

September 2026

Lunchtime CLE Programs

Free for CCBA members Sep. 24 and Oct. 15

See pages 16 and 18



THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

COMMUNIQUE

Discovery

Focusing on

Legal Privileges and Discovery Obligations for Practitioners

See pages 22, 24, 26, 27, 28



COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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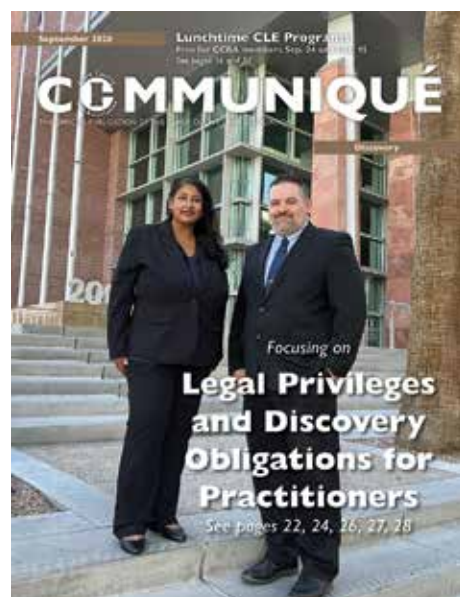
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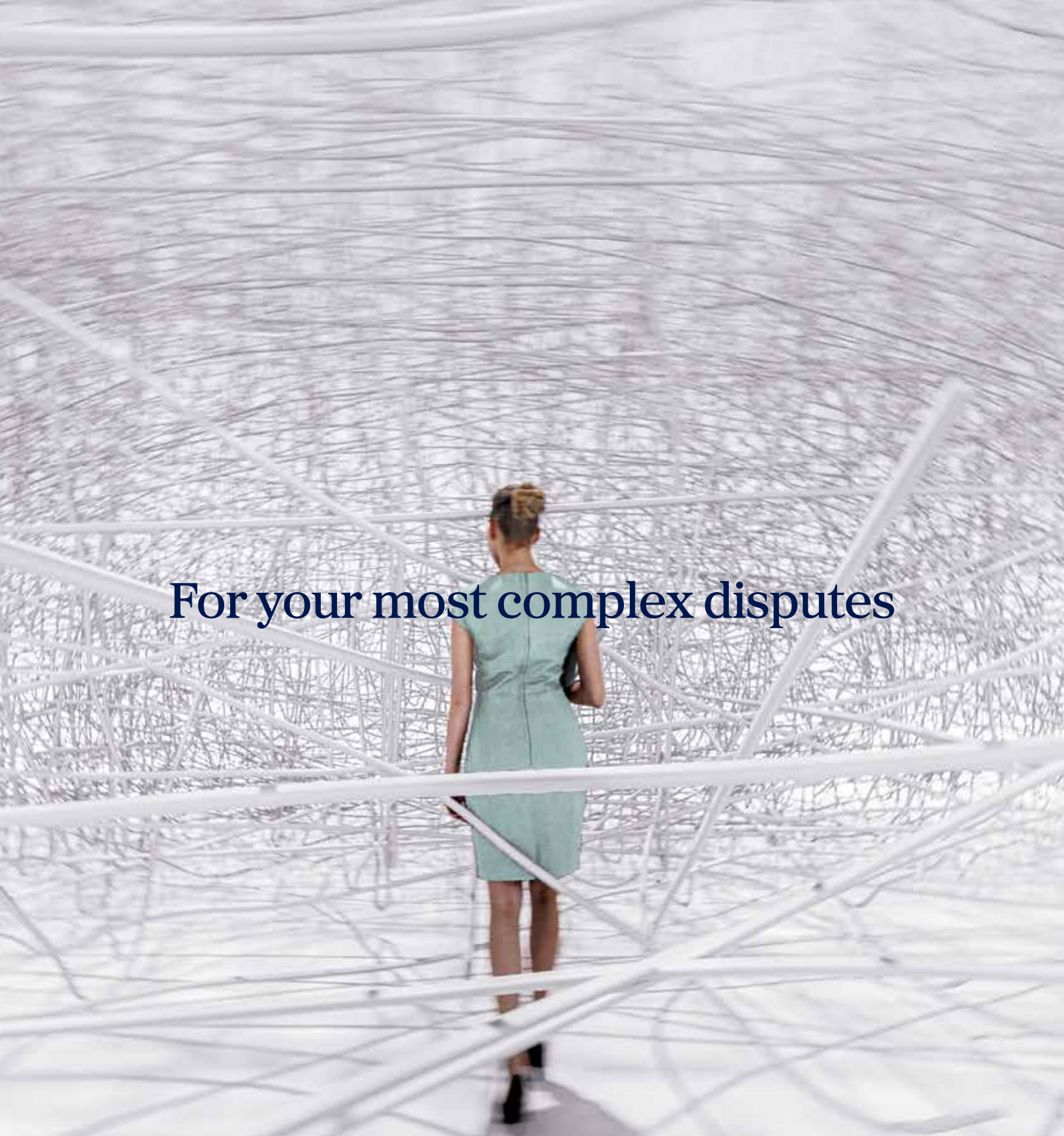
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Communiqué Editorial Calendar

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
August 2026	Land Use Law	7/1/2026
September 2026	Discovery	8/1/2026
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 Services

Advertising Opportunities

Space in the *Communiqué* is available for select businesses to showcase their professional goods, services, and events for Nevada's legal community.

