May 2026

Lunchtime Learning CLE Webcast

Free for CCBA members on June 11

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COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

Labor & Employment Law

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See pages 16, 18, 20

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CLE Article #21:

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Columns

KAMER ZUCKER ABBOTT

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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. Email: editor@clarkcountybar.org.

***Communiqué* Editorial Calendar**		
Cover Date	**Issue Theme**	**Closing Date**
January 2026	Five Things	12/1/2025
February 2026	Bankruptcy Law	1/2/2026
March 2026	Law Practice Management	2/1/2026
April 2026	Family Law	3/1/2026
May 2026	Labor & Employment Law	4/1/2026
June/July 2026	Ethics	5/1/2026
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October 2026	Pro Bono	9/1/2026
November 2026	Appellate Law	10/1/2026
December 2026	Immigration Law	11/1/2026

*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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Bar Activities

Event Calendar

Bar members are invited to attend bar activities

- May 1 Areas of Practice Listings Sign-up Deadline
- May 1 Community Service Committee Meeting
- May 6 Legal Support Professionals Committee Meeting
- May 5 CLE Committee Meeting
- May 8 Publications Committee Meeting
- May 12 Civil Bench-Bar Meeting – *Page 12*
- May 15 DICE Meeting
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- June 11 Health Care Power of Attorney Mobile Workshop
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- June 25 Vintage Americana – A special event to celebrate America & CCBA's Anniversary – *Page 10*
- July 15 Lunchtime Learning CLE: Wage & Hour Risks in Legal Practice
- Aug. 3-7 Virtual Mock Interview Program for Law Students
- Sep. 10 35th Annual Meet Your Judges Mixer

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Reflections on the 40-Year Club Luncheon

By James T. Leavitt

40 Year Club Luncheon Highlight (Back row, l-r): Hon. Gene Porter, James T. Leavitt, Bob Glennen, Justice Ron Parraguirre, Judge Timothy Williams, Rebecca Miller, Michael Wixom, Kevin Stolworthy, Brian Holthus, James Jimmerson. Front row (l-r): Hon. David Wall, Judge Mark Denton, Hon. Ken Cory, Senator Richard Bryan, Dan Polsenberg, John Mowbray, Tim Cory. View more highlights from the event at https://photos.app.goo.gl/CAhathmFTB8kkR3z6

At the time of this writing, I just got back from another great 40-Year Club Luncheon. I love the 40-Year Club Luncheon because it speaks to the very essence of our organization. That essence being a celebration of our unique legal community and those who helped build it. Every year, we have the honor of celebrating the giants of our legal community upon whose shoulders we all stand. Today, I got the opportunity to hear stories from those who started practicing in Clark County in 1986, 1981, 1976, and 1971. Justice Parraguirre was honored and told us all of some of his experiences. John Mowbray was also honored and was gallant enough to share his time with Senator Richard Bryant. Each of our honorees are a treasure of experience and history that this lunch every year gives us a glimpse of.

One theme that is almost always constant every year at this lunch is how much the honorees bring up the concept of civility in the profession. Nearly all of the honorees talk about how hard they and their colleagues would argue against each other in court and afterwards meet at a bar to share a drink. Most of them miss those days, but what they seem to miss the most about them was the relationships that they built.

Today in our post-COVID-19 world, we are all more isolated from each other than ever. Most of us rarely go in person to court or meet in person with our colleagues. The honorees always talk about what we have lost now that many of us no longer see each other in court. That loss being civility within the profession. Civility is created by having familiarity with each other and knowing who you are dealing with on a case. It is encouraged by actively getting to know each other within our legal community. I believe that the CCBA and the events that we throw act as a conduit to encourage familiarity and thus civility within our profession. We might not see each other at court anymore, but we can choose to share a drink with each other at the CCBA pub crawl or go to a baseball game together. The CCBA is actively working on helping bridge the familiarity gap so that we can all effectively advocate for our clients and be civil with each other while we do it. C

James T. Leavitt *operates Leavitt Legal Services, P.C. in Las Vegas, Nevada. His practice focuses primarily on bankruptcy law and criminal law. James earned his bachelor's degree in U.S. History from the University of Nevada - Las Vegas and his Juris Doctorate at the John Marshall Law School in Chicago. James serves as CCBA President through December 2026.*

JAMS Welcomes Mediator/Arbitrator

Hon. Gloria J. Sturman (Ret.)

Judge Sturman presided over complex civil matters and regularly conducted settlement conferences during 15 years on the Eighth Judicial District Court of Nevada. She also served as a court-appointed arbitrator for Nevada's Mandatory Arbitration and Short Trial programs. At JAMS, she is available as a mediator, arbitrator, special master/referee and alternate judge in disputes involving estate/probate/trust, professional liability, personal injury, insurance, governmental/public agency, employment, class action and civil rights matters.

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Voir Dire Law CLE Program Free for CCBA Members June 11, 2026

Larry Chiu Hill

On June 11, 2026, trial lawyer Larry Hill will make a special presentation for the continuing legal education of Nevada lawyers in a lunchtime learning program produced by the Clark County Bar Association and sponsored by Las Vegas Legal Video and Worldwide Litigation Services.

Lawrence (Larry) Chiu Hill is a trial attorney and the founder of Lawrence C. Hill & Associates. Since establishing his firm in 2010, licensed to practice in all Nevada courts, he specializes in personal injury, criminal defense, and immigration law. Larry maintains an AV Preeminent rating from Martindale-Hubbell, was named as Super Lawyers for multiple years, was recognized as one of Nevada's Legal Elite.

Beyond his private practice, Larry serves as a Board Member for the Asian American Advocacy Clinic, providing vital legal support to victims of domestic violence and human trafficking.

