COMMUNIQUÉ
THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION SEPTEMBER 2017

Legislative Update

Learn from Justice of the Peace Melissa Saragosa:
New Legislation Affecting Las Vegas Justice Court
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Gaming law
by Kate Lowenhar-Fisher, Greg Gemignani, Jennifer Gaynor, and Jeff Silver of Dickinson Wright PLLC
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CLE Seminars
Nevada Bar Examination (E-Z Form)
Pro Bono Corner
Senior Law Project News
Attorney Memorial Service
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Considering Changes from Nevada’s 79th Legislative Session

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Animal law
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Court practice, procedure for EJDC Civil Bench-Bar by Jacquelyn Franco of Stephenson & Dickinson, PC
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Employment law
by Aviva Gordon of Gordon Law
See page 30.
A deposition should be smooth – no matter how many bumps arise. So we micromanage the process, from the right location to the right reporter to accessing the right technology.

With 40+ locations across the country and support in 25 countries, we’ll get your deposition right anywhere from Cairo, Egypt, to Cairo, Georgia.

For you, it’s less stress. For your case, odds of a better outcome. Come see how we do depositions differently.
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Cover
Authors from this issue gathered in the lobby at the Grant Sawyer State Office Building for this group photo. Pictured from left to right are Kate Lowenhar-Fisher, Greg Gemignani, Jennifer Gaynor, Jeff Silver, Jeffrey Luszeck, Jennifer Braster, Alan Freer, Jacquelyn Franco, and Aviva Gordon. Photo by Steph Abbott.
YOUR TIME MATTERS.

That’s why we deliver a world of resources through a real relationship focused on you and your business.

We are relationship-focused and highly responsive, bringing you deep local roots, expert bankers, access to decision makers, flexible solutions and a real commitment to superior service. All part of Western Alliance Bancorporation, one of the country’s top-performing banking companies, which ranks #4 on the Forbes 2017 “Best Banks in America” list.

MEET YOUR LOCAL BANKING EXPERT:

Jeff Miracle
Loan Officer
Direct Line: 702.252.6127
JMMiracle@bankofnevada.com
Good News from Southern Nevada Senior Law Program

By Elana Graham, Esq.

Southern Nevada Senior Law Program (SNSLP) has been providing free, quality legal services to Southern Nevadans 60 and over for almost forty years. For the last five years, SNSLP has been a 501(c)(3) Nevada non-profit corporation. During these five years, housing has been generously provided by the Downtown Project; this housing gift ends September 30, 2017.

SNSLP is excited about providing its own housing and is raising funds for new housing of approximately 5,000 to 7,000 square feet. SNCLP would appreciate the donation of an appropriate building, long term lease, or building lot. A Las Vegas location is required, but not necessarily in the downtown area.

Please help!

Your donations over the years have made a difference and are greatly appreciated; now you can make a housing donation. This opportunity can make a difference in your life as you help seniors and can make a difference in the lives of seniors, too. Please make an important difference!

We accept cash, checks, and credit cards. Please join us in our important work solving legal issues, large and small, for seniors in Clark County.

Please contact Sugar Vogel, Executive Director, svogel@snslp.org or Elana T. Graham, Deputy Director, egraham@snslp.org or by calling (702) 229-6645.

Elana Graham Esq. is past president for both the State Bar of Nevada and the Clark County Bar Association. She earned her J.D. at Willamette University College of Law, and was admitted to the NV Bar in 1988. Elana serves as the Deputy Directory of the Southern Nevada Senior Law Program.

SPECIAL EVENT

Attorney Memorial Service
Friday, September 15, 2017
3:00 p.m.
Reception to immediately follow.
Lloyd D. George
U.S. Courthouse
Courtroom 6B
This annual service is a project of 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 Federal Bar Association-Las Vegas Chapter.

Contact: Patrick Montejano, (702) 333-8277 or director@clarkcountylawfoundation.org.
Guardianship Practice: Significant Changes & Updates

A continuing legal education program produced by Clark County Bar Association CLE Committee Chair Rob Telles

Date & Time: Wednesday, September 20, 2017 1:00-2:30 p.m.

Location: Depo International Mock Trial Courtroom 703 S. 8th Street Las Vegas, NV 89101

CLE Credits: 1.5 General CLE Credits available for Nevada lawyers

Event Registration Form:

<table>
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<tr>
<th>Name:</th>
<th>Phone #:</th>
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<td>E-mail:</td>
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<td>Firm/Co.:</td>
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<td>Billing Address:</td>
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<td>City, State, &amp; Zip Code:</td>
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Fee:
- $35/CCBA Member – Attorney, Judge, or Merchant
- $20/CCBA Member – Legal Admin., Legal Assist., or UNLV Law Student
- $50/Non-Member – Attorney, Judge, or Merchant
- $25/Non-Member – Legal Admin., Legal Assist., or UNLV Law Student

All reservations to CCBA events must be pre-paid. To guarantee seating, all reservations MUST be received at least 72 hours prior to the seminar. To receive a full refund for cancellations, a written request must be made to CCBA 72 hours prior to the seminar. Without prior registration, event walk-ins will be charged an extra $15 over the individual price.

Featured Speakers:

Attorney
Elizabeth Brickfield
Dickenson Wright PLLC

Attorney
Dara Goldsmith
Goldsmith & Guymon, PC

Elizabeth Brickfield practices law related to, probate, guardianship matters, estate planning & administration, trust litigation, and taxation.

Dara Goldsmith practices law related to elder law, probate, guardianship matters, estate planning & administration, trust litigation, taxation, business planning, and liquor licensing.

Type of Payment:
- I want to pay using my 2017 CCBA CLE Passport
- I want to purchase a 2017 CCBA CLE Passport ($200) and to use it to pay for this seminar
- Check or money order is enclosed
- I will call CCBA with my credit card information
- I authorize the CCBA to charge my credit card (circle one):
  - Mastercard VISA
  - AMEX

Name of card holder: ____________________________
Credit Card #: ____________________________
Expiration date: ______ Phone #: ______
Authorized Signature: ____________________________

Send registration & payment to Clark County Bar Association Office: 717 S. 8th Street, Las Vegas, NV 89101 Mailing: P.O. Box 657, Las Vegas, NV 89125 Phone: 702-387-6011. Fax: 702-387-7867. Web: ClarkCountyBar.org

NOTE: Do not send credit card details to CCBA via e-mail.
The June/July issue is published in June. There is no publication released in July.

Space reservations are encouraged at least two months in advance. Space is limited with placement only guaranteed to paid advertisements. The deadline for submission of all content is 30 days prior the first day of the desired month of publication.

Communiqué will not publish self-serving articles promoting a specific named product or services of an individual or firm. The editorial calendar may change without notice at any time.

**ADVERTISING OPPORTUNITIES**

Space is available for paid announcements of professional achievements, goods, and services. Rates, policies, and specifications are available upon request.

**ARTICLE OPPORTUNITIES**

To write an article for publication, send a proposal via e-mail to stephabbott@clarkcountybar.org. Proposals should include the following information:

- Author(s) name(s) and Nevada bar #
- Summary paragraph providing the focus and scope for the article (include relevant rules/statutes/procedures, etc.)
- Proposed issue for placement (see editorial calendar above)

All proposals and articles submitted will be considered for publication. However, Communiqué will not publish self-serving articles promoting a specific named product or services of an individual or firm. Articles must be on topic and original, unpublished works. Preference will be given to articles written by attorney members of the CCBA.

Contact the Clark County Bar Association to confirm availability of placement, graphic design services, and discounts.

Clark County Bar Association
717 S. 8th Street
Las Vegas, NV 89101
Phone: (702) 387-6011
stephabbott@clarkcountybar.org
Volunteers Needed

Downtown Cultural Series

Jury Assembly Room
Lloyd D. George U.S. Courthouse
11:50 a.m. to 1 p.m.