Request a quote today!

Contact: StephanieAbbott@clarkcountybar.org, 702-387-6011.

Bar Activities

Event Calendar

Bar members are invited to attend bar activities

- Sep. 8 Civil Bench-Bar Meeting
- Sep. 9 CLE Committee Meeting
- Sep. 10 New Lawyers Committee Meeting
- Sep. 10 35th Annual Meet Your Judges Mixer
- Sep. 11 Publications Committee Meeting
- Sep. 12 Out of Darkness Suicide Prevention Walk
- Sep. 17 Thai American Bar Association 2026 Gala
- Sep. 18 DICE Meeting
- Sep. 18 Attorney Memorial Service
- Sep. 23 SNAWA Miriam Shearing Gala
- Sep. 24 Lunchtime Learning CLE: Traffic Practice
- Sep. 26 Fifth Annual ¡Andale! 5K Run/Walk
- Oct. 2 Community Impact Committee Meeting
- Oct. 9 Publications Committee Meeting
- Oct. 9-10 UNLV Client Counseling Competition
- Oct. 10 LVNBA Annual Scholarships and Awards Gala
- Oct. 13 Civil Bench-Bar Meeting
- Oct. 15 Judicial Perspectives CLE
- Oct. 16 DICE Meeting
- Oct. 17 Walk to End Alzheimer's®
- Oct. TBA Bar Luncheon Featuring Judicial Candidate Forum
- Oct. 22 Halloween Mixer
- Oct. 28 SLP Salutes Senior Advocates

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

Bar Services

Contact the CCBA

Reach out for information and updates about CCBA activities:

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An Exciting New Era for the CCBA

By James T. Leavitt

Welcome back from your summer! I hope each of you were able to take a minute this summer and get away to refresh your batteries.

Here at the CCBA, this summer has brought major changes to our organization. As many of you know, we sold our building. This was not a brash and sudden decision. For the last year, our board has been examining our organizational structure and our financial condition. We have been looking

at what we need to do to ensure that we remain a viable and effective organization for our members and the legal community as a whole. A big part of that has been examining our costs and evaluating what steps we need to take to continue thriving going forward.

We came to the conclusion that, in order to make the changes that we need to make to ensure that we will be around another 100 years, selling the building was absolutely necessary. Don't get me wrong; we loved our building. However, it was costing the organization nearly \$44,000.00 annually to maintain. This was a cost that made sense prior to COVID-19, when we often held CLEs and events at our headquarters. However, since COVID-19, we have transitioned most of our CLE programs to Zoom and our in-person events to other locations. Additionally, some of the proceeds from the sale are going to allow us to put in place highly necessary upgrades to our membership management software and other tools that we use to benefit our members.

I'd like to thank past CCBA president John Aldrich for helping us with this transition and providing the

CCBA with our new home. Our new location is amazing. We look forward to getting unpacked and kicking off this new era with our amazing upcoming events this fall.

I'd like to thank past CCBA president John Aldrich for helping us with this transition and providing the CCBA with our new home.

Speaking of events, I'm sure that all of you have your tickets to our Meet Your Judges Mixer coming up on September 10th. At our silent auction this year, we will be offering the bottle we purchased for the Wake County Bar Association that we were unable to deliver to them due to

federal and North Carolina statutes (don't worry, we took care of our end of the bet).

I can't wait to see all of you at these events. Thank you all for your continued support as we enter into an exciting new era for the CCBA! **G**

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 Bachelors in U.S. History from UNLV and his Juris Doctorate at the John Marshall Law School in Chicago. James serves as CCBA President through December 2026.

Bar Activities



After Bar Mixer Highlights

On August 6, 2026, the CCBA's New Lawyers Committee held the 9th Annual After Bar Mixer at Johnny CoCo's in the Las Vegas Arts District. The event was for current CCBA members, New Admittees of the Nevada bar (Spring 2026), and Nevada bar exam takers (July 2026). Complimentary food and beverage tickets were made available courtesy of event sponsors Leavitt Legal Services PC, Lewis Brisbois, and Lexitas.

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Bar News

CCBA's New Address

*Update your records
accordingly*

On August 5, 2026, the Clark County Bar Association (CCBA) moved its operations to 7866 W. Sahara Ave., Las Vegas, NV 89117-1944. Please update your records accordingly.

The CCBA is sharing space with Aldrich Law Firm, Ltd., in the Coronado Bay Business Park, on the north side of Sahara Avenue, just west of Buffalo Drive.

The CCBA's phone, fax, and emails remain the same.

For more information, contact the CCBA office at (702) 387-6011.