Larry will present "Tips for Conducting Effective *Voir Dire* – 'Is this your Truth?'" He will focus on techniques for soliciting truthful, candid testimony from potential jurors to reduce potential impartial, biased jurors from sitting on the jury. Attendees will learn best ways to communicate with the venire to identify and establish for cause or peremptory challenges of jurors who may not be impartial to the case that is being tried. The program offers 1.0 general CLE credit for Nevada lawyers.

The presentation will be held via Zoom from 12:00 to 1:15 p.m. on June 11, 2026. Attendance to this live webcast is free for CCBA members. To attend the live webcast, CCBA members will need to RSVP to the CCBA by June 9, 2026.

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For more information and to RSVP, call 702-387-6011 or complete the RSVP form at clarkcountybar.org.

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JUNE 4, 2026

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12:00 TO 1:00 P.M. – JUDICIAL CANDIDATE FORUM AND LUNCHEON PROGRAM

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Civil Bench-Bar Meeting

- **Host:** Eighth Judicial District Court - Civil Department
- **When:** May 12, 2026, 12:00 – 1:00 p.m.
- **Where:** Regional Justice Center, Courtroom 14A and Zoom
- **Contact:** EJDCBenchBar@gmail.com

Clark County Court Orders Case Reassignments Effective March 30, 2026

On March 25, 2026, the Eighth Judicial District Court Chief Judge Jerry Wiese signed an order in the administrative matter of general civil and criminal case reassignments. *See* Administrative Order 26-02. (PDF file to download).

- Most notably, Administrative Order 26-02 cites NRS 3.025 and ECR 1.30(b) and orders that:
- 50 percent of all civil cases currently assigned to Department 26 shall be reassigned to Department 12.
- All criminal and related civil cases, currently assigned to Department 12, except for homicide cases and misdemeanor appeals, shall be reassigned to Department 26, and Department 26 shall replace Department 12 in LVJC Track 14 of the Criminal Case Flow Model.
- The aforementioned case reassignments and track change shall take effect on March 30, 2026.
- Court administration shall publish the case reassignments affected by this order on the court's website no later than March 29, 2026.
- Court administration shall include an updated copy of the Criminal Case Flow Model with this order.

For more information, visit the court's website at https://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/.

Peter Thunell Appointed to Department 26 of Eighth Judicial District Court Bench

On March 19, 2026, Nevada Governor Joe Lombardo announced his selection of Peter Thunell to serve as judge in department 26 at the Eighth Judicial District Court. Judge Thunell fills the vacancy left by the retirement of Judge Gloria Sturman. Judge Thunell took the bench on March 30 with a split civil and criminal docket. He will be assigned criminal cases from Judge Michelle Leavitt in Department 12. Judge Leavitt will also take on a split docket with civil cases from Department 26.

Lawyer Representative Opportunities for the District of Nevada

The United States District Court for the District of Nevada is accepting applications for three Lawyer Representative positions in Las Vegas. Letters of Interest are due May 29, 2026. For more information, view the news item posted the court's website at www.nvd.uscourts.gov.

Court News *continued on page* 14

Bar Activity

Professional Portrait Session

All members of the Nevada bar, bench, law students, and supporting legal staff are invited to sit for a professional portrait at the Clark County Bar Association office.

Drop-ins are welcome; appointments preferred.

When & where:

- Tuesday, June 16, 2026
- 9:30 a.m. to 2 p.m. only
- Clark County Bar Association, 717 S. 8th Street, Las Vegas

Special offers:

- 20% off purchases of professional portraits for CCBA members!
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Contact:

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Maintaining An Independent Judiciary

By Chief Judge Jerry Wiese

As Chief Judge of the Eighth Judicial District Court, when I think of labor and employment issues I think of things like wage disputes, discrimination claims, workplace rights, and collective bargaining agreements. During an election cycle, however, I am reminded that these issues may intersect with the judiciary in a different way.

In Nevada, because our judiciary is elected, judges find themselves stepping outside of their courtrooms and into the community, seeking support, endorsements, and financial contributions. Because judges campaign to retain their positions, there are some unique considerations that arise—particularly when it comes to seeking endorsements. In a jurisdiction as dynamic as Clark County, organized labor has an influential and respected voice, representing thousands of workers whose livelihoods are shaped by the very laws judges interpret.

Seeking union endorsements can present a delicate balance for judges. On one hand, it reflects engagement with the community and recognition of the importance of working people in our legal system. On the other, judges must remain ever mindful of the ethical boundaries that preserve judicial independence and impartiality. The integrity of the judiciary depends not only on fair decisions, but on the public's confidence that those decisions are made without obligation or bias.

From my experience, the key lies in transparency and restraint. Judicial candidates can listen, learn, and share their commitment to the rule of law, but should never make promises that would compromise their role on the bench. Labor organizations, like all stakeholders, are entitled to evaluate candidates based on their records, temperament, and adherence to legal principles. No endorsing body or financial contributor should expect favors, or the assurance of any particular outcomes.

This dynamic underscores a broader truth about labor and employment law: it is not confined to statutes and case law, but lives within the institutions and people who apply it. Judges, like the workers and employers who appear before them, are part of the same civic fabric.

