

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT XXVII

By

ALEXANDRA B. McLEOD



Personal Information

1.	Full Name	Alexandra Beth M^cLeod
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	No.
3.	How long have you been a continuous resident of Nevada?	21.5 years
4.	City and county of residence	Las Vegas, Clark County
5.	Age	46

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	WILSON ELSER MOSKOWITZ EDELMAN & DICKER
Phone	702.727.1400
Physical Address & Website	6689 Las Vegas Boulevard South, Suite 200, Las Vegas, NV 89119 www.wilsonelser.com
Date(s) of Employment	Nov 2022 - present
Supervisor's Name and Title	Sheri Thome, Esq. Regional Managing Partner
Your Title	Of Counsel
Describe Your Key Duties	Civil defense litigation with emphasis on auto accident, transportation, premises and products liability cases, and well as catastrophic injury and large loss cases.
Reason for Leaving	N/A

Previous Employer	NETTLES MORRIS
Phone	702.434.8282
Address & Website	1389 Galleria Drive, Suite 200, Henderson, NV 89014 www.nettlesmorris.com
Date(s) of Employment	August 2021-2022
Supervisor's Name and Title	Christian Morris, Esq. Partner
Your Title	Trial Attorney
Describe Your Key Duties	Plaintiffs' attorney and advocate handling severe spinal, brain injury, and catastrophic personal injury matters at all levels of litigation including law & motion, discovery/depositions,

	mediation, arbitration, settlement, and trial. Supervise one of two litigation teams including junior attorneys and staff. Three jury trials.
Reason for Leaving	Dissolution of partnership (now known as Christian Morris Trial Attorneys)

Previous Employer	AIG STAFF COUNSEL (fka Grant & Associates)
Phone	702.940.3529
Address & Website	7455 Arroyo Crossing Parkway, Suite 300, Las Vegas NV 89113 (no firm website)
Date(s) of Employment	Sept 2017 – Aug 2021
Supervisor's Name and Title	Annalisa Grant, Esq. Managing Attorney
Your Title	Trial Attorney
Describe Your Key Duties	Staff counsel specializing in civil defense litigation for AIG insured companies. Prepare and try cases.
Reason for Leaving	Better opportunity

Previous Employer	THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER
Phone	702.366.0622
Address & Website	1100 Bridger Avenue, Las Vegas, Nevada 89101 www.thorndal.com
Date(s) of Employment	Feb 2014 – Sept 2017
Supervisor's Name and Title	Paul Eisinger, Esq./ Kevin Diamond, Esq. Shareholder
Your Title	Senior Associate Attorney
Describe Your Key Duties	Nevada law firm specializing in civil defense litigation for insured and self-insured individuals and companies. Maintained fast-paced civil trial practice with emphasis in premises liability and automobile/transportation negligence cases, including catastrophic injury and/or fatality accidents. One jury trial.
Reason for Leaving	Opportunity at AIG without billing requirements

Previous Employer	BRADY, VORWERCK, RYDER & CASPINO
Phone	N/A (no longer in business)
Address & Website	N/A (no longer in business)
Date(s) of Employment	Oct 2008 – Jan 2014
Supervisor's Name and Title	Robert B. Ryder, Esq. 714.981.9191 (personal cell) Partner

Your Title	Supervising Attorney
Describe Your Key Duties	Defense litigation law firm comprised of 35+ lawyers in seven offices. Responsible for managing Las Vegas casualty unit, supervising other associates and staff, as well as handling and trying cases.
Reason for Leaving	Dispute over partnership

Previous Employer	LEWIS & ASSOCIATES
Phone	N/A (no longer in business)
Address & Website	N/A (no longer in business)
Date(s) of Employment	Mar 2007-Sept 2008
Supervisor's Name and Title	Bryan W. Lewis, Esq. Owner
Your Title	Senior Associate Attorney
Describe Your Key Duties	Manage all aspects of a full, litigated caseload, specializing in insurance defense.
Reason for Leaving	Laid off

Previous Employer	SEEGMILLER & ASSOCIATES
Phone	702.966.7777
Address & Website	9950 W Cheyenne Avenue, Las Vegas NV 89129 www.seegmillerlaw.com
Date(s) of Employment	Aug 2006 – Feb 2007
Supervisor's Name and Title	Clark Seegmiller, Esq. Owner
Your Title	Associate Attorney
Describe Your Key Duties	Involved in all aspects of claims, litigation, and trial practice, specializing in plaintiff's personal injury. Two or three jury trials (second chair).
Reason for Leaving	Offer to return to employment with Bryan W. Lewis, Esq.