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Summer Kick-Back Mixer Highlights

On August 13, 2026, the CCBA's Legal Support Professionals Committee held the Summer Kick-Back Mixer at Carlyon Cica Chtd. The event was for current CCBA members. Complimentary food and beverage tickets were made available courtesy of event sponsors Adams & Ham Trial Lawyers, Carlyon Cica Chtd., Leavitt Legal Services, PC, and Michael Wendlberger your Pro Bono Director at LACSN.



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- Bar Luncheons
- CLE Programming

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Civil Bench-Bar Meeting

- **Host:** Eighth Judicial District Court - Civil Department
- **When:** Tuesday, September 8, 2026, 12-1:00 p.m.
- **Where:** Regional Justice Center, Courtroom 14A and Zoom
- **Next meetings:** 10/13/2026, 11/10/2026, 12/8/2026
- **Contact:** EJDCBenchBar@gmail.com

Meet Your Judges Mixer on September 10

All members of Nevada's legal community are invited to attend the CCBA's 35th Annual Meet Your Judges Mixer at AC Element Las Vegas Symphony Park on September 10, 2026. This is a private cocktail reception; no minors allowed. Business casual attire acceptable. Sponsorship opportunities available. All proceeds to benefit the CCBA. All attendees must register with the CCBA in advance. RSVP to the CCBA at clarkcountybar.org or (702) 387-6011. For more information, see page 12.

Out of the Darkness Las Vegas Walk on September 12

All CCBA members are invited to join Team CCBA in the charity walk at Kellogg Zaher Sports Complex on September 12, 2026. Check-in starts at 9:00 a.m. Team CCBA meets up at 9:30 a.m. Event starts at 10:00 a.m.

Funds raised at the Out of the Darkness Las Vegas Walk directly support research, advocacy efforts, and educational programs in schools, workplaces, and communities across Nevada. All donations are 100% tax deductible and benefit the American Foundation for Suicide Prevention (AFSP), funding research, education, advocacy, and support for those affected by suicide.

To join Team CCBA and/or support the American Foundation for Suicide Prevention (AFSP), sign up on the Team CCBA page at <https://afspwalks.donordrive.com/teams/390605>.

Attorney Memorial Service on September 18

Members of the bench and bar are invited to attend a special event to honor Nevada attorneys who have passed on during the last year. The event will be held at the Supreme Court of Nevada, 408 E. Clark Avenue, Las Vegas, on Friday, September 18, 2026. Service starts at 3 p.m. sharp with reception immediately following.

The annual attorney memorial services are produced by the Clark County Law Foundation in conjunction with the Clark County Bar Association, State Bar of Nevada, Eighth Judicial District Court, U.S. District Court, and the Federal Bar Association-Las Vegas Chapter.

For more information, contact Patrick at the Clark County Law Foundation, (702) 333- 8277.

Bar Services

CLE Speaking Opportunities

Bar members are invited to present CLE programs

CCBA members are invited to develop programming for the continuing legal education of Nevada lawyers at live events to be produced and marketed by the CCBA.

The live programs are often recorded for use in the CCBA's audio/visual library.

Live and recorded programs are made available to attend by Nevada lawyers and their legal support staff for a fee to benefit the CCBA.

For more information, contact Donna at (702) 387-6011 and send a proposal to donnaw@clarkcountybar.org.

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Traffic Practice CLE Free for CCBA Members on September 24

On September 24, 2026, Las Vegas Justice Court Judge Diana Sullivan, Hearing Commissioner Daniel Westmeyer, and Assistant Court Administrator Will Jimenez will make a special presentation for the continuing legal education of Nevada lawyers.

The panel of speakers will present “Traffic Practice in Las Vegas Justice Court” during a lunchtime learning program produced by the Clark County Bar Association and sponsored by Las Vegas Legal Video and Adams & Ham Trial Lawyers.

During the presentation, the panelists plan to address topics relevant to handling matters relevant to practice in traffic court including:

- Traffic case classifications
- From citation to court
- Administrative Order 24-04, deficient citation scenarios
- 1:30 PM Criminal traffic calendar
- Civil infraction contested hearings
- Reducing moving violations to non-moving violations on civil infractions (SB 359)
- Best practices for attorneys

The presentation will be held via Zoom from 12:00 to 1:15 p.m. on Thursday, September 24, 2026. Attendance to this live webcast is free for CCBA members.

RSVP to attend

To attend the live webcast, CCBA members will need to RSVP to the CCBA by September 22, 2026. To RSVP, complete the RSVP form at clarkcountybar.org or contact Donna Wiessner at donnaw@clarkcountybar.org or (702) 387-6011. All RSVPs must be made to the CCBA at least 48 hours before the event starts. The Zoom link will be sent to registrants the day before the live webcast.

Member benefit

Pricing of the live webcast event is included with the 2026 CCBA membership. CCBA membership will be verified upon RSVP. During the event, attendance will be taken, and only those Nevada lawyers in attendance will have their attendance reported to Nevada’s Board of Continuing Legal Education at no extra cost.

The event will be recorded for use in the CCBA’s audio/visual library. The recorded versions of the program will be offered for rental use at a small fee (to cover administrative costs).

For more information about the CCBA’s CLE programming and other member benefits, contact Donna at donnaw@clarkcountybar.org or (702) 387-6011.