As we navigate each election cycle, maintaining an ethical balance—between engagement and independence—is essential. It ensures that our courts remain a place where every party, regardless of affiliation or endorsement, can expect and be assured of fairness, neutrality, and justice under the law. ©

Chief Judge Jerry Wiese *serves in Department 30 of the Eighth Judicial District Court. Since taking the bench in January 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. He was elected Chief Judge by his peers and has served as the Chief Judge of the District Court since July 2022.*

Court News *continued from page* 14

Judge Tierra Jones Selected to Serve as Chief Judge

On March 19, 2026, the Eighth Judicial District Court announced that Judge Tierra Jones has been selected by unanimous vote of the bench to fill the role of chief judge, effective July 1. She will succeed Chief Judge Jerry Wiese, who is term-limited in the role of chief after serving in the role for four years. The chief judge is responsible for managing the administration of the court while maintaining a caseload. Judges serving in the district court vote to fill the chief judge post based on nominations. Judge Jones currently serves as the presiding criminal division judge and oversees the management of cases for the homicide docket, in addition to presiding over a heavy homicide caseload. ©

Cheat Sheet: *Prima Facie* Claim Elements for Common Employment Discrimination Claims in Nevada State and Federal Courts

By Amanda Patanaphan

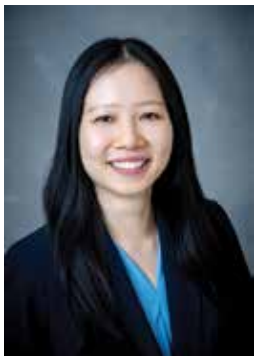
This chart is a brief summary of common employment discrimination claim prima facie requirements and does not represent an extensive legal analysis of all the claims, burdens, and defenses. Additional claims exist for employment related accommodations due to disability, religion, pregnancy, and related medical conditions. This chart does not constitute legal advice.

Category	U.S. Code	State Statute	Legal Analysis
Race; Color; National Origin; Sex; Sexual Orientation; Pregnancy, Childbirth, and Related Medical Conditions; Gender Identity or Expression (State)	42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act of 1964)	NRS 613.310 *et seq.*	(1) Member of protected class[1]; (2) Qualified for job + satisfactory performance; (3) Subjected to adverse employment action; and (4) Similarly situated individuals outside of protected class treated more favorably. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 807 (1973); *Leong v. Potter*, 347 F.3d 1117, 1124 (9th Cir. 2003).
Age	29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act of 1967)	NRS 613.310 *et seq*	If direct evidence of age animus (statements about age), then must be directly tied to adverse employment decision. *Roy v. Laborer's Local 737*, No. 21-35103, 2021 U.S. App. LEXIS 37147, at *2 (9th Cir. Dec. 16, 2021) (citing *France v. Johnson*, 795 F.3d 1170, 1173 (9th Cir. 2015)). If no direct evidence exists: (1) Age 40+; (2) Performing job in satisfactory manner; (3) Subjected to adverse employment action; and (4) Replaced by substantially younger employee with equal / inferior qualifications, or similarly situated younger employees treated more favorably. *See Wallis v. J.R. Simplot Co.*, 26 F. 3d 885, 891 (9th Cir. 1994).

[1] Membership in protected class must "actually play[] a role in the [employer's decision making] process and had a determinative influence on the outcome." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 141 (2000) (quoting *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993)).

Disability	42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act of 1990)	NRS 613.310 *et seq.*	(1) Employee disabled as defined by law; (2) Qualified to perform essential functions of position (with or without accommodation); and (3) Suffered adverse employment action because of disability. *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1249 (9th Cir. 1999)
Harassment (Hostile Work Environment)	Various	NRS 613.330	(1) Plaintiff subjected to verbal, visual, and/or physical conduct directed at protected characteristic; (2) Conduct was unwelcome; and (3) Conduct sufficiently severe / pervasive to alter conditions of employment and create an abusive working environment. *Fried v. Wynn Las Vegas, LLC*, 18 F.4th 643, 647 (9th Cir. 2021). Harassment based on protected class must be both objectively and subjectively severe or pervasive enough to alter the conditions of employment and create an abusive working environment. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993).

Amanda Patanaphan *is an associate at Jackson Lewis, P.C., which exclusively represents employers in employment and labor matters, and is consistently recognized as a leader in the industry. In addition to her legal training and expertise, Ms. Patanaphan draws on her prior education and experience in organizational management when representing clients.*



Foundational Employee Rights Under the NLRA: Considerations for Union and Non-Union Workplaces

By Dare Heisterman and Shannon Chao

Your phone rings late Friday afternoon. It's Beverly, the CEO of your newest client. Beverly does not bother with pleasantries. "I just got a charge from the National Labor Relations Board," she says. "Why did I get this, we have no union here?" she laments. She then explains that she recently fired a new employee for complaining about pay.

When you ask for more details, Beverly explains that the employee came to her office a few weeks ago and demanded a raise for himself and his coworkers. The employee told Beverly that he and others planned to leave work next week if they did not get the raise.

Before you can respond, Beverly adds that another employee came to her this morning and said that she and others were worried about employees coming into the office sick. She told Beverly that anyone who coughs should be required to wear a mask.

Frustrated, Beverly says, "I am sick of these complaints. Masks when someone coughs?! I am going to fire them and anyone else who complains."

How should you advise Beverly?

Employee Section 7 rights

Beverly's experience illustrates a common—and often misunderstood—area of labor law: the scope of employee rights, even in non-union workplaces. Under Section 7 of the National Labor Relations Act ("NLRA"), most private-sector employees have a foundational right to join together to improve their working conditions. More specifically, employees have the right to form or join a union, bargain collectively, and otherwise engage in "concerted activities" for "mutual aid or protection." 29 USC § 157.

Employees engage in "protected concerted activities" any time they take group action or submit a group complaint that is focused on their terms and conditions of employment. *Fresh & Easy Neighborhood Mkt., Inc.*, 361 NLRB 151, 153 (2014). Importantly, these rights apply not only to unionized workplaces but also to nearly every private-sector employer, including those with non-union workforces. When an employer interferes with an employee's right to engage in protected concerted activities—either through an overly broad rule/policy or discipline or termination—the employer has likely violated the NLRA and could be forced to defend its actions before the National Labor Relations Board ("NLRB" or "Board").

