals cases filed on or after August 15, 2024, may now be cited for persuasive authority, and the grant of a petition for review by the Supreme Court of

Nevada no longer automatically vacates a decision by our court.

While the Nevada Court of Appeals embraces the process of change, we remain committed to expeditiously resolving appeals and providing thoughtful and thorough appellate review. 

*Change is not an event,
it's a process.
~ Cheryl James, musician*

Chief Judge Bonnie Bulla has served on the Nevada Court of Appeals since 2019. She previously served as the Discovery Commissioner for the Eighth Judicial District Court for 12 years and, before that, was in private practice as a civil litigator for 19 years.



Gone Are the Days of Discovery Fishing Expeditions

By Jennifer L. Braster

In 2015, Federal Rule of Civil Procedure 26 was amended to include a proportionality analysis for discovery. In 2019, Nevada followed suit. Now, Nevada Rule of Civil Procedure 26 requires that all discovery be proportionate, namely taking into consideration: (1) the importance of the issues at stake in the action, (2) the amount in controversy, (3) the parties' relative access to relevant information, (4) the parties' resources, (5) the importance of the discovery in resolving the issues, and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit. NRCP 26(b)(1). Each of these factors must be weighed in determining whether or not the discovery is permissible.

Commenting on the 2015 federal amendments, Chief Justice John Roberts explained, "The amended rule states, as a fundamental principle, that lawyers must size and shape their discovery requests to the requisites of a case. Specifically, the pretrial process must provide parties with *efficient* access to what is needed to prove a claim or defense, *but eliminate unnecessary or wasteful* discovery. The key here is *careful and realistic assessment* of actual need." John Roberts, 2015 Year-End Report on the Federal Judiciary, <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf> (emphasis added). In other words, don't be unreasonable.

As noted by Justice Roberts, our Magistrate Judges, and Discovery Commissioners, litigation is expensive and

even if discovery is relevant, it must be proportional to the needs of this case. Discovery that is permissible in a case seeking \$10 million in damages may not be permissible in a case seeking \$100,000 in damages. Similarly, the court may find that a *pro se* litigant does not have the same financial resources as the owner of a multi-million dollar company and thus, certain discovery will not be permitted. While these rule amendments do assist in curbing the expense of litigation, there is no longer a hard and fast rule as to what discovery is permissible and effectively, "it depends."

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If a practitioner seeks to limit discovery based on proportionality, it is important to analyze each of the factors and provide the court with justification for limiting discovery. For example, if the party cannot easily access the information or it will be extremely costly to do so, counsel needs to explain why to the court. If the party is elderly or disabled, making cross-country travel very difficult, a practitioner may be able to advocate for a Zoom deposition in a small dollar amount case.

In a recent case before the Supreme Court of Nevada, the Court found that discovery seeking a medical doctor's disciplinary actions after treatment of the patient at issue in the case in unrelated matters was not proportionate. *Norozian v. Eighth Jud. Dist. Ct.*, 562 P.3d 1083 (Nev. App. 2025). In contrast, in a recent United States District Court case, the Court found that a plaintiff's medical records were proportionate to the needs of a products liability case as the plaintiff put her mental, physical, and emotional health at issue in the case and defendant took steps to limit the burden. *Brown v. Zeltiq Aesthetics, Inc.*, Case No. 2:22-cv-00972-RFB-NJK, 2023 WL 4624691, at *3 (D. Nev. July 19, 2023).

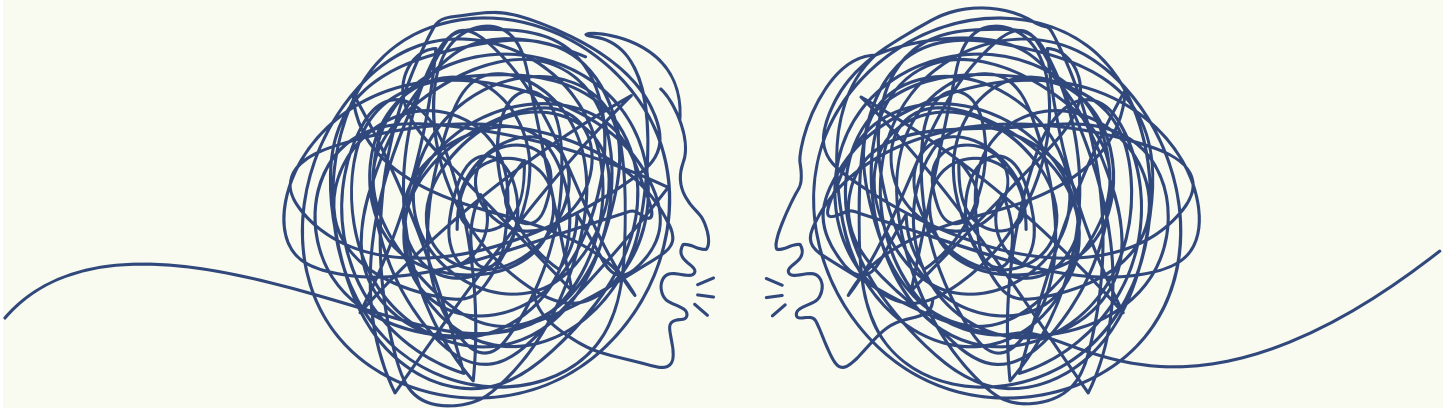
Importantly, as NRCP 26(b)(1) states, proportionality does not simply consider expense but also burden. Thus, in