CLE Program

Traffic Practice in Las Vegas Justice Court

September 24, 2026
12:00 p.m. – 1:15 p.m.
Online via Zoom

Panelists



Judge Diana
Sullivan



Commissioner
Daniel
Westmeyer



Asst. Court
Administrator
Will Jimenez

Learn more/RSVP:
clarkcountybar.org

CLE Programming Sponsors:



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To request an invoice or more info, please contact Yrene Chavez:
702-386-0404 Ext. 145 or ychavez@nevadalegalservices.org



Judicial Perspectives CLE Free for CCBA Members on October 15

On October 15, 2026, a panel of judges from the Eighth Judicial District Court in Clark County, Nevada, will make a special presentation for the continuing legal education of Nevada lawyers during a special in-person event at the Regional Justice Center.

“Judicial Perspectives: Credibility from the Bench – What Persuades Nevada Judges” is a CLE program co-hosted by the Clark County Bar Association and South Asian Bar Association-Las Vegas and sponsored by Adams & Ham Trial Lawyers.

Featured panelists:

- Judge Carli Kierny
- Judge Bitu Yeager
- Judge Colleen Brown
- Judge Jacob Reynolds
- Judge Tina Talim

The panel will be moderated by Sagar Raich, Esq. of Raich Law. The CLE program will be held in Courtroom 14A inside the Regional Justice Center at 200 Lewis Ave. in downtown Las Vegas. Check-in and networking is from 11:30 a.m. to 12:00 with the CLE presentation to be made from 12:00 to 1:15 p.m.

This CLE program is complimentary to all members of the State Bar of Nevada and current law students at the UNLV William S. Boyd School of Law.

Space will be limited to those who RSVP with the CCBA before September 22, 2026. Lunch will be sponsored by the CCBA for the first 50 attendees.

Course description

This CLE program will offer a candid, practical conversation with Nevada judges about one of the most important—and least formally taught—aspects of advocacy: credibility. Rather than focusing on courtroom “dos and don’ts,” the program will give attorneys insight into how judges experience and evaluate lawyers in the courtroom and what makes an advocate persuasive and trustworthy.

The program will be structured as an interactive bench conversation rather than a traditional lecture, with candid discussion among the judges, practical examples, rapid-fire questions, and audience Q&A.

Discussion topics:

- Building credibility with the court – How preparation, candor, professionalism, judgment, and respect shape a judge’s confidence in an attorney.
- What judges find persuasive – Effective oral advocacy, knowing the record and the law, addressing difficult facts, answering questions directly, and knowing when enough has been said.
- How lawyers lose credibility – Overstating the law or record, avoiding difficult questions, failing to acknowledge adverse authority, unnecessary conflict with opposing counsel, and other common mistakes.

CLE continued on page 20

Bar Services

Nevada Ballet Ticket Special Offers

The CCBA will get a limited number of VIP level seats for select performances of the Nevada Ballet Theatre.

CCBA members are invited to request the use of the CCBA’s ballet tickets!

Carmina Burana:

Sat. 10/3/2026 (7:30pm)

The Nutcracker:

Fri. 12/18/2026 (7:30pm)

Sat. 12/19/2026 (2:00pm)

Send requests via email to CCBA Executive Director Donna Wiessner at Donnaw@clarkcountybar.org.

If there are no more tickets available from the CCBA, please make plans to enjoy the Nevada Ballet Theatre presentations!

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*Restrictions apply. For more information, see clarkcountybar.org or call (702) 387-6011.

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Featuring NBT Company Artists. Photo by Virginia Trudeau.

CLE continued from page 18

- Handling mistakes and difficult moments – What judges expect when an attorney does not know an answer, makes an error, faces a difficult question, or receives an unfavorable ruling.
- Professionalism as advocacy – Why interactions with opposing counsel, courtroom staff, clients, and the court can affect an attorney's professional reputation.
- The reputation effect – How credibility develops over time, what judges remember about attorneys, and how an attorney's reputation can influence future courtroom interactions.
- Perspectives from the bench – Judges will share practical observations about what newer lawyers often underestimate, what distinguishes effective advocates, and what they wish attorneys understood earlier in their careers.

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To RSVP, complete the RSVP form at clarkcountybar.org or contact Donna Wiessner at donnaw@clarkcountybar.org or (702) 387-6011. All RSVPs must be made to the CCBA at least 48 hours before the event starts.

CLE reporting included

This CLE program offers 1.0 general CLE credit for Nevada lawyers. During the event, attendance will be taken, and only those Nevada lawyers in attendance will have their attendance reported to Nevada's Board of Continuing Legal Education at no extra cost. Note: This CLE program will not be webcast or recorded; an alternative format will not be available.

For more information, contact Donna at donnaw@clarkcountybar.org or (702) 387-6011.

Court News

Public Notice: Reappointment of U.S. Magistrate Judge Brenda Weksler

The current term of United States Magistrate Judge Brenda Weksler is due to expire on April 30, 2027. The United States District Court, District of Nevada, is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge for another eight-year term.