The NLRB is the federal agency tasked with enforcing the NLRA. The Board currently uses a fact-intensive "totality of the circumstances" test to determine whether an employee has engaged in protected concerted activities. *Miller Plastic Prods., Inc.*, 372 NLRB No. 134, 7 (2023). Additionally, the Board has historically interpreted "concerted activity" broadly to protect a wide range of employee conduct, even including individual actions if they are a "logical outgrowth" of group concerns.

For example, the Board considers the following employee actions ***protected***:

- **Discussing wages with coworkers.** The Board has long considered wage discussions to be "inherently concerted activity" protected by the NLRA.
- **Raising safety concerns to management.** The Board has also consistently held that an employee raising safety concerns on behalf of or impacting more than one employee is engaging in protected concerted activity. For example, the Board held that an employee engaged in protected concerted activity when the employee raised concerns about an employer's operations and lack of COVID precautions during a team meeting. *Miller Plastic Prods., Inc.*, 372 NLRB No. 134 (2023).

- **Walking off the job.** Employers often recognize that employees have the right to strike, but what about walking off the job without making a specific demand or notifying the employer they are "striking" only after walking out? If the walkout is motivated by legitimate employee concerns about working conditions, the walkout will normally be considered protected concerted activity. For example, a group of employees who spontaneously walked out together after one employee asked others if they wanted to continue to "put up with" their manager's "disrespect" were found to have engaged in protected concerted activity. *Hiran Management, Inc.*, 373 NLRB No. 130, 15 (2024).

While the above list includes some of the more common and recent examples of "concerted activity" protected by Section 7 of the NLRA, it is not an exhaustive list. The Board has reiterated that a "myriad of factual situations" could be considered concerted activity. *Miller Plastic Prods., Inc.*, 372 NLRB No. 134, 3 (2023).

What constitutes interference with an employee's Section 7 rights?

Under Section 8(a)(1) of the NLRA, an employer commits an unfair labor practice ("ULP") if it interferes with, restrains, or coerces employees in exercising their Section 7 rights. The Board analyzes alleged violations by determining whether the employer engaged in conduct that "reasonably tends to interfere" with the free exercise of employee rights under the NLRA, regardless of the employer's motive or whether the coercion succeeded or failed.

Examples of employer conduct that ***violate*** the NLRA include:

- Discharging, disciplining, or taking other adverse action against an employee for engaging in protected concerted activities.
- Implementing handbook policies or work rules that have a reasonable tendency to chill employees' exercise of Section 7 rights, such as outright bans on discussing wages among employees or rules against joining outside organizations or voting on matters concerning the employer.

Additional considerations for employers

Employers should note that the Board's enforcement objectives under the NLRA and governing legal standards are often in flux depending on the current political climate. For example, the current NLRB General Counsel—recently sworn in and tasked with determining prosecutorial policy and enforcement priorities—has already signaled that she will take a more selective approach in pursuing charges over alleged handbook policy and work rule violations. *See* NLRB Memorandum GC 26-03. In addition, the last time President Trump was in office, the Board adopted a narrower interpretation of what constitutes "protected concerted activities." *See Alstate Maintenance, LLC*, 367 NLRB No. 68 (2019). Despite the prospect of these changes, employers should remain mindful of the risks involved when considering actions that may interfere with employee rights to join together to improve their terms and conditions of employment.

Dare Heisterman *is a partner at Kamer Zucker Abbott with nearly a decade of experience representing employers in labor and employment matters and NLRB proceedings. Dare thanks and acknowledges the contributions of* ***Shannon Chao****, a labor and employment attorney and graduate of UNLV's Boyd School of Law, to this article.*

Shift Jamming: The Silent Wage Trap Hiding in Plain Sight

By Brandon Born and Jennifer ("Jen") Fornetti

"Shift jamming" isn't a term you'll find in most legal textbooks, but ignoring it can quickly lead to miscalculating employee wages in Nevada. For attorneys, this issue matters because it implicates wage-and-hour law and creates potential legal exposure.

This scheduling quirk, common in the 24/7 world of hospitality, healthcare, and security, occurs when closely stacked shifts merge, spanning more than eight hours within a 24-hour period. While the shifts appear compliant individually, Nevada's unique daily overtime rules may turn a standard schedule into a major liability. Because these overlaps often go unnoticed in the data, they regularly escape notice until litigation. For litigators, spotting a "jammed" shift early isn't just about compliance; it's about accurately valuing the claim before the payroll records prove you wrong.

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Daily overtime basics

Most understand that daily overtime must be paid to employees earning less than 1.5 times minimum wage ($18/hour) and working more than eight hours in a day, under NRS 608.018(b)(1). But this straightforward rule becomes more complex because a "workday" is a 24-hour period that begins when the employee starts their shift, not the calendar day. An otherwise compliant shift on the next calendar day may still trigger daily overtime if it falls within the prior shift's 24-hour "workday" and pushes total hours over eight. Employers must track employees' "workday" and "workweek," as Nevada law requires paying the more employee-favorable overtime calculation between daily or weekly.

In practice

Shift jamming can be easy to miss. An employee working a 2:00 p.m. to 10:00 p.m. closing shift and returning for an opening shift at 8:00 a.m .the next morning appears compliant, but when viewed within a 24-hour "workday" period, these hours overlap to create daily overtime requirements. The issue is not how long employees work, but how their shifts are structured.