Dates:
• Friday, September 15, 2017
• Friday, October 20, 2017
• Friday, November 17, 2017
• Friday, December 15, 2017
• Friday, January 19, 2018
• Friday, February 16, 2018
• Friday, March 16, 2018
• Friday, April 20, 2018

About:
The Downtown Cultural Series is produced by the City of Las Vegas’ Office of Cultural Affairs with cooperation by the Lloyd D. George U.S. Courthouse. The Clark County Bar Association provides a speaker to address the audience before the performance begins.

Volunteers Needed:
CCBA members (attorneys only) will be scheduled to speak (11:50 to 11:55 a.m.) to the audience before the artists take the stage (12 to 1 p.m.).

To volunteer to speak, contact Steph Abbott at (702) 387-6011, stephabbott@clarkcountybar.org.

A continuing legal education program produced by the Clark County Bar Association’s CLE Committee

Date & Time:
Friday, September 22, 2017
12:00-1:00 p.m.

Location:
Depo International
Mock Trial Courtroom
703 S. 8th Street
Las Vegas, NV 89101

CLE Credits:
1.0 General
CLE Credits available for Nevada lawyers

Featured Speakers:
Judge
Charles Hoskin
Eighth Judicial District Court - Family Division, Dept. E

Judge
Bryce Duckworth
Eighth Judicial District Court - Family Division, Dept. Q

Event Registration Form:

RE: Child Testimony Procedures CLE - 9/22/2017

Name: __________________________
Bar #: ____________ Phone #: ____________
E-mail: __________________________
Firm/Co. __________________________
Billing Address: ____________________
City, State, & Zip Code: ____________________

Fee:
☐ $30/CCBA Member – Attorney, Judge, or Merchant
☐ $15/CCBA Member – Legal Admin., Legal Assist., or UNLV Law Student
☐ $45/Non-Member – Attorney, Judge, or Merchant
☐ $25/Non-Member – Legal Admin., Legal Assist., or UNLV Law Student

All reservations to CCBA events must be pre-paid. To guarantee seating, all reservations MUST be received at least 72 hours prior to the seminar. To receive a full refund for cancellations, a written request must be made to CCBA 72 hours prior to the seminar. Without prior registration, event walk-ins will be charged an extra $15 over the individual price.

Total Amount: $ ____________

Type of Payment:
☐ I want to pay using my 2017 CCBA CLE Passport
☐ I want to purchase a 2017 CCBA CLE Passport ($200) and to use it to pay for this seminar
☐ Check or money order is enclosed
☐ I will call CCBA with my credit card information
☐ I authorize the CCBA to charge my credit card (circle one):

Mastercard VISA AMEX

Name of card holder: __________________________
Credit Card #: __________________________
Expiration date: ____________ Phone #: ____________
Authorized Signature: __________________________

Send registration & payment to Clark County Bar Association:
Office: 717 S. 8th Street, Las Vegas, NV 89101
Mailing: P.O. Box 657, Las Vegas, NV 89125
Phone: 702-387-6011. Fax: 702-387-7867. Web: ClarkCountyBar.org

NOTE: Do not send credit card details to CCBA via e-mail.
## Claiming Privilege

A continuing legal education program produced by
John Aldrich, Esq. on behalf of Clark County Bar Association’s CLE Committee

**Date & Time:**
Thursday, October 12, 2017  
Lunch: 11:30 a.m. - 12:00  
CLE Program: 12:00 - 1:30 p.m.

**Location:**
Depo International  
in their Mock Trial Courtroom  
703 S. 8th Street  
Las Vegas, NV 89101

**CLE Credits:**
- 1.5 Ethics  
- CLE Credits available for Nevada lawyers

**Featured Speakers:**
**Discovery Commissioner**  
**Bonnie Bulla**  
*Eighth Judicial District Court*  
**Attorney**  
**John Aldrich**  
*Aldrich Law Firm, Ltd.*

**Topics:**
- When does the attorney-client privilege apply?  
- When does the work-product doctrine apply?  
- How do I preserve the attorney-client and work-product privileges?  
- What are the elements of an adequate privilege log?  
- How do these privileges apply to everyday practice?

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### Event Registration Form:

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<tr>
<th>RE: Claiming Privilege CLE - 10/12/2017</th>
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<td>Name: ______________________________</td>
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<tr>
<td>Bar #: ____________________________</td>
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<td>Phone #: __________________________</td>
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<td>E-mail: ___________________________</td>
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<td>Firm/Co. __________________________</td>
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<td>Billing Address: ___________________</td>
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<td>City, State, &amp; Zip Code: ____________</td>
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</tbody>
</table>

**Fee:**
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- $20/CCBA Member – Legal Admin., Legal Assist., or UNLV Law Student  
- $50/Non-Member – Attorney, Judge, or Merchant  
- $25/Non-Member – Legal Admin., Legal Assist., or UNLV Law Student

**Total Amount:** $________

**Type of Payment:**
- I want to pay using my 2017 CCBA CLE Passport  
- I want to purchase a 2017 CCBA CLE Passport ($200) and use it to pay for this seminar  
- Check or money order is enclosed  
- I will call CCBA with my credit card information  
- I authorize the CCBA to charge my credit card (circle one):
  - Mastercard  
  - VISA  
  - AMEX

| Name of card holder: ____________________ |
| Credit Card #: ________________________ |
| Expiration date: __________ Phone #: __________ |
| Authorized Signature: __________________ |

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**Send registration & payment to Clark County Bar Association**  
Office: 717 S. 8th Street, Las Vegas, NV 89101  
Mailing: P.O. Box 657, Las Vegas, NV 89125  
Phone: 702-387-6011. Fax: 702-387-7867. Web: ClarkCountyBar.org

**NOTE:** Do not send credit card details to CCBA via e-mail.

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**Bank of Nevada**  
**Depo International**

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**CCBA CLE Programming Sponsors:**
- Bank of Nevada  
- Depo International

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**Bonus:**
Price of seminar includes LUNCH at 11:30 a.m.
Traffic in a Nutshell
A continuing legal education program produced by
Stephen F. Smith, Esq. on behalf of Clark County Bar Association’s CLE Committee

Date & Time:
Friday, October 13, 2017
Lunch: 11:30 a.m. - 12:00
CLE Program: 12:00 - 1:30 p.m.

Location:
Depo International
in their Mock Trial Courtroom
703 S. 8th Street
Las Vegas, NV 89101

CLE Credit:
1.5 General
CLE Credits available for Nevada lawyers

Featured Speakers:
Traffic Hearing Master
David Doto, Esq., LL.M.
Clark County

Traffic Commissioner
Ann Elworth
Las Vegas Municipal Court

Topics:
Discussion to include procedures for setting attorney sessions, filing motions, setting fines, etc.

Event Registration Form:
RE: Traffic in a Nutshell CLE - 10/13/2017
Name: ___________________________ Phone #:________________________
Bar #: ___________________ E-mail: ______________________________
Firm/Co. _________________________________
Billing Address: ________________________________________________
City, State, & Zip Code:_________________________________________

Fee:
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☐ $20/CCBA Member — Legal Admin., Legal Assist., or UNLV Law Student
☐ $50/Non-Member — Attorney, Judge, or Merchant
☐ $25/Non-Member — Legal Admin., Legal Assist., or UNLV Law Student

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Total Amount: $_________

Type of Payment:
☐ I want to pay using my 2017 CCBA CLE Passport
☐ I want to purchase a 2017 CCBA CLE Passport ($200) and to use it to pay for this seminar
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☐ I authorize the CCBA to charge my credit card (circle one):
   Mastercard VISA   AMEX

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Credit Card #: ___________________________ Expiration date: _________
Authorized Signature: ___________________________

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Office: 717 S. 8th Street, Las Vegas, NV 89101
Mailing: P.O. Box 657, Las Vegas, NV 89125
Phone: 702-387-6011. Fax: 702-387-7867. Web: ClarkCountyBar.org

NOTE: Do not send credit card details to CCBA via e-mail.
CCBA Needs You!

Join CCBA in its efforts to enrich the lives and careers of our members and our community. Attend a meeting or contact a committee chair to find out how you can get involved.