Previous Employer	LEWIS & SHREVE
Phone	N/A (no longer in business)
Address & Website	N/A (no longer in business)
Date(s) of Employment	Jan 2003-Aug 2006
Supervisor's Name and Title	Bryan W. Lewis, Esq. & Don F. Shreve, Esq. Owners
Your Title	Associate Attorney

Describe Your Key Duties	Handle litigated caseload while assisting partners on additional projects, specializing in insurance defense. Four or five jury trials.
Reason for Leaving	Firm dissolution

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

SCHOOL	DATES OF ATTENDANCE	CERTIFICATE OR DEGREE	ACTIVITIES
RAS TANURA INTERNATIONAL SCHOOL Ras Tanura, Saudi Arabia	1991-1993	Promotion from 9 th grade Reason for leaving: Completion	<ul style="list-style-type: none"> • Student Body President • Nat'l Jr. Honor Society, officer • Band (flute) • Chorus • Salutatorian
CHOATE ROSEMARY HALL 333 Christian Street Wallingford, CT	1993-1996	High School Diploma <i>cum laude</i> Reason for leaving: Graduation	<ul style="list-style-type: none"> • Crew team (junior varsity) • Musicals: Oklahoma, Anything Goes (chorus) • Summers – tutoring • Term abroad in La Coruña, Galicia, Spain • 6th Form (12th grade) Prefect • Internship with Governor John G. Rowland
AMERICAN UNIVERSITY 4400 Massachusetts Avenue Washington, D.C.	1996-1999	Bachelor of Arts in Political Science <i>cum laude</i> , with Minor in Spanish Language Reason for leaving: Graduation	<ul style="list-style-type: none"> • Latter-Day Saint Student Association • Sales Associate, Student Store • Teaching Assistant: Politics in the U.S.; Introduction to Psychology • Resident Assistant 1998-1999

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

Please see chart above.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

UNIVERSITY OF THE PACIFIC, MCGEORGE SCHOOL OF LAW; Juris Doctorate, May 2002; top 25% (exact rank unknown)

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I was employed in the work-study program and worked with torts professor Julie Davies as a research assistant during my 2L and 3L years (2000-2002).

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

- **Latter-Day Saint Law Student Association, various offices**
- **McGeorge Law Review, 2000-2001 (published at 32 MLR 593)**
- **Editor, *The Transnational Lawyer*, 2001-2002**
- **Community Legal Services: Certified Law Student 2000-2002; Governing Board Member 2001-2002**
- **Trial Advocacy & Advanced Trial Advocacy clinics**
- **Judicial Internship with Judge Roger Hunt, U.S District Court for the District of Nevada, May-Aug 2001**

Law Practice

12. State the year you were admitted to the Nevada Bar. **2002.**

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission. **None.**

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? ~~If so, describe the circumstance, dates, and locations.~~

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

100% litigation matters; 95% trial, 5% appellate courts.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	1% (CAP program)
Juvenile matters	0
Trial court civil	94%
Appellate civil	5%
Trial court criminal	0
Appellate criminal	0
Administrative litigation	0
Other: Please describe	

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials? **100% jury trials**

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

Since 2019, I have tried three jury trials as lead counsel, and one additional case as second chair.

19. List courts and counties in any state where you have practiced in the past five years.

**Eighth Judicial District Court, Clark County, Nevada
 Second Judicial District Court, Washoe County, Nevada
 Supreme Court of Nevada
 U.S. District Court for the District of Nevada**

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: <i>Van Horn v. USF Fabrication et al</i> , Case No. A-02-446696-C, (filed 2/19/02; trial 6/28-7/8/04)
Court and presiding judge and all counsel: Department 23: Hon. Sally Loehrer (Ret.) Plaintiff’s Counsel: Lawrence Smith, Esq., Robert Vannah, Esq. Co-Counsel: Bryan Lewis, Esq. Co-Defendant’s Counsel: Stan Perry, Esq., Debra Turner, Esq.
Importance of the case to you and the case’s impact on you: This was my very first trial, in which I served in the role of second chair to Bryan Lewis. It was a personal injury suit involving product defect and negligence claims, with very high potential exposure. To say assisting in handling and trying this case was a learning