The duties of a magistrate judge include the following: (1) conduct preliminary proceedings in criminal cases; (2) conduct trial and disposition of misdemeanor cases; (3) conduct various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; and (4) conduct trial and disposition of civil cases upon consent of litigants.

Comments from members of the State Bar of Nevada and the public are invited as to whether Magistrate Judge Brenda Weksler should be recommended by the panel for reappointment by the Court. Comments can be emailed to Debra Kempf, Clerk of Court at: comments_magistrate@nvd.uscourts.gov. Comments must be received no later than September 30, 2026.

CLE Program

Judicial Perspectives: Credibility from the Bench – What Persuades Nevada Judges

October 15, 2026

11:30 a.m. – 1:15 p.m.

**Regional Justice Center,
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Panelists



Judge Carli
Kierny



Judge Bitia
Yeager



Judge Colleen
Brown



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What's New in Discovery

By Discovery Commissioners Erin Lee Truman and Adam Ganz

In October 2021, the Eighth Judicial District Court's Discovery Commissioners (Truman and former Commissioner Jay Young) published "Wanna Stay Out of Trouble in Discovery?"—a practical guide addressing recurring discovery issues and how practitioners could avoid them. Five years later, the discovery landscape has evolved, some familiar problems persist, and new issues have emerged. So, we thought it was time for an update and have written: "Stay Out of Trouble in Discovery 2.0" The full article will be available on the Discovery Department's website, a readily accessible reference for Nevada practitioners confronting these issues. See <https://www.clark-countycourts.us/departments/discovery/>.

Among the topics addressed are the affirmative initial disclosure obligations imposed by NRCP 16.1, including claims file materials, surveillance evidence, and applicable insurance information. The article also revisits the obligations that exist before a discovery objection is asserted, as well as the reasonable inquiry and certification requirements imposed by NRCP 26(g).

A substantial portion addresses stipulated protective orders and NRCP 26(c). The focus is not whether legitimately confidential information should be protected, but the procedure required to obtain that protection. When otherwise discoverable information is withheld pending execution of a stipulated protective order, who

bears the burden of acting? The article examines Nevada authority—including *Ballard v. Eighth Judicial Dist. Court*, 106 Nev. 83 (1990), *Columbia/HCA Healthcare Corp. v. Eighth Judicial Dist. Court*, 113 Nev. 521 (1997), and *Keolis Transit Services, LLC v. Eighth Judicial District Court*, 138 Nev. 71 (2022)—and discusses the obligation of the party seeking confidentiality to identify the information at issue, establish the basis for protection, and timely invoke NRCP 26(c) when necessary.

We also address developments affecting current discovery practice, including Administrative Order 22-08 Regarding Deposition Behavior and the Supreme Court of Nevada's decision in *Powers v. Eighth Judicial District Court*, 142 Nev. Adv. Op. 35 (2026), finding NRS 629.630 (regarding physical and mental examinations) unconstitutional.

Finally, for family law practitioners, the article has a specific section related to common errors when filing discovery motions. Specifically, it examines the new EDCR 5.402 amended by Administrative Order 24-0612, including its robust meet-and-confer requirements and Section (g)'s requirement that a "request or motion to compel further answer to any written discovery must set forth in full the interrogatory or request and the answer or answers thereto." Lastly, it includes a practical guide to drafting a Discovery Commissioner's Report and Recommendations to prevent multiple requests for rewrites

... [W]e thought it was time for an update and have written: "Stay Out of Trouble in Discovery 2.0." The full article will be available on the Discovery Department's website, a readily accessible reference for Nevada practitioners confronting these issues.

by the Department.

We encourage practitioners to review the full article and use it as a practical reference when preparing disclosures, responding to discovery, meeting and conferring, and presenting the disputes that genuinely require judicial resolution. **C**

Erin Lee Truman was appointed as the ADR Commissioner for the Eighth Judicial District Court in 2017; in 2019 she added Discovery Commissioner to her duties. Prior to joining the court, Erin litigated civil cases for 25 years, most recently with the law firm of Hutchison & Steffen, LLC. She also served as an arbitrator, mediator, and short trial judge for the court and was a neutral, practicing as a private mediator with Bongiovi Dispute Resolution. Erin graduated from J. Reuben Clark Law School in 1991.

Adam Ganz, a lifelong Nevada resident, graduated from the University of San Diego Law School in 1998. He has over 25 years in civil litigation, represented thousands, and volunteered with the Children's Attorney Project. In 2022, he earned his LL.M. from Pepperdine and became the ADR/Discovery Commissioner in 2023. He recently was elected and will be serving as the next Eighth Judicial District Court Judge in Department 13, beginning January 2027.

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Protected or Produced? Understanding Legal Privileges in Litigation

By Jennifer L. Braster

With minimal exception, when a party is involved in a lawsuit, the party is required to disclose to the other side those documents and information that are relevant to a claim or defense in the lawsuit. A key exception to this rule is whether a document or piece of information is privileged, and if so, whether that privilege serves as an absolute bar to the disclosure of otherwise relevant information and documents. Many litigants are familiar with the attorney-client privilege (for communications between an attorney and client) and work product doctrine (for documents prepared in anticipation of litigation), but other privileges, such as accountant-client and marital privilege, and exceptions to those privileges may also impact the disclosure of relevant information and records.