○ Community Service Committee – We lawyers have big hearts, and this committee helps us organize our efforts to do good in the world.
  • Chairs: Jennifer Roberts & Paul Ray
  • Meetings: Monthly on 1st Friday at Noon
  • Contact: Steph Abbott, 702-387-6011, stephabbott@clarkcountybar.org

○ Continuing Legal Education Committee – Thanks to the efforts to the members of this committee, CCBA puts on many affordable CLE programs for our members. Help our members share their expertise.
  • Chair: Rob Telles
  • Meetings: Monthly on 2nd Friday at Noon
  • Contact: Donna Wiessner, 702-387-6011, donnaw@clarkcountybar.org

○ New Lawyers Committee (for members who have been admitted to the Nevada Bar in the last five years) - Whether you are new to the practice of law in general, or just new to the practice of law in Nevada, this Committee is the one for you. It plans networking events, as well as opportunities for recent admisses to learn the ins and outs of practice in Nevada.
  • Chair: James T. Leavitt
  • Meetings: Monthly on 2nd Thursday at 12:30 p.m.
  • Contact: Donna Wiessner, 702-387-6011, donnaw@clarkcountybar.org

○ Publications Committee - This committee produces Communiqué, the official publication of the Clark County Bar Association. Members determine issue themes, solicit articles, and edit the magazine.
  • Chair: Heather Anderson-Fintak
  • Meetings: Monthly on 1st Tuesday at Noon
  • Contact: Steph Abbott, 702-387-6011, stephabbott@clarkcountybar.org

○ Social Events Committee – This brand new committee is wide open to ideas and opinions on how best to facilitate opportunities for members to meet and socialize. We hope to plan events to appeal to members at all stages of their careers.
  • Chair: Jason Stoffel
  • Meetings: [TBA]
  • Contact: Donna Wiessner, 702-387-6011, donnaw@clarkcountybar.org

Join a committee today:

Yes – I want to help! Please send me information on the Committees checked below:

☐ Community Service Committee
☐ Continuing Legal Ed Committee
☐ Publications Committee
☐ New Lawyers Committee
☐ Social Events Committee

Name: ____________________________________________
E-mail: __________________________________________
Phone: __________________________________________

Submit your completed form to the Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101, via fax to (702) 387-7867, or via e-mail to stephabbott@clarkcountybar.org.

Portrait Services

Date:
October 25, 2017
9 a.m. to 2 p.m.

Clark County Bar
717 S. 8th Street, Las Vegas, NV

Special Offer for CCBA Members:
Get 1 Digital Image for $79 or 2 Digital Images for $99.

About:

Portraits are for CCBA to publish in the CCBA Members Directory at https://www.clarkcountybar.org/members/directory and in the bar journal Communiqué, as needed. Members can purchase their portrait(s) directly from the photographer with special pricing*.

*Special pricing will be made available from the photographer at Portraits to You for the individual to purchase his/her portrait(s) but only on the day of the portrait session.
Volunteer Night at Three Square

An opportunity for CCBA members to help with Three Square’s BackPack for Kids Program to provide kids with ready-to-eat meals during the weekend.

Tuesday, October 10, 2017
5:30 p.m. to 7:30 p.m.
Three Square Food Bank, 4190 N. Pecos Road, Las Vegas, Nevada, 89115

Volunteers will pack kid-friendly foods into bags that will be delivered to the kids at the end of the school day on Fridays. There are several activities occurring during the BackPack session, which include stuffing bags with food, replenishing stock, tying the bags, and placing them into the school bins. Minimum age: 10 yrs old w/adult.

Volunteer Sign Up Form:

- Yes, I will plan to volunteer with Team CCBA.
- # of people (including myself) I plan to bring to this event.

My Contact Info:
Name: ________________________________
Bar #: _______ Phone #: ________________________________
E-mail: ________________________________
Firm/Co. ________________________________
Address: ________________________________
City, State, & Zip Code: ________________________________

Contact:
Want to join us? Want to bring friends and family? RSVP # of volunteers to Paul Lal, partner at Boies Schiller Flexner LLP, plal@bsflp.com or Steph Abbott at (702) 387-6011, stephabbott@clarkcountybar.org.
Call for Donations

PLEASE SEND IN YOUR SUPPORT TODAY

Volunteer Sign Up Form

___ Yes, I will plan to walk with Team CCBA.
___ Yes, please accept my donation for the LLS $ ________.

My Contact Info:

Name: ________________________________________________
Bar #: ______ Phone #: ___________________________
E-mail: ______________________________________________
Firm/Co.: ____________________________________________
Billing Address: _______________________________________
City, State, & Zip Code: _________________________________

LET’S MAKE A DIFFERENCE

WALK WITH TEAM CCBA
Sign up to walk with us and/or donate to LLS
THANK YOU!

Light The Night Walk

Walk and/or Donate

• What: An annual event to benefit The Leukemia & Lymphoma Society (LLS)
• When: Saturday, November 4, 2017
• Who: CCBA members, friends, and family
• Where: UNLV Thomas & Mack Center

Your support can make a difference locally and nationally in the fight against blood cancers.

Make your donation today!
Make checks payable to The Leukemia & Lymphoma Society
Note to benefit: “Clark County Bar Association’s Team - LTN 2017”
Mail payment to: Leukemia & Lymphoma Society Southern Nevada Office,
6280 S. Valley View Blvd., Suite 342, Las Vegas, NV, 89118
Donations can be made online too.
Visit Clark County Bar Association’s Team Page at:
http://pages.lightthenight.org/snv/LasVegas17/clarkcountybarassociation

September 2017 – COMMUNIQUÉ – Clark County Bar Association
EJDC Hearing Master William Croft has been reassigned from TPO to Juvenile Delinquency Court, 601 N. Pecos Road, Las Vegas, Nevada 89101. Phone: (702) 455-5301.

EJDC Hearing Master Melisa De La Garza has been reassigned from Juvenile Delinquency Court to Arraignment Court and Specialty Courts, 200 Lewis Avenue, Lower Level Courtroom A, Las Vegas, Nevada, 89155. Phone: (702) 671-4593.

Calder Gabroy has opened his own firm, Calder B. Gabroy, Ltd., 521 South 7th Street, Suite 3, Las Vegas, Nevada, 89101. Phone: (702) 728-5708.

Jeana Hart now may be reached at Kolesar & Leatham, 400 S. Rampart Boulevard, Suite 400, Las Vegas, Nevada, 89145. Phone (702) 362-7800. Fax: (702) 362-9472.

EJDC Hearing Master Jennifer Henry has been reassigned from Arraignment Court to TPO Court and Guardianship Compliance (Minor), Family Court and Services Building, 601 N. Pecos Road, Las Vegas, Nevada 89101. Phone: (702) 455-2434.

Cindy Lee Stock may be reached at 840 South Rancho Drive, #4-810, Las Vegas, Nevada, 89106.

Mark Roach now may be reached at Cokinos Young, 1210 Nueces Street, Austin, Texas, 78701. Phone: (512) 476-1080.

EJDC Hearing Master Bita Yeger has been assigned to Arraignment Court, Specialty Courts, and Civil Commitment Court, 200 Lewis Avenue, Las Vegas, Nevada, 89155.

Mary Bacon, a new attorney member from Spencer Fane, LLP, 400 S. Fourth Street, Suite 500, Las Vegas, Nevada, 89101. Phone: (702) 408-3411.

Tamara Canella, a student member from UNLV William S. Boyd School of Law.

Carla Jaroch, a public services member from Nevada Attorney General’s Office, 3014 W. Charleston Boulevard, Suite 150, Las Vegas, Nevada, 89102. Phone: (469) 418-1058.

Judge Tierra Danielle Jones, a public services member from Eighth Judicial District Court, Department 10, 200 Lewis Avenue, Las Vegas, Nevada, 89101.

Kimber Laux, a student member from UNLV William S. Boyd School of Law. Phone: (702) 985-1872.