a case in which a party seeks to depose a company and provides the list of topics for examination, those topics may be limited based on proportionality. For example, in a recent case, the United States District Court for Nevada found a list of topics for examination "excessive and improper" as "rather than targeting those issues for which corporate testimony is truly needed, the deposition notice tries to cover nearly every conceivable facet of the case." *Alvarado-Herrera v. Acuity*, 344 F.R.D. 103, 109 (D. Nev. 2023). The court reasoned that contrasting the 68 topics with the 7-hour deposition limit, much of the deposition preparation would be wasted on topics that would not be covered in the deposition. *Id.*

In other words, as multiple courts have noted, proportionality requires litigants to use common sense in crafting their discovery. The proportionality rule reminds parties to work together in formulating what is truly needed in discovery based on the circumstances of each specific case. **■**

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

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Offers of Judgment—Powerful Settlement Tool that Requires Attention to Detail

By John A. Fortin

Offers of Judgment (“OOJ”) under NRCP 68 and NRS 17.117 are valuable settlement tools that present a risk-reward dichotomy because of penalty provisions in OOJs. *See, e.g.*, NRCP 68(f); NRS 17.117(10). The OOJ’s purpose “is to save time and money for the court system, the parties, and the taxpayers” and shift the risk to the opponent to “reward a party who makes a reasonable offer and punish the party who refuses to accept such an offer.” *See Dillard Dep’t Stores v. Beckwith*, 989 P.2d 882, 888 (Nev. 1999). In 2024, the Supreme Court of Nevada published three decisions that clarify important procedural points for practitioners relying on an OOJ in litigation.

OOJs Inclusive vs. Exclusive of Attorney Fees and Costs

Aguilar v. Lucky Cab Co. provides a comprehensive explanation of OOJs and the difference between OOJs that are inclusive versus exclusive of attorney fees or costs. 540 P.3d 1064, 1066-69 (Nev. 2024). OOJs “that preclude a separate award” of attorney fees or costs “are said to be ‘inclusive’” while “offers that allow a separate award of such allowances are said to be ‘exclusive.’” *Id.* at 1067. An inclusive OOJ “is exactly that number written” on the OOJ, meaning, “an offeree who accepts an” OOJ “for \$50,000 inclusive of all costs, expenses, interest, and allowable attorney’s fees can expect only \$50,000—nothing more and nothing less.” *Id.* It is important to note that an exclusive OOJ does not mean attorney fees and costs are unavailable. As the Court explained, prevailing party status results from OOJs

for costs and fees purposes. Therefore, depending on the offer, the party’s position, and the nature of the exclusive OOJ, a party “must separately pay the amount of pre-offer costs, expenses, and interest” that “would otherwise be entitled to as a prevailing party. It must also pay attorney fees, so long as law or contract supplies a basis for those fees.” *Id.* at 1068. The nuanced analysis for an exclusive OOJ is because in Nevada (unlike federal court), both plaintiffs and defendants may propound an OOJ. *Cf.* Fed. R. Civ. P. 68.

In 2024, the Supreme Court of Nevada published three decisions that clarify important procedural points for practitioners relying on an OOJ in litigation.

Application of Penalty Provision

Valley Health Systems v. Murray provides additional context for weighing the risks of an OOJ—regardless of whether the OOJ is exclusive or inclusive. 544 P.3d 904, 912-13 (Nev. 2024). Specifically, when a party rejects an OOJ, a district court must determine whether the penalty provision should result in shifting attorney fees and costs. The *Murray* Court explained that courts must examine the *Beattie* factors which include (1) whether the claims or defenses were “brought in good faith[,]” (2) whether the OOJ “was reasonable and in good faith in both its time and amount[,]” (3) whether the “decision to reject” the OOJ “was grossly unreasonable or in bad faith[,]” and (4) whether, under *Brunzell*, the fees sought were “reasonable and justified.” *Id.* at 912. In *Murray*, the plaintiff beat the OOJ that plaintiff propounded by several hundreds of thousands of dollars at trial as well as after appeal when a statutory cap reduced the jury award. Applying *Beattie* factors, the *Murray* Court held that the penalty provision should apply. *Id.* The Court’s reasoning focused on how ac-

ceptance of the OOJ would have avoided “a nine-day jury trial” and appeal such that Nevada courts and “each party would have forgone considerable time and expense.” *Id.* at 913.