Nevada has codified its privileges in Nevada Revised Statutes Chapter 49. Importantly, Chapter 49 not only sets forth the privileges recognized in Nevada but also their exceptions. For example, NRS 49.095 defines the attorney-client privilege as follows: “A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications” between the client and attorney “[m]ade for the purpose of facilitating the rendition of professional legal services to the client.”

The statute also provides for five exceptions to the attorney-client privilege: (1) seeking the services of the lawyer to aid in a crime or fraud; (2) between parties per-

taining to the same deceased client; (3) pertaining to a breach of the lawyer’s duty to the client; (4) concerning documents the lawyer is attesting to as a witness; and (5) relating to a common interest between the clients. NRS 49.115.

The Supreme Court of Nevada has recently reaffirmed that privileges should be “interpreted and applied narrowly.” *Canarelli v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 136 Nev. 247, 252, 464 P.3d 114, 120 (2020) (quoting *Clark Cty. Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)). That being said, a party needs some degree of certainty as to whether communications will be protected or not, and the Supreme Court of

A key exception to this rule is whether a document or piece of information is privileged, and if so, whether that privilege serves as an absolute bar to the disclosure of otherwise relevant information and documents.

Nevada has made it clear that it will not read in additional exceptions to privilege.

For instance, the court in *Canarelli* addressed whether or not a fiduciary exception to the attorney-client privilege, which would prevent a trustee from asserting privilege in a dispute with trust beneficiaries, will be recognized. The court very clearly answered no, reasoning that the legislature has already identified the five exceptions, and it will not create a sixth one by “judicial fiat.” 136 Nev. at 254, 464 P.3d at 121.

The *Canarelli* court did clarify that a document may be protected by the attorney-client privilege even if the actual document is not provided by the client to the attorney. The attorney-client privilege protects internal notes prepared by a client, even if not physically delivered

to the attorney, so long as the content of the notes was previously or is thereafter communicated with counsel. *Id.* at 252, 464 P.3d at 120. Further, while facts are not privileged, facts that a party communicates in order to obtain legal advice are privileged. *Id.* at 253, 464 P.3d at 121.

As with the attorney-client privilege, there are exceptions to the application of the work product doctrine (as well as exceptions to the applications of other privileges), emphasizing the importance of knowledge of not only the privileges but their exceptions. For example, with regard to the work product doctrine, NRCPC 26(b)(3)(A) provides that a party may obtain disclosure of a document otherwise protected by the work product doctrine if the party demonstrates "it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." Thus, like the attorney-client privilege, the work product doctrine is not absolute.

Other privileges may also preclude disclosure of relevant information, and litigants must familiarize themselves with these privileges to avoid inadvertent disclosure of privileged communications and/or potential waiver of the privilege due to such disclosure. For instance, communications between an accountant and client for the

purpose of obtaining accounting services are also privileged. *See* NRS 49.185. Like the attorney-client privilege, there are also several exceptions set forth in NRS 49.205, including the crime-fraud exception and common-interest exception that apply to attorney-client communications as well.

The Nevada legislature has also enacted numerous other privileges, including, but not limited to, psychologist-patient privilege, doctor-patient privilege, marriage and family therapist-client privilege, victim's advocate-victim privilege, clergy privilege, and marital privilege. *See* NRS 49.209, 49.225, 49.246, 49.2546, 49.255, and 49.295. The breadth of NRS Chapter 49 demonstrates the need to ensure that all documents and information produced in litigation are not covered by a privilege, as it is very difficult, if not impossible, to unring the bell. **G**

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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Discoverability of AI Data: Lessons from the *OpenAI Litigation*

By Jane Susskind

Lawyers now routinely use generative AI (“GenAI”). And because we’re lawyers bound by ethical rules, we approach GenAI use with healthy paranoia. We’re aware of the risks and take measures to protect our clients’ confidential information. Our clients are using GenAI, too, usually when litigation is nowhere on the horizon. Understandably, they might not be thinking about how their prompts and outputs could surface in discovery.

That leaves the discovery questions to us. Are prompts and outputs discoverable under standard discovery rules? What about other AI-generated materials, like notetaker transcripts and meeting summaries? And how should we counsel clients on the use and preservation of GenAI data? These questions are far from settled, but some courts have weighed in.