Beth Rosenblum, an attorney member from Rhonda L. Mushkin, Chtd., 4475 S. Pecos Road, Las Vegas, Nevada, 89121. Phone: (702) 474-2400.

Mary Bacon, a new attorney member from Spencer Fane, LLP, 400 S. Fourth Street, Suite 500, Las Vegas, Nevada, 89101. Phone: (702) 408-3411.

Tamara Canella, a student member from UNLV William S. Boyd School of Law.

Carla Jaroch, a public services member from Nevada Attorney General’s Office, 3014 W. Charleston Boulevard, Suite 150, Las Vegas, Nevada, 89102. Phone: (469) 418-1058.

Judge Tierra Danielle Jones, a public services member from Eighth Judicial District Court, Department 10, 200 Lewis Avenue, Las Vegas, Nevada, 89101.

Kimber Laux, a student member from UNLV William S. Boyd School of Law. Phone: (702) 985-1872.

Beth Rosenblum, an attorney member from Rhonda L. Mushkin, Chtd., 4475 S. Pecos Road, Las Vegas, Nevada, 89121. Phone: (702) 474-2400.
Federal CJA Panel Applications Due September 22, 2017

The Clerk of the Court for the United States District Court for the District of Nevada will be accepting applications for appointments of new Federal Criminal Justice Act (CJA) Panel attorneys (appointment of counsel for indigent defendants) for the Unofficial Southern Division of the District of Nevada for both trial and appellate/habeas positions. Attorneys interested in appointment to the CJA panel must submit an application to Debra Kempi, Clerk of Court, by September 22, 2017. Attorneys applying for the appeal panel must also submit a writing sample. Applications are available on the court’s website at www.nvd.uscourts.gov or at the intake counter of the Clerk’s Office in Las Vegas. Applications may be submitted via electronic mail to cja_applications@nvd.uscourts.gov. Appointments for the new panel will be effective November 1, 2017.

Applicants must be members in good standing of the bar of the federal court and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Federal Sentencing Guidelines. Attorneys on the CJA Panel also must have demonstrated an interest in providing criminal defense services and a reputation for competent and vigorous representation. Members of the panel are required to participate in six hours of training in federal criminal practice, with at least three of the six hours on the Federal Sentencing Guidelines, per year which shall be provided by the Federal Public Defender’s Office or another court-approved provider of continuing legal education.
Note: The State Bar has announced a new, easier test will be given to applicants who want to practice law in Nevada. I have obtained a copy of one of the draft exams:

STATE OF NEVADA BAR EXAMINATION
(E-Z FORM)

Print Your Name: ____________________________________________ 5 points

Essay Questions: You will have five (5) minutes to answer each of the questions below. If you think any question is just too hard to respond to, then just do not answer it.

QUESTIONS 1: If you were a tree, what kind of a tree would you be? 10 points

QUESTIONS 2: When Ronald McDonald puts his outfit on, is he clothed in apparent authority or is he just clowning around? 10 points

QUESTIONS 3: If a judge enters an order “sua sponte,” is he or she deciding something or is the court just “suing” some guy whose last name is “Sponte”? 10 points

QUESTIONS 4: You are a criminal defense lawyer and the judge has just issued a bench warrant on your client. Do you seek to “quash” it or “squash” it? 10 points

QUESTIONS 5: If you agree to take a case “pro bono,” does that mean you are representing a gigolo, or does it mean you just don’t like Cher? 10 points

HAVE YOU TAKEN THE MULTI-STATE BAR EXAM? [ ] YES [ ] NO
(Give yourself 50 points. It doesn’t matter what score you got . . .) 50 points (automatic)

Are you finished? Good . . . Now, hand the test in. There are no right or wrong answers. Just pay your application fee and hang out your shingle. Feel free to take the optional Ethics Examination (If you are one of those kind of lawyers) . . .

Sal Gugino, Esq., has a resume as long as your arm. He was the 1996 President of the CCBA, the Student Body President at McGeorge School of Law, the Chairman of the EMRB, and now serves as a Short Trial Judge, a Supreme Court Settlement Judge, an arbitrator, and a mediator. Sal can be reached at Olson, Cannon, Gormley, Angulo & Stoberski.
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David S. Lee, Esq.  Hon. Philip M. Pro (Ret.)  Hon. Robert E. Rose (Ret.)  Hon. David Wall (Ret.)
The 2017 Nevada Legislative Session passed several bills that will affect multiple case types in the Las Vegas Justice Court. Here are a few of the highlights.

There were several bills that relate to the sealing and joinder of certain cases. One of the bills passed requires the joinder of misdemeanor offenses with felony or gross misdemeanor offenses when allegations stem from the same act or transaction (AB 412). Victims of sex trafficking or involuntary servitude now have the ability to have their judgments vacated and court documents sealed (AB 243). Another bill will change the waiting periods in regards to criminal record sealing and allow the district court to seal records from justice court (AB 327). Finally, there is now the ability for automatic sealing of a summary eviction if it is denied or dismissed. The bill also provides for discretionary sealing upon written stipulation or upon a showing that sealing is in the interests of justice (AB 107).

In addition to the sealing of summary evictions, there are three bills relating to landlord/tenant laws. First, victims of harassment, sexual assault, and stalking are afforded an opportunity to have early termination of rental agreements (AB 247). Second, NRS 118A.200 has been amended creating a rebuttable presumption that an occupant does not have lawful occupancy of a dwelling without a notarized lease or a lease that is signed by a licensed property manager. The landlord, however, may enforce such a lease (AB 161). Finally, an important towing bill has been passed that adds limitations to the towing of vehicles from residential complexes. The bill requires a 48-hour notice affixed to the vehicle and provides new restrictive guidelines for towing a vehicle for expired registration. The same bill creates guidelines for the immobilization of a vehicle parked in certain parking garages and structures, along with remedies for violation (SB 320).

Other important bills include laws mandating the installation of an ignition-interlock device for all persons convicted of an offense involving driving under the influence (SB 259). Another bill now allows an unlicensed person to act as a process server three times a year (AB 128). Furthermore, a new law makes detailed changes relating to the collection of civil judgments, including amounts exempt from execution (SB 230). Finally, a bill was passed specifically providing for veterans treatment courts at the limited jurisdiction level (AB 286).

More information about each of these bills and all of the bills passed this legislative session can be found at www.leg.state.nv.us. In the coming months, the court will be creating new forms, procedures, and practices in order to implement the bills addressed above.

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**Judge Melissa Saragosa** was appointed to Las Vegas Justice Court Department 4 in 2006.
Newly Released Publication:
Contract Templates for Nevada Attorneys

The first edition from the state bar’s Publications Committee, Contract Templates for Nevada Attorneys provides lawyers with **more than 60 sample contract templates** covering the most commonly used transactions, such as lease agreements and deeds of trust. Written by Nevada attorneys, these forms have been adapted from documents actually used in practice.

The manual includes forms designed as a starting point for practitioners to craft custom agreements. The templates can and should be adjusted to fit your clients’ specific needs or requirements.

Available only in digital format, Nevada Contract Templates for Attorneys is available for immediate download.

Changes to affect court practice, procedure for Clark County Civil Bench-Bar

By Jacquelyn Franco, Esq.

On July 11, 2017, at the Civil Bench-Bar Meeting, the Honorable Judge Gloria Sturman presented a Legislative Update. With the assistance of a PowerPoint presentation created by Joe Tommasino, Esq., Staff Attorney, Las Vegas Justice Court, Judge Sturman reviewed, in part, the following:

- **AB 37** – Revises procedure for “affidavit of prejudice” against a judge and expands the process to include justices of the peace and municipal judges. Also, a judge may now challenge the affidavit and file a response. The questions regarding the judge’s disqualification will then be heard and determined by another judge, who is either a judge that is agreed upon by the parties or, if they are unable to agree, by a judge who is appointed. (Effective May 22, 2017.)

- **AB 63** – Requires every applicant for certification as a court interpreter or appointment as an alternate court interpreter to submit, with his/her application, a complete set of his/her fingerprints to be forwarded to the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigations for their initial report on the criminal history of the applicant. (Effective May 23, 2017.)