Avoiding the Penalty Provision

In re Parametric Sound Corp. Shareholders’ Litig. expanded on *Aguilar* for inclusive OOJs and detailed that, to avoid the penalty provision, the rejecting party must demonstrate both (1) the amount of the fees and costs incurred at the time of the OOJ and (2) that the rejecting party is nonetheless entitled to have attorney fees and costs included in the court’s analysis of whether rejecting the OOJ was reasonable. 549 P.3d 1189, 1197 (Nev. 2024). Meaning, that when a party propounds an inclusive OOJ, and the rejecting party is not entitled to attorney fees, district courts cannot take into account the rejecting party’s fees when considering the reasonableness of rejection. *Id.* (“[I]t was improper for the district court to have considered” the rejecting party’s “fees because there is no indication that” the party was “entitled to fees ‘by law or contract’”). The Court further noted that even if the rejecting party is entitled to fees, it is improper “for the district court to have guessed as to the amount” of fees “without any evidence before it.” *Id.*

Offers of Judgment are powerful settlement tools. Three 2024 published Supreme Court of Nevada decisions clarify important procedural points for utilizing OOJs in litigation and demonstrate the risk-reward relating to penalty provisions. Attention to detail is required to properly wield the OOJ tool as a sword or shield. **C**

John Fortin is an experienced commercial litigator and appellate attorney at McDonald Carano. He is a former law clerk to the Honorable Chief Justice James Hardesty of the Nevada Supreme Court. John is a Member-At-Large on the Executive Committee of the Appellate Litigation Section of the State Bar and the Executive Council of the Young Lawyers Section. He also serves on the Access to Justice Commission.

Bar Activity Spotlight

Law Day Activity

Bar members are needed to help with the Law Day event at the U.S. Air Force on May 1, 2025. For more information, contact Stephanie at StephanieAbbott@clarkcountybar.org, (702) 387-6011.

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Do I need to prove the merits of my client's claims to obtain class action certification under NRCP 23?

By Joseph A. Liebman

Many practitioners will tell you that there is one vital moment in class action litigation—the trial court's decision regarding class certification. Denial of certification is often referred to as the “death-knell” of a class action, often leading to the end of the case. *See, e.g., Microsoft Corp. v. Baker*, 137 S. Ct. 1702 (2017). On the other hand, a “grant of class status can put considerable pressure on the defendant to settle, even when the plaintiff's probability of success on the merits is slight. Many corporate executives are unwilling to bet their company that they are in the right in big-stakes litigation, and a grant of class status can propel the stakes of a case into the stratosphere.” *Blair v. Equifax Check Services*, 181 F.3d 832 (7th Cir. 1999).

So how does a class action practitioner satisfy the burden to obtain class certification to avoid the dreaded death-knell? Much of the recent federal jurisprudence surrounding FRCP 23 is focused on whether it is appropriate or necessary to analyze the merits of the claims for relief at the class certification stage. For many years, it was understood that merits-analysis was off-limits to determine class action certification. *See, e.g., Blackie v. Barrack*, 524 F.2d 891 (9th Cir. 1975); *Hernandez v. Alexander*, 152 F.R.D. 192 (D. Nev. 1993). However, numerous federal courts have recently clarified that class certification analysis will “frequently overlap with the merits of the plaintiff's underlying claim.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). In order to properly analyze many of the necessary class action factors, such as commonality, typicality, and predominance, trial courts need to understand—and thus

class action plaintiffs need to show—precisely how the elements of the pending claims will be proven at trial. This is necessary in order to determine whether the pending claims can and will be proven with common and uniform evidence and thus are appropriate for a class proceeding. To be clear, a class action plaintiff need not prove that he

or she is going to prevail at trial in order to obtain class certification. However, a class action plaintiff must show that “the evidence establishes that a common question is capable of class-wide resolution.” *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 667 (9th Cir. 2022).

But what have Nevada courts said about the merits of the claims as it pertains to class action certification? Unfortunately, not much. The first Nevada opinion that alluded to the elements of the pending claims for class certification purposes is *Shuette v.*

... a class action plaintiff must show that “the evidence establishes that a common question is capable of class-wide resolution.”

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Beazer Homes Holdings Corp., 124 P.3d 530 (Nev. 2005). However, *Shuette* does not sufficiently explain that in order to show commonality, typicality, and/or predominance, the plaintiff must come forth with common evidence that would make the claims—or at least certain elements of those claims—appropriate for uniform resolution in a class proceeding. Even worse, much of Nevada class action jurisprudence remains colored by the following outdated statement: “In analyzing whether it should certify a class, the court should generally accept the allegations of the complaint as true. An extensive evidentiary showing is not required.” *Meyer v. Eighth Judicial Dist. Court*, 885 P.2d 622 (Nev. 1994). *Meyer* remains at odds with federal jurisprudence, which repeatedly holds that class certification is not “a mere pleading standard.” *Wal-Mart Stores, Inc.*, 564 U.S. at 350. Accordingly, many class action plaintiffs in Nevada can cite to *Meyer* to distinguish the federal certification burden under FRCP 23 and achieve a more relaxed standard under NRCF 23, thereby avoiding any obligation to include—or at least describe—proposed, uniform evidence with a motion for class certification.