Why it matters

This distinction matters in Nevada. Under the closing-to-opening shift scenario, all hours worked after the eight-hour closing shift until 2:00 p.m. the next day count as daily overtime and must be paid at 1.5 times the regular rate, even though their shifts were compliant in isolation. Employers relying on calendar-day tracking or weekly summaries may never see the problem until it is reconstructed from payroll data in litigation.

Where it appears

These issues are most often found in industries with continuous operations. However, any workplace with hourly employees using flexible or back-to-back scheduling is exposed to the same risk under Nevada's unique daily overtime rules.

Practical takeaways

Litigators should look beyond payroll summaries and request raw time data early, watching for overlapping shifts that may alter damages calculations and overall case valuation. Practitioners advising employers should

stress the benefits of proactive auditing to ensure that scheduling practices beyond their payroll systems conform with Nevada's daily overtime rules. Seemingly minor scheduling decisions can compound into significant liability when repeated over time.

In Nevada wage-and-hour analysis, the biggest risks do not come from employees' longest shifts, but rather the shifts that overlap just enough to go unnoticed. C

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Nevada's Middle Path on Non-Competes: Revise, Don't Rewrite

By Amanda Brookhyser and Ruth Turley

Nevada employers need workable tools to protect goodwill and confidential information; employees need a fair opportunity to continue earning a living after they move on. Nevada's non-compete regime seeks to honor both interests. Courts may preserve a reasonable restraint through targeted trimming, but they will not draft a new deal for the parties. The distinction—revise, not rewrite, otherwise known as "blue-penciling"—defines Nevada's middle path. *Tough Turtle Turf, LLC v. Scott*, 139 Nev. 459, 465–66, 537 P.3d 883, 887–88 (2023).

I. Nevada's statutory framework: Blue-penciling as remedy, not drafting aid.

Nevada codifies non-compete enforcement in NRS 613.195. A restraint is void unless supported by valuable consideration, is narrowly tailored to protect legitimate business interests, is free from undue hardship and is appropriate in relation to the consideration given. NRS 613.195(1). For agreements executed on or after June 3, 2017, courts confronting unreasonable time, geographic or activity restrictions must revise the overbroad term and enforce the covenant as revised. NRS 613.195(6).

The statute, however, confers a remedial tool—not a drafting license. Nevada's Supreme Court has drawn a bright line: courts may revise existing terms, but they may not rewrite the agreement or supply missing terms. *Tough Turtle*, 537 P.3d at 887–88.

That line produces a practical test. Where enforcement requires narrowing what the parties actually wrote, revision is available. Where enforcement would require adding terms, selecting boundaries the contract never expressed or re-architecting the restraint, revision crosses into impermissible rewriting and the covenant fails. Contractual overreach is not cured by the availability of judicial revision, and NRS 613.195 does not reward aggressive drafting in the hope a court will later impose reasonable limits. Judicial revision presupposes that reasonable boundaries already exist and merely require tightening, not reconstruction. *Tough Turtle*, 537 P.3d at 887–88; *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. 476, 487–88, 376 P.3d 151, 159–60 (2016).

II. Statutory landmines courts will avoid.

Several statutory provisions bar enforcement altogether rather than inviting judicial trimming.

Nevada prohibits non-competes for employees paid solely on an hourly basis and mandates fee-shifting when an employer attempts to enforce one. NRS 613.195(4), (7). The statute also codifies customer choice: a former employee may do business with a former customer who voluntarily moved without solicitation, and any contrary restriction is void. NRS 613.195(2). Following a reduction in force, a non-compete is enforceable only so long as the employer continues salary, benefits or severance. NRS 613.195(5).

Courts do not revise restraints that are statutorily void. Where the legislature has removed certain restraints from the realm of reasonableness altogether, judicial modification plays no role. *Tough Turtle*, 537 P.3d at 887–88.

III. What permissible revision looks like.

When statutory tripwires are not implicated, Nevada courts revise covenants through surgical adjustments grounded in business reality rather than abstract competitive fear.

In *Mia Aesthetics Clinic LV, PLLC v. Chua*, the court illustrated the point and confined the scope of prohibited activity to procedures the employer actually offered,

reduced the geographic radius from 50 miles to five and shortened the duration from two years to one. 543 P.3d 664, 2024 WL 591729, at *3 (Nev. Jan. 31, 2024) (table). In *Ahern Rentals, Inc. v. Young*, the court limited a non-compete to roles related to the employee's prior services, reduced geography to a 100-mile radius around the single store where he worked, and tailored a non-solicitation provision to customers with whom the employee had personal contact. No. 2:23-cv-01178-APG-EJY, 2024 WL 967194, at *8–11 (D. Nev. Mar. 6, 2024). In these instances, the court was not adding terms that were not bargained for; instead, the court was tightening up pre-negotiated terms to narrow them to a more reasonable breadth that was not an undue burden on the employee's ability to earn a living while still protecting the employer's legitimate business interests.

Each decision reflects the same method. Courts narrow restraints by reference to provable facts about the employer's business and the employee's role. By contrast, courts consistently refuse "drastic modifications" that would amount to drafting a new agreement—an approach shared across jurisdictions and endorsed in Nevada. *Tough Turtle*, 537 P.3d at 887–88; *Eichmann v. Nat'l Hosp. & Health Care Servs., Inc.*, 719 N.E.2d 1141, 1149–50 (1999); *Bayly, Martin & Fay, Inc. v. Pickard*, 780 P.2d 1168, 1172–73 & n.19.