- **AB 102** – Change of venue – NRS 13.050 is amended to read as follows: 1. If the county designated for that purpose in the complaint, petition or motion is not the proper county, the proceeding may, notwithstanding, be tried or heard therein unless (a) after the filing of a complaint or petition, the defendant demands in writing, before the time for answering expires, that the trial be had in the proper county, and the place of trial be thereupon changed by consent of the parties, or by order of the court. (Effective October 1, 2017.)

- **AB 125** – Requires certification of court interpreters. Also, the term “person with a language barrier” is
replaced with “person with limited English proficiency”. (Effective October 1, 2017.)

• AB 207 – Enlarges selection pool for jurors from current voter lists, DMV, and certain utilities to include recipients of benefits from the Employment Security Division. In addition, the Jury Commissioner is to maintain records of demographic information provided by jurors, which includes name, occupation, address, and race, and to report the same annually to the Court Administrator. Lastly, it is a gross misdemeanor to misuse juror selection lists. (Effective July 1, 2017.)

• AB 314 – Part one of the bill increases exemption for execution to $1,000,000 in money and $10,000 in nonexempt personal property. (Effective October 1, 2017.)

• SB 202 – Each municipal judge must be a licensed member of the State Bar of Nevada. This requirement does not apply to any municipal judge who holds the office on October 1, 2017 and continues to serve as such in uninterrupted terms. (Effective October 1, 2017.)

• SB 230 – Increases exemption from execution to 82 percent of a judgment debtor’s disposable earnings for any workweek if gross wages are $770 or less and maintains the exemption of 75 percent if the wages exceed $770. (Effective October 1, 2017.)

The Civil Bench-Bar meetings are held on the second Tuesday of each month. The Honorable Judge Nancy Allf hosts the meetings at 12:00 p.m. in Courtroom 3A at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. All members of the State Bar of Nevada are invited to attend the meetings to comment and/or ask questions about some of the ongoing modifications of processes in the civil department. Lunch is served.

Jacquelyn M. Franco, is an associate with Stephenson and Dickinson. Her practice focuses on insurance defense litigation, including commercial transportation, personal injury, and construction defect claims. She can be reached at (702) 474-7229 or jfranco@slawoffice.net.

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Nevada Expands its Laws Protecting Animals Left in Hot Cars – But Will It Result in Change?

By Jennifer Braster, Esq.

Since 2007, Nevada's animal cruelty laws have prohibited a person from leaving a dog or cat in a car during periods of extreme heat or cold. NRS 574.195. Violation of this law is a misdemeanor. Id. During the 2017 Legislative Session, with Senate Bill 409, Senators Manendo, Cannizzaro, and Parks sought to expand this law to further protect animals left in vehicles and those who come to the animals’ aid. Ultimately, the revised law essentially made three changes: (1) expressly stating that animal control officers must provide these rescued animals with shelter and care; (2) clarifying the protections afforded to those individuals authorized to aid these animals; and (3) expanding the application of the law to not just dogs and cats but all pets. It remains to be seen if these changes will result in change.

Within minutes, a vehicle can prove deadly to children and animals

While unfortunately there are several stories a year about children dying in hot cars, many do not realize how quickly a vehicle can also become a death trap for animals. The Animal Veterinary Medical Foundation provides the following chart:

<table>
<thead>
<tr>
<th>Estimated Vehicle Interior Air Temperature v. Elapsed Time</th>
<th>Outside Air Temperature (F)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elapsed time</td>
<td>70</td>
</tr>
<tr>
<td>0 minutes</td>
<td>70</td>
</tr>
<tr>
<td>10 minutes</td>
<td>89</td>
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<tr>
<td>20 minutes</td>
<td>99</td>
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<tr>
<td>30 minutes</td>
<td>104</td>
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<tr>
<td>40 minutes</td>
<td>108</td>
</tr>
<tr>
<td>50 minutes</td>
<td>111</td>
</tr>
<tr>
<td>60 minutes</td>
<td>113</td>
</tr>
<tr>
<td>&gt; 1 hour</td>
<td>115</td>
</tr>
</tbody>
</table>

Courtesy Jan Null, CCM; Department of Geosciences, San Francisco State University

See AVMA, https://www.avma.org/public/Pet-Care/Pages/Estimated-Vehicle-Interior-Air-Temperature-v.-Elapsed-Time.aspx (last visited July 30, 2017). In Washoe County, Regional Animal Services responds to an average of 400 to 500 calls of dogs and cats left in hot vehicles each summer. Minutes of the Senate Committee on the Judiciary, 79th Session (April 7, 2017) (statement of Robert Smith, Manager, Washoe County Regional Animal Services). Clark County Animal Control has reported responding to over 200 calls a day in the summer regarding animals left in extreme heat – whether in vehicles or simply outside. With S.B. 409, Senator Manendo sought to bring the dogs in hot cars law in line with the laws regarding children left in hot cars. At the end of the day, the legislation that passed did not deviate significantly than the laws on the books, but serves as a stepping stone to further protecting animals from these dangerous circumstances.

Nevada is one of 25 states that allows the rescuing of animals left in hot cars

Approximately half of the states allow certain individuals to rescue animals left in hot cars and/or provides immunity to those that undertake such acts. Nevada is one of sixteen states that allows public officers to rescue an animal left in a hot vehicle and/or provides civil and/or criminal immunity for such acts. Nine states go one step further and have enacted legislation allowing good samaritans to rescue animals left in hot cars in certain situations and/or provides civil and/or criminal immunity from such acts. See Humane Society, Pets in Hot Cars Laws – Current Landscape, http://blog.humanesociety.org/wp-content/uploads/2017/06/hot-car-laws-map-1.pdf (last visited July 30, 2017).

Changes in Nevada’s hot car law as a result of SB 409

During the 2017 Legislative Session, the Humane Society of the United States lobbied to expand the language of S.B. 409 to allow good Samaritans to save animals left in hot vehicles without incurring civil liability. The proposed language suggested by the Humane Society of the United States would have allowed someone with a good faith belief that an animal was in imminent danger to forcibly enter a vehicle to save the animal if the person
first called 911, or otherwise contacted the authorities, and remained with the animal until the authorities arrived. Minutes of the Senate Committee on Judiciary, 79th Session (April 7, 2017) (Exhibit K). Ultimately, the enrolled version of S.B. 409 did not expand on those authorized individuals who could rescue such distressed animals. Under S.B. 409, only the following individuals may rescue a pet left unattended in a parked or standing motor vehicle during periods of extreme heat or cold without incurring civil liability: peace officer, animal control officer, governmental officer or employee whose primary duty is to ensure public safety, employee or volunteer of a fire department, or a member of a search and rescue organization that is under the direct supervision of a sheriff. S.B. 409.

There are three main changes to Nevada’s laws protecting animals from being left in hot cars – and protecting those who come to the animals’ aid. Both the 2007 law and S.B. 409 allow those certain authorized individuals identified above to rescue such animals without incurring civil liability. S.B. 409 specifically states that those authorized individuals “who reasonably believe that a violation of this section has occurred may, without incurring civil liability, use any reasonable means necessary to protect the pet and remove the pet from the motor vehicle.” S.B. 409.

SB 409 also clarified that both peace officers and animal control officers must take possession of such animal if they deem the animal to have been treated cruelly and provide it with shelter and care. S.B. 409 protects such individuals from liability:

A person required … to take possession of a pet removed pursuant to this section may take any action relating to the pet specified [under Nevada law] and is entitled to any lien or immunity from liability . . .

Lastly, the 2007 law only protected cats and dogs left in hot cars. S.B. 409 expanded those protections to all pets.

The changes to Nevada’s animal cruelty laws are encouraging and hopefully will result in fewer animal deaths – and further protections to those authorized individuals who come to the aid of these animals, especially in a state with such extended periods of extreme heat.