Recently, the Supreme Court of Nevada has indicated a willingness to bring the Nevada class certification standard more in line with federal precedent. Specifically,

the Supreme Court of Nevada recently stated that “merits questions may be considered to the extent—but only to the extent—that they are relevant to determine whether the Rule 23 prerequisites for class certification are satisfied.” *Sargeant v. Henderson Taxi*, 3394 P.3d 1215, 1219 (Nev. 2017). While certainly a step in the right direction, it still does not mirror much of the federal authority, where “it is not correct to say a district court *may* consider the merits to the extent that they overlap with class certification issues; rather, a district court *must* consider the merits if they overlap with the Rule 23(a) requirements.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011). **C**

Joseph A. Liebman effectively litigates real estate matters, partnership and limited liability company disputes, product liability cases, professional liability cases, health care matters, and class action cases. He has consistently been recognized among Mountain States Super Lawyer, Best Lawyers, and Benchmark Litigation in the areas of product liability, healthcare, and professional liability. Mr. Liebman is actively involved in the community in his role on the Las Vegas Natural History Museum’s Board of Directors.

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The Basics of Expert Witness Retention and Disclosure

By Racheal A. Ross

Expert witnesses are an important part of many cases, but it can be daunting to know where to start. Even if you have a good grasp of the rules, finding an expert to retain can be just as puzzling. Here are the basics of both.

I. When an Expert Witness is Necessary

Jurors must rely upon their “everyday common sense and judgment as reasonable” people when making their findings of fact. Nev. Civ. J.I. 1.5 (2018). Since the jury is not comprised of experts, parties must hire witnesses to explain scientific or complicated facts and theories. An expert witness is necessary when, “scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue...” NRS 50.275. Expert witnesses are characterized by their “special knowledge, skill, experience, training or education” and may testify “to matters within the scope of such knowledge.” *Id.*

Common types of experts include economists, forensic accountants, and engineers. Any time a party needs to admit evidence outside the purview of a layperson, an expert should be retained. In civil cases, experts commonly testify on issues of causation, damages, and technical theories of liability. For instance, in a business case, a party may retain a forensic accountant to testify about fraud or business valuation. In an employment case, an economist may be retained to testify about the amount of past or future earning damages.

In negligence cases, physicians are the type of expert that most practitioners—and jurors—are familiar with. Physician experts are divided into retained experts and non-retained treating physician experts. NRCP 16.1(a)(2)(D). This means that a party who is receiving medical treatment germane to their case may designate their treat-

ing physician to testify on their behalf without disclosing a report. These treating physician experts often provide important testimony because they have both first-hand knowledge of the party and the qualifications to explain the medicine to the jury.

II. Disclosure Requirements for Expert Witnesses

Generally, parties are required to disclose their expert witnesses 90 days prior the close of discovery, but the deadline is ultimately controlled by the Court’s scheduling order. *See* NRCP 16.1(a)(2)(A); NRCP 16.1(a)(2)(E)(i)(a).

A. Retained Experts

Witnesses who are specially retained in a case to provide testimony have more stringent requirements for disclosure than non-retained treating physician experts. NRCP 16.1(a)(2)(B). A party must disclose the expert’s: name, written report, curriculum vitae, list of deposition or trial testimony given in the prior four years, list of publications authored in the prior ten years, fee schedule, and statement of compensation to be paid for the study and testimony in the case. NRCP 16.1(a)(2)(B)(i)–(vi). The report must include a complete statement of the expert’s opinions and the basis for the opinions, the facts or data considered in forming the opinions, and the exhibits which will be used to summarize or support the opinions. *Id.* These requirements modify NRS 50.305, which only requires disclosure of the facts and data an expert bases their opinion on if the judge so requires.

Retained experts enjoy a special privilege that non-retained experts do not—privilege for their communications with retaining counsel and their draft reports. NRCP 26(b)(4)(B)–(C). NRCP 26(b)(3) “protects communications between the party’s attorney and any witness required to pro-

vide a report . . . regardless of the form of the communications.” NRCP 26(b)(4)(C). However, communications which relate to the expert’s compensation, or which identify the assumptions, facts or data provided to the expert which were considered in forming the expert’s opinions are not protected by the privilege. NRCP 26(b)(4)(C)(i)–(iii). Likewise, any draft reports the expert authored before issuing his or her final report are not discoverable, regardless of the format of the draft. NRCP 26(b)(4)(B).

The rules also protect a party’s expert who is retained only as a consultant. NRCP 26(b)(4)(D) prohibits another party from discovering the “facts known or opinions held by an expert who has been retained” only as a trial or litigation consultant who is not called at the time of trial. However, if exceptional circumstances make it impracticable for an adverse party to obtain the facts and opinions known by the consultant, a court may order their disclosure. NRCP 26(a)(b)(4)(D)(ii). Additionally, a consultant who performs a Rule 35 mental or physical exam must disclose a copy of his or her report. NRCP 26(a)(b)(4)(D)(ii); NRCP 35(b)(1).