In re OpenAI, Inc., Copyright Infringement Litigation (“*OpenAI Litigation*”), a multidistrict litigation alleging that OpenAI used copyrighted materials without permission to train its models, is one of the leading cases on this topic. There, Magistrate Judge Wang ordered OpenAI to produce millions of ChatGPT logs, including prompts and outputs, and denied OpenAI’s motion to reconsider that order. *OpenAI Litigation*, No. 25-md-3143, 2025 WL 3468036 (S.D.N.Y. Dec. 2, 2025); *see also OpenAI Litigation*, 2026 WL 21676 (S.D.N.Y. Jan. 5, 2026) (overruling objection and affirming order compelling production). After analyzing the motion under traditional discovery principles, the court found the logs were relevant and proportional to the needs of the case, and any privacy concerns were mitigated by anonymizing the logs and the protective order. But in an earlier ruling in the same case, Magistrate Judge Wang *denied* a motion to compel the New York Times to produce logs reflecting its own GenAI use. *OpenAI Litigation*, 800 F. Supp. 3d 602 (S.D.N.Y. 2025). The New York Times argued that it would need to review over 80,000 log entries,

which the court estimated would take over 1,300 hours and “cost upwards of \$1 million for the privilege review alone.” *Id.* at 612. The court found that the logs were not relevant to the central issue in the case, but even if they were, production would not have been proportional to the needs of the case.

Takeaways

Courts are treating GenAI like any other category of electronically stored information (“ESI”), so we should, too.

- Talk to clients about their GenAI use before a dispute, not after a discovery request.
- Explain to clients the importance of identifying which custodians use GenAI, which tools (including not only chatbots, but also notetakers and drafting assistants that sometimes run in the background), and where that data is stored.
- Amend your litigation hold letters to expressly address GenAI and preservation obligations related to chat histories.
- Broach the topic of GenAI data with opposing counsel early on and consider defining “Generative AI Data” in your ESI protocol.

While not an exhaustive list, these steps should put you in a better position when GenAI becomes an issue later in the case. **G**

Jane Susskind is a member of McDonald Carano’s Commercial & Complex Litigation Practice and Appellate Practice. She is Co-Chair of McDonald Carano’s AI Task Force and has completed the “Generative AI for the Legal Profession” course provided by the Berkeley Law Executive Education program. Before joining McDonald Carano, Jane served for over two years as a judicial law clerk for Supreme Court of Nevada Justices Ron Parraguirre, Elissa Cadish, and Mark Gibbons.



Proportionality and the Need for Precision When Conducting Discovery in 42 U.S.C. § 1983 Cases

By Leo Hendges

Civil rights litigation pursuant to Section 1983 can take many forms including claims against local municipal agencies (*Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978)), individual state employees for monetary damages based on their personal actions (*Hafer v. Melo*, 502 U.S. 21 (1991)), or state employees in their official capacities for prospective injunctive relief only (*Kentucky v. Graham*, 473 U.S. 159 (1985)).

When conducting discovery in a Section 1983 case it is important to think about the type of suit at issue and the proportionality of the request as outlined in Nev. R. Civ. P. 26(b)(1) and Fed. R. Civ. P. 26(b)(1).

With a *Monell* claim, policies and procedures of a local governmental agency are at issue, but there is no *respondeat superior* liability; rather, the claim is against the municipality itself. *Monell*, 436 U.S. at 690-95. This could make portions of the agencies' employment files relevant to establish, for instance, a failure to train or supervise employees. However requests for employment files need to be proportional to the needs of the case. Requests for the entirety of a non-party municipal employee's employment file will generally lack proportionality because that file likely contains irrelevant information about the employee, such as his or her salary, any family support obligations, FMLA requests, etc.

When requesting employment files for a *Monell* claim, or responding to a request, the parties can help avoid discovery motion practice by proactively entering into a stipulated protective order providing confidentiality for any documents that are eventually produced. Nev. R. Civ. P. 26(c) and Fed. R. Civ. P. 26(c). It is also helpful to limit production requests to specific portions of an employment file which might produce records relevant to the issue in the case, and when declining to produce records on relevance and proportionality grounds providing specific context explaining why any information has been withheld.

A claim against an individual state employee in their personal capacity often brings requests for production of that employee's prior disciplinary history. Any such request must be limited, however, because evidence of prior bad acts is generally inadmissible to prove that a person acted in a particular way on a particular occasion. Fed. R. Evid. 404(b); *Hirst v. Gertzen*, 676 F.2d 1252, 1262 (9th Cir. 1982). In this circuit, there is a narrow construction of the "modus operandi" exception for prior bad acts with a very close similarity to the conduct sought to be established. *Hirst*, 676 F.2d at 1262. Making sure the parties are clear about limitations of what is being requested, and produced, helps to avoid disputes about information that goes outside the scope of this limited exception.

Finally, when seeking prospective injunctive relief, a party must establish standing by showing they are likely to suffer future injury in the absence of the requested injunctive relief. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). To maintain proportionality, discovery requests need to be tightly focused on specific policy manuals and records of past complaints to establish a clear pattern of practice.

Placing an emphasis on proportionality when drafting discovery requests or responses will help to avoid discovery motion practice and allow the parties to focus on the merits of the claims being raised in any specific civil rights case filed pursuant to Section 1983. **●**

Leo Hendges is of counsel at Cooper Levenson. He focuses his practice on defense litigation. Leo handles civil defense matters, including employment-related disputes, premises liability, wrongful death claims, and other complex personal or professional liability cases. He graduated from Albany Law School and is admitted to practice law in New York, Michigan, and Nevada.