Jennifer L. Braster is a founding partner of Naylor & Braster and one of the founding members of the Animal Law Section of the State Bar of Nevada. Jennifer practices primarily in the area of commercial litigation and has also represented clients with various animal law issues, including animal custody, enforcement of dangerous dog regulations, and civil rights cases along with attorney Maggie McLetchie involving the shootings of pet dogs.
In 2017, Nevada’s lawmakers addressed gaming industry issues, including the confidentiality of information submitted to Nevada gaming regulators, the boundaries of gaming enterprise districts (“GEDs”) in the City of Las Vegas, and pari-mutuel wagers for esports events. Below, we take a look at the key gaming bills passed this session.

**Senate Bill 376 (SB376)**

SB376 amends NRS 463.120, the statutory section that provides for confidentiality of information submitted as part of the Nevada state gaming application process. Section 463.120 was originally adopted in 1959 to ensure that information and data furnished to the Nevada Gaming Control Board (“Board”) and Nevada Gaming Commission (“Commission”), or prepared or obtained by a Board agent or employee pursuant to audit, investigation, determination, or hearing, is “confidential and may be revealed in whole or in part only in the course of the necessary administration of Chapter 463, or upon the lawful order of a court of competent jurisdiction.” This statute also provides that information derived from this confidential information and transmuted into the work product of an agent, such as an investigative summary, is not only confidential, but absolutely privileged (as upheld in *Rosenthal v. Nevada*, 514 F. Supp. 907 (D. Nev. 1981)).

This statute also provides that information derived from this confidential information and transmuted into the work product of an agent, such as an investigative summary, is not only confidential, but absolutely privileged.

The confidentiality protections of NRS 463.120, however, have been under continual assault by civil litigants. For example, in 2008, a U.S. Bankruptcy Court judge allowed portions of a gaming application to be revealed to opposing counsel after the judge reviewed the entire application in camera. Then, in 2013, a Nevada state district court judge found in a discovery action that papers submitted to the Board by a gaming license applicant were not entitled to confidentiality protection. Additionally, each jurisdiction has differing views on whether records maintained by a sister agency are entitled to protection. For example, if New Jersey gaming regulators obtain investigative materials from the Nevada Board, would that information or data still enjoy protection under New Jersey law?
Therefore, we have SB376, which attempts to strengthen NRS 463.120 by providing that:

[I]f any applicant or licensee provides or communicates any information and data to an agent or employee of the Board or Commission in connection with its regulatory, investigative or enforcement authority:

a. All such information and data are confidential and privileged and the confidentiality and privilege are not waived if the information and data are shared or have been shared with an authorized agent of any agency of the United States Government, any state or any political subdivision of a state . . . [and]

b. The applicant or licensee has a privilege to refuse to disclose, and to prevent any other person or government agent, employee or agency from disclosing, the privileged information and data.

Additionally, each jurisdiction has differing views on whether records maintained by a sister agency are entitled to protection.

“Information and data” is also broadly defined in the new law. Whether these broad definitions of protectable information contained in SB376 will be upheld by the courts, however, is yet to be seen.

Assembly Bill 75 (AB75)

- AB75—otherwise known as the gaming “omnibus” bill—was signed by Governor Sandoval on May 23, 2017, and became effective on July 1. The bill was largely uncontroversial and accomplished a number of objectives, including that it:
- Expands the term “manufacturer” for gaming licensing purposes to include those who assume responsibility for certain actions constituting manufacturing and then exempts certain manufacturers and independent contractors from licensing if a licensed manufacturer assumes responsibility for the actions performed by the unlicensed manufacturer or independent contractor.
- Exempts licensed manufacturers and distributors from any additional licensing requirement in connection with furnishing equipment or services to...

**Gaming Law continued on page 28**
Gaming Law continued from page 27

- a licensee in exchange for a percentage of gaming revenue.
- Exempts the trustee of an employee stock ownership plan from certain licensing requirements (current law similarly exempts a bank acting as a fiduciary).
- Provides that the Board’s expenditures from the Board’s revolving account (which is used to facilitate confidential investigations) may exceed the amount authorized by the legislature only when the expenditures are derived from state or federal forfeiture funds.
- Transfers certain duties related to the approval of associated equipment manufacturers and distributors from the Commission to the Board.

Finally, one of the more interesting components of the bill is that it grants the Commission the authority to “reject” an application that the Board has recommended for denial. A rejection of the application would not constitute a determination of the suitability of the applicant or a denial of the application of the applicant. It is not clear from the bill what circumstances would lead the Commission to reject an application rather than deny or remand the application.

Assembly Bill 219 (AB219)

AB219 was brought on behalf of the City of Las Vegas to help them redefine the boundaries of GEDs within the City. The bill does this in two parts. First, the bill eliminates a portion of the Las Vegas Boulevard gaming corridor GED where it encroached into an established residential area. Second, it creates the Historic Downtown Gaming District, to encourage development in the historic gaming center of downtown Las Vegas. For many years, the City's municipal code had established a permissive downtown casino district where nonrestricted gaming would be acceptable. Concerns with the proliferation of casinos in residential areas led the Nevada legislature to create state-level restrictions on the location of nonrestricted gaming in the 1990s. This included that nonrestricted licenses could be issued only in designated GEDs and all previously designated GEDs that did not have operating nonrestricted licensees were eliminated.

Consequently, the permissive casino district created by the City was replaced with a map containing a checkerboard of parcels upon which the City’s existing casinos were located. These casinos could continue to operate but expansion options were limited.

Recognizing that there was interest in development in the downtown gaming corridor, the City asked the Nevada legislature to re-establish its original casino district as its designated GED. With AB219, the legislature did so, but with a number of specific conditions to ensure that devel-
Development would include more than just a casino floor. To take advantage of gaming expansion in the newly-defined GED, the development must be a nonrestricted resort hotel (a statutory definition that requires a minimum of 200 hotel rooms and other amenities), located on an entire city block, and have a value of at least $100 million.

Senate Bill 240 (SB240)

SB240 is the product of the Gaming Law Policy course at the William S. Boyd School of Law at UNLV. Under pre-existing law in NRS 463, a sports book was permitted to take wagers on sporting events and other events by any system or method of wagering. Under NRS 464 (pari-mutuel wagering statute), however, all references to the pari-mutuel system of wagering were limited to racing and sporting events. SB240 expressly expands NRS 464 to include “other events” as suitable subject matter for pari-mutuel wagering.

SB240 did not alter the current statutory and regulatory framework for approvals required for wagering to occur on “other events,” nor did it alter requirements for pari-mutuel wagering on sporting events or racing. Although SB240 is often cited in the press as an esports bill, and it does provide that Nevada regulators may permit pari-mutuel wagering on esports, the bill is neutral with regard to the subject matter of the “other events” upon which wagering may be approved and allows for pari-mutuel wagering on a variety of other non-racing or sporting events.

Senate Bill 120 (SB120)

SB120 revises the membership and duties of the Advisory Committee on Problem Gambling. Proponents provided that the advisory committee needed more flexibility in the requirements for its membership because some of the seats had been so narrowly defined that they were left vacant due to an inability to find appropriate people to fill them.

Jennifer Gaynor represents clients before the Nevada State Legislature, Nevada gaming regulators, and other state and local regulatory bodies.

Gregory Gemignani focuses primarily on intellectual property law, gaming law, technology law, Internet law, online gaming law, and online promotions law.

Kate Lowenhar-Fisher provides counsel on regulatory issues in connection with mergers and acquisitions, corporate restructuring, reorganizations and financings, and Internet law.

Jeffrey Silver represents clients on gaming law, liquor licensing, regulatory law, planning and zoning matters, contractors licensing, and transportation law.
Assembly Bill 276 was passed on May 26, 2017, in the final days of the Nevada Legislative Session, and although it was a latecomer, it has the ability to considerably change business owners’ abilities to prevent competition from former employees. The Act revises provisions governing covenants not to compete, which raises questions as to the efficacy of existing agreements and how it may affect current employees.

To make matters more challenging, the Act’s requirements were implemented immediately, giving employers and their employees zero advance notice. Because of this, existing agreements could be invalid, creating even more questions, as well as the possibility of litigation.