B. Non-Retained Experts

A party is not required to disclose any report of a non-retained treating physician expert witness. NRCP 16.1(a)(2)(D). However, parties are required to disclose the subject matter of the expert’s testimony, a summary of the facts and opinions the expected testimony, the qualifications of the witness, and the expert’s fee schedule. NRCP 16.1(a)(2)(D)(iii); NRCP 16.1(a)(2)(C). The disclosure must be made “to the extent practicable,” meaning “appropriate disclosure may include that the physician will testify in accordance with his or her medical chart, even if some records contained

therein were prepared by another healthcare provider.” NRCP 16.1(a)(2)(D)(iii).

Non-retained treating physicians may be disclosed and give testimony on behalf of the disclosing party. NRCP 16.1(a)(2)(D)(i). Treating physicians may also testify as to causation without providing a written report so long as the content of the physician’s testimony was disclosed and the expert does not consider materials outside the course and scope of the treatment provided to the patient. NRCP 16.1(a)(2)(D)(i)–(ii). If a non-retained expert is not identified at the time of the initial expert disclosure, generally the offering party is required to move to reopen the deadline. NRCP 16.1(a)(2)(F)(ii).

C. Disclosure Pitfalls to Avoid

One of the easiest pitfalls to avoid is untimely and incomplete disclosure of your witness. The Court issues discovery scheduling orders well in advance of the deadlines so the parties will usually have at least six months’ notice before their expert’s report is due. *See* NRCP 16(b). The best practice is to have your experts retained before you file your complaint. Ensure you get your experts all the materials they need for their report as soon as possible. Take your depositions early and send the transcripts and necessary disclosures to your expert as soon as you have them. Otherwise, you risk having an untimely and/or incomplete disclosure which can have serious consequences. *See* NRCP 37(c)(1)(A)–(C); *see also* NRCP 37(b)(1). The Court may limit the expert’s testimony or even strike them altogether which can have case-ending implications. *Id.*

Experts continued on page 32



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III. How to Find an Expert Witness

Lawyers who have practiced for many years in a particular area of law often have a list of experts they prefer to work with. But, for those just starting out there are a wealth of resources to find the right expert. These resources range from cost efficient—or even free—to those that will increase case costs and should be used wisely.

Many practitioners seek expert witnesses by simply conducting their own research. Legal database services offer products to assist you in these searches. You may find expert CVs and prior testimony transcripts this way. Typically, there is an extra cost for these types of searches depending on your subscription level to those sites. Regular search engines are still free and can be a quick and easy alternative to find what you need.

Another option is to search your local university for professors who may fit the bill. These experts have experience with public speaking which will be an asset during their testimony. Another benefit is that professors are used to “teaching” their subject matter to lay people and may be great at helping “teach” the jury about your facts and theories. Teachers often present as neutral and likeable witnesses—both are great qualities. If the professor does not have much testimony experience, you may want to ask them to sit in on a lecture or search for recordings on YouTube of their prior lectures to gauge their presentation skills. These witnesses may need additional preparation from you before they testify, so be sure to factor that into your analysis when retaining them.

One of most cost-efficient methods to find an expert witness is to increase your network of colleagues who practice in the same area of law as you. Typically, new lawyers can join practice area specific organizations at a reduced price for their first few years of practice. Most of these organizations host email list servers which connect their members. To take full advantage of the benefits of membership, practitioners should be active on these list servers. When you need an expert and do not know where to turn, send an email to the group asking for recommendations.

Be sure, however, to maintain the confidentiality of the case and the client to avoid running afoul of the ethical rules. It is best to send a description of the type of expert you need rather than sending a summary of your case’s facts. If there is a unique challenge, describe it without referencing case-specific facts. By asking for recommendations from others, you will hopefully get names of qualified experts who have experience with testifying in legal cases.

The value of this type of experience cannot be understood—testimony experience is a unique skill set all its own.

If your network of colleagues is unable to turn up any good recommendations, another useful resource can be expert referral services. These services assist you with finding experts by conducting local or national searches for qualified candidates. Many referral services have a pool of experts in various topics that are on standby for retention. A good referral service will vet the candidates and provide you with multiple options. Each referral service will have its own rules about contacting the expert and payment, so it is important to understand those rules up front to make sure the referral service is right for your client. Retention through this method may be pricier than finding an expert on your own. But, in cases where you need a unique type of expert, these services can provide you with valuable assistance. **G**

Racheal Ross is a Las Vegas native and UNLV Boyd School of Law graduate. She is a trial attorney at Panish Shea Ravipudi LLP, where her practice focuses on catastrophic injury, products liability, and wrongful death cases.



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***Restrictions apply.** This offer is available to current CCBA members who are licensed attorneys with paid membership types of Attorney Member, New Attorney Member, or Senior Attorney Member for the 2025 membership year. Due to space constraints in the *Communiqué*, any entries made by "Public Service Members" may be omitted from the publication. Listings are available only to current CCBA members who are licensed to practice law in Nevada or in another U.S. jurisdiction. Listings in the *Communiqué* will be limited to the member's first name, last name, NV Bar number, and phone number (if provided), and up to three (3) areas of practice from the list above. Updates to selections submitted previously for the listing in the *Communiqué* can be made by completing the form again prior to the published deadline. Listings in the *Communiqué* are only available to members of the Clark County Bar Association who are licensed attorneys and have paid their 2025 CCBA Membership fee prior to May 1, 2025.