A common example illustrates where Nevada draws the line. A Las Vegas sales lead bound by a two-year, statewide ban on any employment with any competitor—paired with a non-solicitation clause covering all customers—presents classic overbreadth. Appropriate blue-penciling in this instance might involve trimming such a restraint to a one-year term, a five- or 10-mile radius around the relevant store, sales of the same product line or a non-solicit limited to personal-contact customers. What it does not permit is supplying missing terms or inventing boundaries the parties never expressed. *Mia Aesthetics*, 2024 WL 591729, at 3; *Ahern Rentals*, 2024 WL 967194, at 8–11; *Tough Turtle*, 139 Nev. at 465–66, 537 P.3d at 887–88.

IV. Geography, role and evidence: The three pillars of reasonableness.

Most non-compete disputes turn on three variables: where the employer actually competes, what the employee actually did and whether the record proves either.

Geography must match proven markets. Courts expect a prima facie showing that a geographic radius reflects the employer's operational footprint; nationwide restraints routinely falter when business operations are localized. *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 505–06, 422 P.3d 1238, 1240–41 (2018).

A reasonable scope must turn on what the employee's actual role was. Prohibitions on working in any capacity for a competitor—even in non-competitive roles—sever the connection between restraint and competitive risk. Nevada courts require a nexus between the employee's former duties and the prohibited activity. Restrictions untethered from the employee's functional role risk becoming restraints on employment rather than competition. Courts therefore favor limits keyed to defined activities—selling a specific product line, managing identified accounts or providing particular services—rather than identity-based bans tied solely to a competitor's name. *Johnson v. INTU Corp.*, 2019 BL 170113, at *4–5 (D. Nev. May 10, 2019); *Golden Rd.*, 376 P.3d at 155–60; *Ahern Rentals*, 2024 WL 967194, at *8–11.

Evidence supplies the final anchor. Reasonableness lives on maps, account lists, revenue by territory, role descriptions and training records. Where the evidentiary record does not match the restraint, courts trim—or deny—relief. Capturing those anchors at the drafting stage positions a judge to narrow rather than invent. *Shores*, 422 P.3d at 1240–41; *Tough Turtle*, 537 P.3d at 887–88.

Notably, covenants executed before June 3, 2017, fall outside the statute's revision mandate. Re-papering those agreements with severable, evidence-backed limits restores the possibility of judicial revision without rewrit-

CLE *continued on page 24*

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CLE *continued from page 23*

ing. *Paws Up Ranch, LLC v. Martin*, 463 F. Supp. 3d 1160, 1167–69 (D. Nev. 2020); *Golden Rd.*, 376 P.3d at 155–60.

V. Nevada in the national landscape

Nevada's statutory approach is a reasonable middle ground because our approach to blue-penciling occupies ground between jurisdictions that broadly reform overbroad covenants and those that refuse modification altogether.

Arizona's traditional "cross-out only" model illustrates the utility of step-downs—grammar-severable alternatives that allow courts to strike to reasonableness without adding terms. *Lessner Dental Labs., Inc. v. Kidney*, 492 P.2d 39, 41–42 (Ariz. Ct. App. 1971); *Compass Bank v. Hartley*, 430 F. Supp. 2d 973, 980–81 (D. Ariz. 2006). Delaware, by contrast, cautions against salvaging extreme overbreadth in employment settings. *Delaware Elevator, Inc. v. Williams*, 2011 WL 1005181, at *10–11 (Del. Ch. Mar. 21, 2011); *FP UC Holdings, LLC v. Hamilton*, 2020 WL 1492783, at 8 (Del. Ch. Mar. 27, 2020). Wyoming has abolished blue-penciling altogether. *Hassler v. Circle C Res., Inc.*, 505 P.3d 169, 178 (Wyo. 2022).

VI. Drafting for revision—not reinvention

Effective drafting shares a single objective: limiting judicial revision by anchoring restraints to provable facts.

Define competition by function, not employer identity. Describe prohibited activities by product line, customer segment and channel rather than barring employment by any competitor. *Johnson*, 2019 BL 170113, at 4–5; *Golden Rd.*, 132 Nev. at 481–88, 376 P.3d at 155–60.

Right-size geography with evidence. Select the smallest circle that captures proven markets; maps and territory-based revenue support preliminary relief. *Shores*, 134 Nev. at 505–06, 422 P.3d at 1240–41.

Calibrate duration. A restrictive covenant of one year has been found by many Nevada courts to be a reasonable duration and often aligns with sales cycles and relationship decay. Longer terms demand stronger proofs tied to role and training. *Mia Aesthetics*, 2024 WL 591729, at 3.

Draft for strike-to-fit. Pair severability and judicial-modification clauses with step-downs (e.g., 12/9/6 months; 10/5 miles) so a court may select a reasonable bracket without adding terms. *Tough Turtle*, 537 P.3d at 887–88; *Compass Bank*, 430 F. Supp. 2d at 980–81.

Use targeted restraints. Non-solicitation provisions and NDAs often address the core risk with fewer externalities; courts favor non-solicits limited to personal-contact customers. *Ahern Rentals*, 2024 WL 967194, at 10–11.

Plan for no-go zones. Exclude hourly roles; tie post-RIF restraints to continued compensation; and respect customer choice. NRS 613.195(2), (4)–(5), (7).

Build the injunction record. Memorialize territories, accounts, revenues, duties and training. Courts cannot revise intelligently without concrete anchors. *Shores*, 134 Nev. at 505–06, 422 P.3d at 1240–41.

VII. The bottom line

Nevada rewards precision and punishes overreach. Employers who draft for minimal revision—not reinvention—are best positioned to obtain meaningful relief: a reasonable radius tied to actual markets, a duration aligned with relationship half-life, and a scope pegged to the employee's true competitive functions. Employers who rely on blanket bans, speculative territories, or universal employment prohibitions are likely to find their restrictive covenants unenforceable and not subject to blue-penciling. *Tough Turtle*, 537 P.3d at 887–88. **C**

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Nevada's Middle Path on Non-Competes: Revise, Don't Rewrite

Offers 1.0 General CLE Credit (NV)

Complete the quiz. Each question has only one correct answer.
Circle the option with the correct answer.