The new law spells out conditions that may make an existing non-compete covenant void and unenforceable:

- It is not supported by valuable consideration; and/or
- It imposes a greater restraint than is required for the employer’s protection, thereby placing an undue hardship on the employee, or it contains restrictions that are inappropriate vis-à-vis the consideration given.

Because the law does not define “valuable consideration” or “undue hardship,” it will likely lead to additional litigation to decide if a non-compete agreement has or has not fulfilled the requirements as stated by the law.

And that is not all. Employers lose some of the power to restrict previous employees from contacting their clients or customers for business purposes.

The Act revises provisions governing covenants not to compete, which raises questions as to the efficacy of existing agreements and how it may affect current employees.

In addition, employers need to provide consideration to employees in return for the covenant not to compete. Arriving at valuable consideration can be a difficult balancing act – it needs to have a correlation to the agreement and yet, it cannot force the employee to suffer the aforementioned “undue hardship.” It is unclear whether it is “valuable consideration” to simply offer employment or if additional compensation is required.

If the employee was laid off due to reduction in workforce or reorganization, a non-compete can only be enforced as long as the employer paid the employee upon his or her dismissal. Again, the amount is still up for debate. If an employee is dismissed as a result of economic difficulties experienced by the company, business owners whose businesses are already financially vulnerable would have to pay employees not to compete in an effort to comply with AB276. In theory, this could put businesses in a precarious position – pay employees who agree to a non-compete agreement or run the risk of directly competing with them.

The law’s ambiguous language and its immediate enforcement will likely lead to more litigation and the predominant question likely to be litigated is: Are the current non-compete agreements worthless? Although the courts have the ability to “blue pencil” an overly broad agreement, a courts’ ability to rewrite an agreement will, in all probability, lead to more litigation, not less. This change was in response the Nevada Supreme Court’s decision in Golden Road Motor Inn, Inc. v. Islam, 132 Nev. Adv. Op. 49, 376 P.3d
Are the current non-compete agreements worthless?

151 (2016). (For a comprehensive discussion of this decision, please see https://www.clarkcountybar.org/communique/march-2017/#enforcingnoncompetes)

This leaves business owners who seek to limit competition and solicitation among former employees on thin ice. Attorneys who advise clients on non-compete agreements must keep abreast of new non-compete agreement limitations and tread carefully when the courts are asked to determine whether new or existing covenants not to compete are enforceable.

Gordon Law founder Aviva Y. Gordon, Esq., has more than 20 years’ experience practicing business law in Southern Nevada and has successfully argued before the Nevada Supreme Court. She is a member of both the Nevada and California Bars.

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All Aboard the Omnibus: Highlights of AB 314 Changes to Probate and Trust Law

By Alan D. Freer, Esq. and Jeffrey P. Luszeck, Esq.

Introduction

AB 314, which becomes effective October 1, 2017, makes various changes to probate and trust law. Although the bill provides omnibus amendments to the law governing trusts and estates (primarily contained in NRS Titles 12 and 13), most provisions are designed to minimize litigation and reduce the cost and expense to the parties. Generally, these amendments fall into four broad categories: (1) creditors and exemptions; (2) estate planning; (3) administration of estates and trusts; and (4) litigation and contested proceedings.

Perhaps most substantial change in this category is the overhaul of Nevada’s non-probate transferee liability statutes...

Creditors and exemptions

In the area of creditors and exemptions, Section 1 amends NRS 21.090 to increase the exemption amount available to all judgment debtors for money held in retirement or pension accounts from $500,000 to $1,000,000, while also providing state law creditor protection for inherited retirement accounts. As to creditors of a decedent’s estate, Section 24 amends NRS 147.130 to now give all creditors the option of filing a petition for summary determination of a rejected creditor’s claim in the probate court instead of filing a separate civil lawsuit to adjudicate the claim. Likewise, Section 25 amends NRS 147.150 to permit all lienholders to foreclose on security interests on estate property without filing a creditor’s claim, if the lienholder expressly waives all recourse against any other property of the estate.

Perhaps the most substantial change in this category is the overhaul of Nevada’s non-probate transferee liability statutes (which permits recovery against recipients of certain transfers of property where the probate estate possesses insufficient assets to satisfy creditors). Specifically, Section 2...
amends NRS 111.721 to clarify that property transferred from a third party estate or trust through a power of appointment does not constitute a non-probate transfer. Similarly, Section 3 amends NRS 111.779 to define the procedural steps to be taken when seeking to impose liability on a non-probate transferee, clarify the limitations period in which such actions must be commenced depending on how the creditor’s claim was processed in the probate estate, and clarify exemptions to enforcement.

Estate planning and trust formation

AB 314 also provides several amendments relating to estate planning. Section 47 authorizes a settlor to incorporate trust provisions that permit a trustee to be exonerated, indemnified, or reimbursed for tort arising from trust property so long as the trustee has not acted with malice, gross negligence, or intentional misconduct (NRS 163.130). Section 54 amends NRS 451.024 to expressly provide that a provision for cremation in a valid durable power of attorney or last will and testament is enforceable.

The largest change in the area of estate planning occurs in Sections 38 and 39 of the bill by recognizing and permitting the creation of purpose trusts under Nevada law.

In the area of formation of trusts, Section 42: (1) amends NRS 163.002(1) by clarifying the types of declarations acceptable for the formation of a valid trust, including allowing a declaration by a property owner that someone else owns the property as trustee, and (2) expressly permits a schedule of trust property to qualify as a valid declaration that the listed property is held in trust.

The largest change in the area of estate planning occurs in Sections 38 and 39 of the bill by recognizing and permitting the creation of purpose trusts under Nevada law. A “purpose trust” is an irrevocable trust that does not have an ascertainable beneficiary and is not created for charitable purposes, but rather is used for the maintenance of grave sites, the maintenance of family property such as art, memorabilia, and similar collections, or the maintenance of a family homestead or ranch, digital assets or family trust companies.

Omnibus continued on page 34

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Administration of estates and trusts

Numerous sections within AB 314 amend and simplify trust and estate administration. Several sections amend definitions to further clarify their application within the probate code, such as Chapter 132's definitions for “expenses of administration” (Section 6) and “fiduciary” (Section 7).

With respect to ascertaining whether a will was revived, lost, or stolen, Section 8 amends NRS 133.130 to now permit extrinsic evidence to be introduced concerning the manner in which a testator revoked a will in determining whether the testator intended to revive a prior will by such action. Similarly, Section 9 clarifies NRS 136.240 and conforms that section to common law by setting forth the information that must be presented to the court when proving a lost or stolen will.

In the area of special administrators, Section 13 now permits the appointment of a special administrator to be appointed to protect the rights and privileges of a decedent, in addition to preserving the decedent’s estate.

Three sections were passed that assist in streamlining the sale of real property in the estate administration process. Section 26 expands the scope of permitted waivers of publication of notice of sale of real property under NRS 148.220 to include situations where the property is listed in a multiple listing service or where the property is being sold as a short sale. Similarly, Section 27 amends NRS 148.260 to allow the court, for good cause shown, to waive the requirement of a current appraisal when confirming a probate sale. Section 28 clarifies and conforms the overbid process in sales of real property (NRS 148.270) to current practices to provide that where the overbid purchaser is the highest bidder on a sale of real property, the original purchase contract remains in force and effect except for the substitution of the purchase price and the new purchaser. This section also amends this subsection to exempt short sale purchases from the overbid process.

Litigation and contested matters

Sections 10 and 41 amend the no-contest clause statutes for both wills (NRS 137.005) and for trusts (NRS 163.00195) by providing a public policy statement confirming that public policy favors enforcing the intent of the testator/settlor but does not favor forfeitures. This amendment clarifies that a no contest clause must be strictly construed to carry out the testator's intent. This section adds a safe harbor provision from the no contest provisions for seeking to enforce the fiduciary duties of the trustee/personal representative.