Advance Opinion Summary (3-7-25)

By Joe Tommasino

Supreme Court of Nevada

Child abuse and neglect: NRS 432B.290(4) provides a limited privilege for child-abuse-or-neglect reporter identities when the agency possessing that information determines that disclosure would harm an investigation or harm the life or safety of any person. The State of Nevada charged real party in interest Nikos Sharp with several criminal offenses stemming from a child-abuse-or-neglect investigation conducted by petitioner Clark County Department of Family Services (DFS). In preparing his defense, Sharp sought information contained in several other reports to DFS involving the alleged victim, and over DFS's objection, the district court compelled DFS to turn over the information, including the identities of the individuals who reported the abuse or neglect to DFS. In this original proceeding, the Supreme Court of Nevada considered whether the district court erred in ordering DFS to disclose the identities of the persons who made the unrelated allegations involving the alleged victim. Whether a district court can order DFS to disclose reporter identities during criminal discovery is an important issue that implicates both constitutional concerns and the compelling public interest in encouraging citizens to report suspected child abuse. The Court concluded that the plain language of NRS 432B.290 must be harmonized with the constitutional due-process requirements of criminal prosecutions. Construing NRS 432B.290(4) to provide a limited privilege for reporter identities balances policy goals by creating a safety valve: DFS can protect reporter identities *if* it determines that disclosure would harm an investigation or a person. This interpretation also fits neatly with the other provisions of the statute. For example, NRS 432B.290(2)(e) authorizes DFS to publicly disclose confidential information if "the court determines that public disclosure of the information is necessary for the determination of an

issue before it." Interpreting NRS 432B.290(4) otherwise would improperly impact criminal defendants' ability to defend themselves by forever foreclosing their ability to get discovery that might be essential to their defense. Under NRS 432B.290(2)(e), the district court is required to conduct an in camera review to determine what can be released, and the judge appropriately did so in this case. Nevertheless, the limited privilege for reporter identities discussed in this case does not apply under the facts presented, so the district court did not err in ordering DFS to disclose the applicable identities. Separately, Justice Lee filed a concurring opinion and proposed that, under NRS 432B.290(4), DFS must always protect the identity of reporters but must protect "any other person" only when the disclosure would cause specified harm. *Clark Cnty. Dep't. of Fam. Serv. v. Dist. Ct. (Sharp)*, 141 Nev. Adv. Op. No. 10, ___ P.3d ___ (March 6, 2025).

Education records: The federal Family Education Rights and Privacy Act (FERPA) defines "education records" as records that are both directly related to the student and maintained by the educational institution. This petition for writ relief concerns whether emails stored in a school district's database but not placed in a student's permanent file qualify as "education records" under FERPA. The district court ordered the Clark County School District (CCSD) to comply with a request for education records under FERPA by producing all emails stored in CCSD's Google Vault (a cloud-based electronic database) that referenced a certain student. The Supreme Court of Nevada agreed that the emails are "maintained" by the school district because they are electronically stored in the school district's email database. However, because CCSD failed to identify or produce any emails, the district court erred in determining that the emails are "directly related" to the student without first assessing the content of those

emails. Thus, the district court must perform an in camera review of all emails maintained by CCSD that mention the specific student by name, initial, or student ID number to determine whether the emails are directly related to that student. *Clark Cnty. School Dist. v. Dist. Ct.* (Angalia B.), 141 Nev. Adv. Op. No. 11, ___ P.3d ___ (March 6, 2025).

Nevada Uniform Commercial Code (UCC):
Discovery tolling does not apply to a breach-of- implied-warranty claim under NRS 104.2725(2). This appeal arose from an alleged violation of the implied warranty of merchantability after the sale of a commercial gasoline storage tank over 15 years ago. Appellant Golden Gate/S.E.T. Retail of Nevada, LLC, claimed that the district court erred in concluding that Golden Gate’s claim was time-barred and, therefore, in granting summary judgment in favor of the manufacturer, respondent Modern Welding Company of California, Inc. In this opinion, the Supreme Court of Nevada considered whether a claim for breach of implied warranty under the Nevada UCC is subject to discovery tolling. The discovery rule tolls the statute of limitations on a cause of action until the plaintiff knows or reasonably should know of the facts underlying the claim. The Court has applied the discovery rule to contract actions when the operative statute of limitations “is silent as to when such a cause of action accrues.” Although the discovery rule may be applied to *some* contract actions, it would be inappropriate to apply the rule to claims of breach of an implied warranty under NRS 104.2725(2). That statute, which governs limitations periods for UCC breach-of- sale contract actions, is not silent as to when the cause of action accrues. Rather, it specifies that a cause of action for breach of warranty accrues on the tender of delivery of the goods. This distinguishes it from the statutory causes of action where the discovery rule has been applied in the past, which did not speak to the time of accrual. The Court emphasized that applying the discovery rule to NRS 104.2725(2) would contradict the specific statutory language. Moreover, the UCC already provides its own discovery rule for breach-of-warranty claims, and this rule is broadly construed to exclude implied-warranty claims. The UCC applies the discovery rule to breach-of-warranty actions when a warranty “explicitly extends to future performance.” Because the UCC discovery rule requires an *explicit* promise of future performance, and *implied* warranties inherently cannot explicitly promise anything, other state courts have generally held that implied warranties are outside the scope of the future-performance exception. Federal courts have also generally concluded that claims