1. **Which of these is not a consideration under NRS 613.195 of whether a restrictive covenant is enforceable?**
   a) Whether the covenant places an undue hardship on the employee.
   b) Whether the restrictions are narrowly tailored to protect the employer's legitimate business interests.
   c) The time length the employee has worked for the employer.
   d) Whether the employee was given appropriate consideration for agreeing to the covenants.

2. **When a Court is considering reasonableness, what is it looking for?**
   a) Geographical restraints that are tied to the markets in which the employer operates.
   b) A reasonable scope of prohibited activities based upon the actual scope of the employee's role with the company.
   c) Evidence to support proposed restrictions as it applies to particular customers, markets, or streams of revenue.
   d) All of the above.

3. **Which of the below would be considered appropriate revision of a restrictive covenant by a judge?**
   a) Adding a term that the Judge thinks the parties forgot.
   b) Tightening up already agreed-to time limitations.
   c) Adding additional categories to the definition of "confidential information."
   d) Adding an additional restraint that the Judge thinks better protects the employer's interests.

4. **True or False:** An employer can enforce a restrictive covenant that is unlimited as to duration of time?

5. **On the question of reasonableness, Nevada court's require a nexus between the employee's former duties and what?**
   a) Their compensation
   b) The protected activity
   c) The employee's title
   d) None of the above

6. **Which of the following is a drafting consideration when you're working on a restrictive covenant:**
   a) Making sure the scope of the restriction is tied to the employee's role at the company.
   b) Tailoring non-solicitation provisions to only apply to customers with whom the employee regularly interacts.
   c) Considering whether all restrictions can be tied to the employer's legitimate business interests.
   d) All of the above.

7. **True or False:** I can ask the Court to blue-pencil a restrictive covenant as long as it was entered into after June 3, 2017.

8. **What time duration is a Court likely to find reasonable?**
   a) 1 year
   b) 3 years
   c) Unlimited
   d) 6 months

9. **Which of the following is statutorily unenforceable as applied to restrictive covenants?**
   a) Applying it to an hourly employee
   b) A duration of 18 months
   c) Employees who are part of a Reduction In Force so long as the employer continues salary, benefits, or severance.
   d) Geographical limitations of 30 miles.

Nevada's Middle Path on Non-Competes: Revise, Don't Rewrite

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				27 SL 7:05PM	28 SL 7:05PM	29 SL 12:05PM
30	31 LV 6:05PM	1 LV 11:05AM	2 LV 7:05PM	3 LV 7:05PM	4 LV 7:05PM	5 LV 12:05PM
6	7 RC 6:45PM	8 RC 6:45PM	9 RC 6:45PM	10 RC 6:45PM	11 RC 6:37PM	12 RC 1:05PM
13	14 A 6:05PM	15 A 6:05PM	16 A 6:05PM	17 A 6:05PM	18 A 4:05PM	19 A 1:05PM
20	21 SL 7:05PM	22 SL 7:05PM	23 SL 7:05PM	24 SL 7:05PM	25 SL 7:05PM	26 SL 12:05PM
27	28 R 6:05PM	29 R 6:05PM	30 R 7:05PM			

MAY

MON	TUE	WED	THU	FRI	SAT	SUN
				1 R 7:05PM	2 R 6:05PM	3 R 1:35PM
4	5 SL 7:05PM	6 SL 7:05PM	7 SL 7:05PM	8 SL 7:05PM	9 SL 7:05PM	10 SL 12:05PM
11	12 A 6:05PM	13 A 6:05PM	14 A 11:05AM	15 A 6:05PM	16 A 4:05PM	17 A 1:05PM
18	19 LV 7:05PM	20 LV 7:05PM	21 LV 7:05PM	22 LV 7:05PM	23 LV 7:05PM	24 LV 12:05PM
25	26 R 6:05PM	27 R 6:05PM	28 R 7:05PM	29 R 7:05PM	30 R 6:05PM	31 R 1:35PM

JUNE

MON	TUE	WED	THU	FRI	SAT	SUN
1	2 A 7:05PM	3 A 7:05PM	4 A 7:05PM	5 A 7:05PM	6 A 7:05PM	7 A 12:05PM
8	9 RC 5:05PM	10 RC 10:05AM	11 RC 5:05PM	12 RC 5:05PM	13 RC 4:05PM	14 RC 10:05AM
15	16 LV 7:05PM	17 LV 7:05PM	18 LV 7:05PM	19 LV 7:05PM	20 LV 7:05PM	21 LV 12:05PM
22	23 RC 6:45PM	24 RC 12:05PM	25 RC 6:45PM	26 RC 6:45PM	27 RC 6:37PM	28 RC 1:05PM
29	30 SL 5:35PM					

JULY

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13	14	15	16	17 LV 5:05PM	18 LV 5:05PM	19 LV 4:05PM
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17	18 A 5:35PM	19 A 5:35PM	20 A 11:05PM	21 A 5:35PM	22 A 5:35PM	23 A 12:35PM
24	25 SL 7:05PM	26 SL 7:05PM	27 SL 7:05PM	28 SL 7:05PM	29 SL 7:05PM	30 SL 6:05PM
31						

SEPTEMBER

MON	TUE	WED	THU	FRI	SAT	SUN
	1 EP 5:35PM	2 EP 11:05AM	3 EP 5:35PM	4 EP 5:35PM	5 EP 5:35PM	6 EP 11:05AM
7	8 RC 7:05PM	9 RC 7:05PM	10 RC 7:05PM	11 RC 7:05PM	12 RC 7:05PM	13 RC 12:05PM
14	15 SL 5:05PM	16 SL 5:05PM	17 SL 5:05PM	18 SL 5:05PM	19 SL 5:05PM	20 SL 12:05PM
21	22	23	24	25	26	27
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AWAY

PCL WEST
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Beyond Billables: How Pro Bono Elevates Big Law

By Eric D. Walther

In large law firms, pro bono work is sometimes viewed with hesitation. With demanding client expectations and internal pressure to meet billable-hour goals, firm leadership may worry that encouraging pro bono participation will detract from revenue-generating work. But this perspective overlooks the meaningful—and strategic—benefits that pro bono engagement brings to clients, attorneys, and the firm as a whole.