Section 11 clarifies the post-probate will contest procedure in NRS 137.090 and conforms it with procedures for pre-probate will contests (NRS 137.010(1)) regarding the issuance of a citation upon filing a contest. With respect to service of citations, Section 35 now permits service of citation by certified mail, with a return receipt requested, similar to NRS 159.0475 (NRS 150.050).

Lastly, Sections 20 and 46, clarify the court's authority and procedure with respect to entering restraining orders over personal representatives subject to its appointment, trustees subject to its jurisdiction, and property over which it could exercise in rem jurisdiction. (NRS 143.165 and 163.115).

Conclusion

The primary intent of AB 314 was to clarify the laws relating to estate planning, trust administration, probate, and property transfers. Due to the breadth of AB 314 it is impossible to go through each amendment in detail. An Executive Summary of AB 314 that was offered by the Legislative Committee of the Probate and Trust Law Section of the Nevada State Bar can be found at https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/JUD/SJUD1008E.pdf.
**Nevada Appellate Court Summaries**

**Advance Opinion Summary (8-1-17)**

*By Joe Tommasino, Esq.*

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**Aiding and abetting:** A defendant can be convicted of aiding and abetting a negligent or reckless crime upon sufficient proof that the aider and abettor possessed the necessary intent to aid in the act that caused the harm. The Supreme Court of Nevada stated that “an aider and abettor must act with awareness of the reckless or negligent conduct and with the intent to promote or further that conduct.” Separately, the court held that “[b]ecause there were intervening causes between [defendant’s] actions and the victim’s death, we conclude that the State presented insufficient evidence to convict [defendant] of second-degree murder.”


**Attorneys:** (1) The business-judgment rule protects action by a board of directors, just as it protects an individual director’s action; (2) because the business-judgment rule precludes courts from reviewing the substantive reasonableness of a board’s business decision, an evaluation of the substance of the advice the board received from its attorney, and thus discovery regarding the substance of that advice, is unnecessary in determining whether the board acted in good faith; (3) instead, a court can address whether a director acted in good faith by considering various factors, such as an inquiry into the identity and qualifications of any sources of information or advice sought which bear on the decision reached; and (4) a party is not required to waive the attorney-client privilege as the price for receiving the protection of the business-judgment rule. In this lengthy opinion, the Supreme Court of Nevada also discussed the at-issue waiver doctrine, which applies when the client has placed at issue the substance or content of a privileged communication. A client only waives the attorney-client privilege by expressly or impliedly injecting his attorney’s advice into the case. The work-product doctrine protects more than just communications between a client and attorney and is thus broader than the attorney-client privilege. At its core, the work-product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client’s case. Thus, an attorney’s work product, which includes “mental impressions, conclusions, opinions, and legal theories of counsel . . . , are not discoverable under any circumstances.” NRCP 26(b)(3) protects documents with two characteristics: (1) they must be prepared in anticipation of litigation or for trial and (2) they must be prepared by or for another party or by or for that other party’s representative. In determining whether materials were prepared in anticipation of litigation, courts generally use one of two tests. Here, the court took this opportunity to join a majority of courts and adopted the “because-of” test for determining whether work was done “in anticipation of litigation.”

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**Summaries continued on page 36**
der the “because-of” test, documents are prepared in anticipation of litigation when “in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation.” In determining whether the “because-of” test is met, the court joined other jurisdictions in adopting a “totality-of-the-circumstances” standard. In evaluating the totality of the circumstances, the court should “look to the context of the communication and content of the document to determine whether a request for legal advice is in fact fairly implied, taking into account the facts surrounding the creation of the document and the nature of the document.” Lastly, the court should consider “whether a communication explicitly sought advice and comment.” Wynn Resorts, Ltd. v. Dist. Ct. (Okada), 133 Nev. Adv. Op. No. 52, ___ P.3d ___ (July 27, 2017).

**Foreclosures:** (1) NRS 116.3116 provides homeowners’ associations (HOAs) a superpriority lien on up to nine months of unpaid HOA dues; (2) in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. No. 75, 334 P.3d 408 (2014), the Supreme Court of Nevada concluded that a lien pursuant to NRS 116.3116 is a true priority lien such that its foreclosure extinguishes a first deed of trust on the property; and (3) the provisions of NRS 116.3116 are not preempted by federal law when the first deed of trust on the property is insured through the Federal Housing Administration (FHA). Because the FHA insurance program specifically contemplates that lenders may be subject to superpriority liens such as those provided in NRS 116.3116, the preemption doctrine does not apply. *Renfroe v. Lakeview Loan Serv., LLC*, 133 Nev. Adv. Op. No. 50, ___ P.3d ___ (July 27, 2017).

**Foreclosures:** The rule of *SFR In-

**Jurors:** (1) In this case, appellant failed to establish any prejudicial prosecutorial misconduct and appellant’s trial counsel failed to adequately develop the record to assess whether he was prejudiced by juror misconduct; and (2) because the instructions on malice given to the jury were correct and appellant failed to indicate what supplemental clarifying instruction the district court should have provided, appellant failed to demonstrate error. In this opinion, the Supreme Court of Nevada took the opportunity to provide guidance on two recent cases. First, the court distinguished *Bowman v. State*, 132 Nev. Adv. Op. 74, 387 P.3d 202 (2016), regarding the district court’s duty to instruct the jury not to conduct independent research or investigation. Unlike *Bowman*, the district court in this case provided the relevant jury instructions prohibiting jurors from conducting independent research and from considering the penalty. Further, the juror misconduct was revealed before the jury reached a verdict, so the district court was able to remedy any prejudice by admonishing the jury. Most notably, counsel for both parties agreed upon a curative instruction, which the district court provided. Therefore, the district court was not required to act *sua sponte* to investigate whether actual prejudice attached as a result of the juror misconduct. It was incumbent upon the defense counsel to make such a request. Because the defendant’s trial counsel did not adequately develop the record to assess any prejudice, a new trial was not warranted. Second, the court discussed *Gonzalez v. State*, 131 Nev., Adv. Op. 99, 366 P.3d 680 (2015), concerning the district court’s duty to provide additional instruction when a jury’s questions during deliberations suggest confusion or lack of understanding of applicable law. The court clarified *Gonzalez* “to the extent that a district court does not abuse its discretion when it refuses to answer a jury question after giving correct instructions if neither party provides the court with a proffered instruction that would clarify the jury’s doubt or confusion.” *Jeffries (Michael) v. State*, 133 Nev. Adv. Op. No. 47, ___ P.3d ___ (July 6, 2017).

**One-action rule:** The one-action rule must be timely interposed as an affirmative defense in a party’s responsive pleadings or it is waived. The one-action rule provides that “there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate.” When applicable, the one-action rule thus requires that “a creditor . . . seek to recover on the property through judicial foreclosure before recovering from the debtor personally.” *Hefetz v. Beavor*, 133 Nev. Adv. Op. No. 46, ___ P.3d ___ (June 6, 2017).

**Taxes:** (1) In *Sierra Pacific Power Co. v. State Department of Taxation*, 130 Nev. Adv. Op. No. 93, 338 P.3d 1244, 1246 (2014), the Supreme Court of Nevada recognized that “[v]iolations of the dormant Commerce Clause are remedied by compensating for the negative impact to the claimant as measured by the unfair advantage provided to the claimant’s competitors,” and because no competitor was favored by any unfair tax advantage, no tax refund was due in that case; (2) in the instant case
Joe Tommasino, Esq. 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 (NA-CCA).

Mary Bacon, Esq. is an associate at Spencer Fane, LLP. She focuses her legal practice on commercial and construction litigation in addition to civil litigation. She enjoys working with business owners to prevent litigation, and to successfully litigate issues when necessary.
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• When: Saturday, December 16, 2017
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• Where: Distribution to local charities that serve homeless people

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A $75 donation buys 10 blankets. Please accept my donation for $ ________.

My Contact Info:
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Billing Address: _________________________________________________
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Type of Payment Enclosed:
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☐ I will call the CCLF with my credit card information
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