for breach of implied warranty under the UCC should not be subject to discovery tolling, as they are excluded from the future-performance exception. Thus, the consensus view supports the conclusion that the discovery rule does not apply to claims of breach of an implied warranty under NRS 104.2725(2). *Golden Gates/S.E.T. Retail of Nev., LLC v. Modern Welding Co. of California, Inc.*, 141 Nev. Adv. Op. No. 12, ___ P.3d ___ (March 6, 2025).

Nevada Court of Appeals

Child custody: When evaluating domestic violence as a best-interest factor under NRS 125C.0035(4) (k), the district court must apply the **preponderance-of-the-evidence standard**. Domestic-violence allegations must be carefully considered in child-custody proceedings. The Nevada Supreme Court has recognized the “very real threat” domestic violence poses to a child’s safety and well-being when determining custody between parents. Mindful of the harmful effects of domestic violence on child safety and development, the Nevada Legislature has established a rebuttable presumption against awarding physical custody to a perpetrator of domestic violence and has also included domestic violence as a best-interest factor that must be considered when determining child custody. In this opinion, the Court of Appeals clarified that there are two separate evidentiary standards for the statutes at issue: one when using domestic violence to apply a *rebuttable presumption* and the other when evaluating the role of domestic violence as a *best-interest factor*. While clear and convincing evidence is the standard when applying the rebuttable presumption that can result in the denial of custody to a parent, preponderance of the evidence is the

Summaries continued on page 36

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Summaries continued from page 35

standard when evaluating domestic violence as a best-interest factor in considering the custody arrangement that is in the best interest of the child. In this case, the district court erred in applying the clear-and-convincing-evidence standard to *both* statutes in its analysis and, therefore, did not fully evaluate the allegations of domestic violence as a best-interest factor in determining custody. The Court of Appeals took this opportunity to stress that a district court must hear *all* information regarding domestic violence in order to determine the child's best interests. In this case, the district court excluded *all* of appellant's exhibits, primarily for being untimely disclosed, despite many of the exhibits containing information regarding allegations of domestic violence known to both parties and despite the fact that certain exhibits had previously been disclosed in motion work during the discovery period. This exclusion acted as a discovery sanction under applicable rules governing sanctions. Thus, the district court was required to follow those rules to determine if excluding the trial exhibits was an appropriate sanction for the alleged failure to timely disclose them. The district court's failure to follow those requirements, especially in light of the nature of some of the exhibits, is reversible error. Accordingly, the Court of Appeals reversed the custody decree and remanded for further proceedings. The Court of Appeals noted that a criminal conviction is not required before the district court may find that a party has committed domestic violence in a civil matter. A criminal conviction requires proof beyond a reasonable doubt, but NRS Chapter 125C does not. *Soldo-Allesio v. Ferguson*, 141 Nev. Adv. Op. No. 9, ___ P.3d ___ (February 13, 2025).

Child support: For the purposes of calculating a 20-percent change in income pursuant to NRS 125B.145(4), the controlling child-support order is the most recent substantive order setting the amount of the child support and making a finding about the obligor and obligee parents' respective incomes, regardless of any subsequent denials of motions to modify. Upon a request for review, a district court may modify a child-support order only when it finds a change in circumstances since the entry of the order and the modification is in the best interest of the child. Although the modification of a child-support order is discretionary even if the district court finds changed circumstances, NRS 125B.145(4) mandates the district court conduct a review of the child-support order when the obligor parent experiences a 20-percent change in gross monthly income.

In this case, the Court of Appeals was asked to determine which child-support order is the controlling order for purposes of calculating a 20-percent change in income when an original order has been entered and the amount of child support has remained unchanged over the course of multiple denials of motions to modify the order. The Court of Appeals held that, for purposes of determining changed circumstances under NRS 125B.145(4), the controlling order is the most recent substantive order setting forth the child-support obligation and making findings regarding the respective incomes of the obligor and obligee parents, not any subsequent orders denying motions to modify child support. The Court of Appeals also clarified that *prima facie* evidence is the standard to be applied to determine whether sufficient evidence exists as to changed circumstances to necessitate a substantive review of the motion to modify child support. In the proceedings below, the district court did not use the correct controlling order when it affirmed the family court master's recommendation finding no change of circumstances. In addition, the district court failed to substantively review the child-support order as required by NRS 125B.145(4) despite appellant's *prima facie* evidence establishing a 20-percent change in income. The Court of Appeals therefore reversed the order denying the motion to modify child support and remanded the matter to the district court for further proceedings. *Backman v. Gelbman*, 141 Nev. Adv. Op. No. 8, ___ P.3d ___ (February 13, 2025).