Probate Peculiarities: Discovery in Trust and Estate Proceedings

By Alan Freer and Jeffrey Luszeck

Attorneys new to trust and estate litigation often assume the Nevada Rules of Civil Procedure (NRCP) control discovery in matters arising under Nevada Revised Statutes (NRS) Titles 12 and 13. NRS Chapter 155 and the Eighth Judicial District Court Rules (EDCR) displace the NRCP in specific ways that practitioners need to track.

Discovery begins upon filing of a proceeding and service of the notice of hearing

Under NRS 155.170(1), an “interested person” in matters initiated under Titles 12 and 13 may “obtain discovery, perpetuate testimony or conduct examinations in any manner authorized by law or by the Nevada Rules of Civil Procedure . . .,” upon filing of a proceeding and service of the notice of hearing to the other interested persons.

Although an interested party is not required to attend and/or file an early case conference report prior to conducting discovery, *see* NRS 155.170(2), a probate commissioner or probate court judge, in Clark County, *may* set deadlines provided for under NRCP 16 and 16.1 as deemed necessary based on the nature and scope of the issues to be determined at the evidentiary hearing. *See* EDCR 4.17(c).

Who hears the discovery dispute?

“In contested matters before the probate commissioner, all discovery disputes must first be heard by the probate commissioner, the probate commissioner’s designee, or a special master approved by the parties, unless otherwise ordered by the probate judge” (EDCR 4.18(a)), while all discovery disputes in contested matters before the probate judge must first be heard by the discovery commissioner. *See* EDCR 4.18(b).

Motion practice and timing

A discovery motion filed with the discovery commissioner (*see* EDCR 2.34(d)) or probate commissioner (*see* EDCR 4.18(3)), must contain “an affidavit of moving counsel [] setting forth that after a discovery dispute conference or a good faith effort to confer, counsel have been unable to resolve the matter satisfactorily.”

Although motion practice in matters initiated under Titles 12 and 13 can generally be heard on ten-day notice (*see, e.g.,* NRS 155.010(a)), discovery motions are rarely, if ever, heard on ten-day notice.

Report and recommendations, and objections thereto

Irrespective of who hears the discovery dispute (*i.e.,* the discovery commissioner or probate commissioner) a report and recommendation will issue. Following the hearing of any discovery motion, the discovery commissioner must file a report with its recommendations. *See* EDCR 2.35(f). The probate commissioner will also file a report with its recommendations (*see* EDCR 4.05(b)), *unless* the parties stipulate to immediate entry of an order on the recommendations. *See* EDCR 4.05(d). The time-frame to object to a report and recommendation entered by the discovery commissioner or probate commissioner is 14 days. *See* EDCR 2.34(f)(1) and EDCR 4.06(1).

Although the language in EDCR 2.34(f)(2) and 4.07(c) differ slightly, upon receipt of a discovery commissioner or probate commissioner’s report, the court shall either affirm, reverse, or modify the ruling and/or remand the matter to the respective commissioner for further action. **■**

Jeffrey P. Luszeck and Alan D. Freer are members of Solomon, Dwiggins, Freer & Steadman, Ltd. where they focus their practice primarily on trust and estate litigation. Mr. Luszeck serves as Co-Chair of the Probate and Trust Section’s Legislative Committee.



Re-discovering Pro Bono

By Jenifer Lissett

Imagine a child, just removed from their home. They now face a court that will decide where they belong. But the child cannot begin to achieve stability until an attorney is appointed to represent the child's wishes. Legal Aid's Children's Attorney Project fills that role for many children, but not all of them. Where a conflict exists, Legal Aid can't step in. So a child who has already lost their home is left with no one to speak for them.

That's the gap I spent my summer trying to close.

I came to it as this year's Melanie Kushnir "Access to Justice" fellow. My task was simple: re-engage former *pro bono* attorneys—lawyers who had shown up before, and might again. More and more of our most vulnerable community members need representation, and there are not enough hands to go around. So I emailed, called, and pitched in person. Behind every ask sat the same image—a child who cannot voice their wishes without a lawyer.

Some attorneys took on a case right away. It seemed as though they were waiting to be asked again. Other attorneys hesitated. They were busy. They worried the work sat outside their practice. I understood. *Pro bono* can feel like one more thing in an already full day. But then something would shift. They remembered a case or remembered why they went to law school. Then, they said, "Yes."

That was the part I hoped for. This work is not only about filling a gap. It is about reminding attorneys of all kinds of advocacy the law encompasses. One child, one voice, and one hearing where someone finally speaks for them. That is not a small thing. Not to that child, or to our community.

It is easy to forget the impact a *pro bono* matter has in the rush of a busy life. Re-discovering it takes only one case. If you have ever taken a *pro bono* matter, you already know the feeling. If you have not, there is a child waiting for you, too.

To re-discover *pro bono*, visit <https://www.lacsnprobono.org/volunteer-attorneys/available-cases>. 

Jenifer Lissett is a 2L at the William S. Boyd, School of Law. She served as the 2026 Melanie Kushnir "Access to Justice" Fellow. She is an active member of the Boyd Law community, serving on the board of the Criminal Law Society and as a Boyd Ambassador.

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