A win for clients. For individuals and organizations that cannot afford legal representation, access to a large law firm can be transformative. Big firms bring not only skill and experience, but also the resources and institutional support that many underserved clients would never otherwise encounter. That level of representation can change outcomes and, in many cases, change lives.

A win for attorneys. Pro bono work is equally valuable for the lawyers who handle it—particularly junior attorneys. Because billable matters often involve large teams and narrow roles, early-career lawyers may go years without appearing in court or counseling a client directly. Pro bono cases shift that dynamic. They allow attorneys to take ownership, make strategic decisions, speak in court, negotiate, and develop client-management skills. This hands-on experience accelerates professional development, builds confidence, and reminds attorneys of the human impact of their work—factors that support long-term satisfaction and reduce burnout.

A win for firms. From the firm's perspective, pro bono participation strengthens talent, culture, and reputation. The practical training attorneys receive on pro bono matters translates into stronger advocacy and leadership skills in billable work. Pro bono engagement also enhances recruiting and retention, as today's lawyers increasingly seek workplaces that value purpose and community involvement. And firms that demonstrate a real commitment to public service bolster their standing within the legal community and the communities they serve.

Conclusion. Pro bono work is not a drain on firm resources—it is an investment. It benefits clients who need help, attorneys who gain meaningful experience, and firms that cultivate stronger, more engaged lawyers. When big law champions pro bono service, everyone wins. **C**

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RedPanda Systems can offer a 50% discount on the price of the first month or a 10% discount on monthly pricing for the first 6 months with a signed 1 year or longer contract for managed IT support services to current CCBA members.

Advertise in the *Communiqué*

Support your local bar association!

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*.

Place a display ad in the *Communiqué* to showcase:

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

Request a quote today!

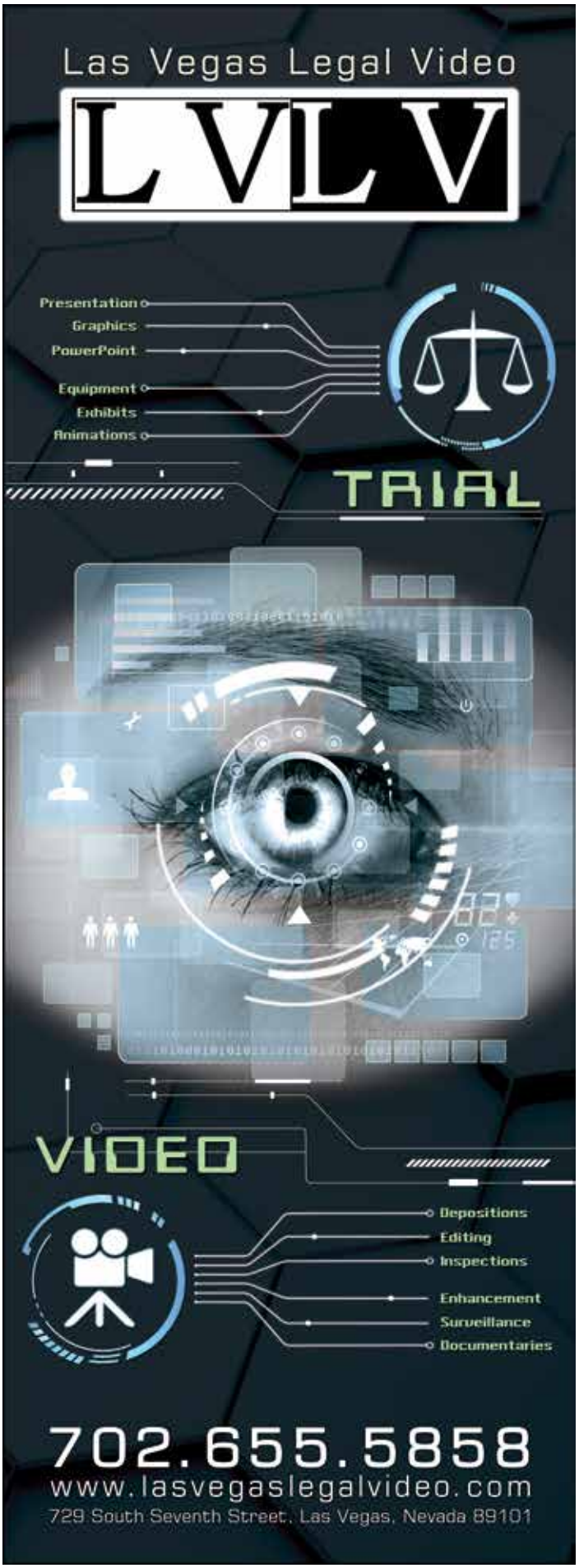
Please include the size, format (color or grayscale), and cover date(s) for your ad placement.

Ask about:

- Discount options
- Added value opportunities
- Design services

Contact:

Stephanie Abbott
Clark County Bar Association
702-387-6011
StephanieAbbott@clarkcountybar.org.



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