Resources

- "Advance Opinions" are viewable at this link: http://nvcourts.gov/Supreme/Decisions/Advance_Opinions/
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Joe Tommasino has served as Staff Attorney for the Las Vegas Justice Court since 1996. Joe is the President of the Nevada Association for Court Career Advancement (NACCA).

Why I Contribute My Time to Pro Bono and You Should, Too

By Amanda Brookhyser

Every single time I offer my time for some version of pro bono service—be it volunteering a few hours for one of LACSN’s “Ask-a-Lawyer” sessions or working on one of the cases I have taken through the Children’s Attorney Project—I am always amazed by how simple it is to make a huge impact on someone else’s life. As lawyers, we take for granted how easy it is for us to navigate the legal system. Where we are immersed daily in our complex litigation and transactional matters, it’s lost on us how scary it is for our community members to navigate legal terrain and the court system on their own. It is so moving to me when the people I help are incredibly grateful for my advice on issues that I wouldn’t think twice about, like what to call a certain motion, or how to prepare to speak to a judge during a hearing. I forget just how valuable my knowledge is and how privileged I am to have it. The level of anxiety a *pro se* party or a child experiences when faced with having to go to court and speak to a judge is significant, and spending just a few minutes of your time giving them some advice, or just expressing to them that they do not need to be scared, means the world to them. It is your obligation to use your specialized knowledge and experience to help others and I promise you that when you do, it will be worth it. 🐼

Amanda J. Brookhyser is the Managing Partner of Zumpano Patricios & Helsten. She focuses her litigation and trial practice on commercial and business disputes, and personal injury matters.

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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.

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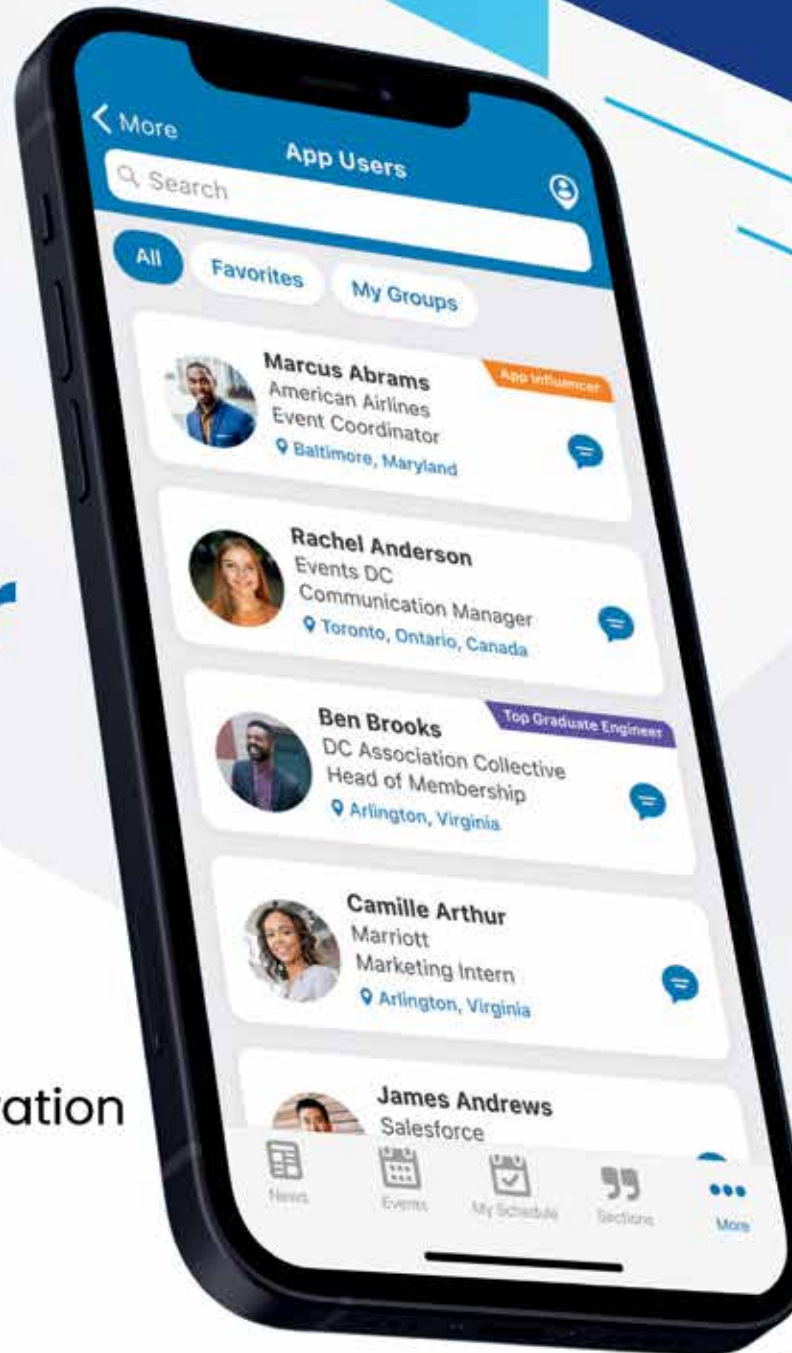


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