<p>experience would be a severe understatement. When I traveled along with my colleagues for depositions in the discovery phase, I practiced much more than examination techniques; this was my initiation into the civility that can (and should!) exist between opposing counsel, who did their jobs as advocates on the record, but, off the record, enjoyed the comradery of breaking bread together and getting to know one another. When it came to preparing for trial, I was trusted with responsibility for comprehensive law and motion, jury instructions, trial brief, and examination of several witnesses from the depositions I had previously attended, as well as assisting behind the scenes with strategy and drafting argument. Everything was new to me and I absorbed it all, learning from Mr. Lewis' capable example as well as from the other advocates in that courtroom. We were very pleased when the jury returned a defense verdict for our client, USF Fabrication, but I know this case and trial would have been memorable in my career regardless of the outcome.</p>
<p>Your role in the case: Defense counsel, second chair</p>

<p>Case 2</p>
<p>Case name and date: Bradley v. Driggs, Case No. A-03-461509-C, (filed 1/7/03; trial 9/30/04)</p>
<p>Court and presiding judge and all counsel: Department 11: Hon. Stewart Bell (Ret.) Co-Counsel: Bryan Lewis, Esq. Plaintiff's Counsel: Noel Gage, Esq., Janelle Lavigne, Esq.</p>
<p>Importance of the case to you and the case's impact on you: I handled this personal injury auto case as first chair, and, for the first time, had principal responsibility for all portions of discovery, case preparation, and trial, including voir dire, opening, evidence and witness examination, as well as the closing I had prepared but never got to give as the case settled at the close of the defense case. Trying a case before Judge Bell was a test of endurance to say the least, but he demanded the advocates in his courtroom be prepared and did not accept any dilatoriness that might give counsel a chance to catch our breath but make the jurors wait. Preparing and trying a case before Judge S. Bell made me a better lawyer, not just because of the additional practice, but because he held the advocates to such high standards.</p>
<p>Your role in the case: Defense counsel, first chair</p>

<p>Case 3</p>
<p>Case name and date: Frabotta v. Ramparts, Inc., Case No. A-02-453343-C, (filed 7/15/02; trial 12/6-12/14/04)</p>
<p>Court and presiding judge and all counsel: Department 11: Hon. Elizabeth Gonzalez</p>

<p>Plaintiff's Counsel: Carolyn Ellsworth, Esq. Co-counsel: Bryan Lewis, Esq.</p>
<p>Importance of the case to you and the case's impact on you: In this negligent security case, I reprised my role as second chair as the trial called for more than one trial attorney due to its complexity, potential for newsworthiness, and possible exposure. This was the first trial I was part of that we lost for our client, and I recall feeling that defeat acutely after having put so much effort, energy, and countless hours into it. I think every trial makes one a better practitioner and a stronger advocate, and this trial was no exception as it relates to learning and practicing trial techniques. In addition, there were some procedural anomalies both before and after the verdict which tested our abilities to think quickly on our feet, strategize, and problem solve. I also learned a great deal from observing a skillful opponent, now Judge Carolyn Ellsworth (Ret.). More than that, this is case that taught me about the unpredictability of trial which we warn our clients about and turn to ADR seeking a greater ability to control the outcome. This trial taught me about the emotional impact litigation and trial can take on the litigants, and made me a more empathetic counselor at law. Having experienced the ups and downs of this case gave me greater experience and better perspective, and made me more capable of giving practical, realistic advice to every client I have represented since.</p>
<p>Your role in the case: Defense counsel, second chair</p>

<p>Case 4</p>
<p>Case name and date: <i>Yang v. Hammond</i>, Case No. A-04-487993-C, (filed 6/29/04; trial 6/4-6/6/07)</p>
<p>Court and presiding judge and all counsel: Department 2: Judge Elizabeth Halverson Plaintiff's Counsel: Benson Lee, Esq.</p>
<p>Importance of the case to you and the case's impact on you: I was defense counsel this personal injury auto case which had many twists and turns during trial before Judge Halverson. As result of the abnormalities in this trial including the Court's cross-examination of the defense expert, we filed a motion for new trial based on alleged judicial misconduct. I recall from the research and briefing a great deal of case law about the power and inherent authority in the judge's robe and the possibility to influence the jury, even unintentionally, if one were not extremely careful in preserving neutrality. One quote comes to mind, "The average juror is a layman; the average layman looks with most profound respect to the presiding judge..." <i>Peterson v. Pittsburg Silver Peak Gold Mining Co.</i>, 140 P. 519, 520 (Nev. 1914). This experience was the inception of my desire to serve on the bench and to protect due process and the litigants' right to a fair trial. I realize that judges must be mindful of the influence they wield in performing their function as referee between the advocates, and also of their duty to ensure the jury maintains the freedom to decide the case.</p>
<p>Your role in the case: Solo defense counsel</p>

Case 5
Case name and date: <i>Howard vs. Caesars Linq, LLC</i> , Case No. A-20-820182-C (filed 8/26/20; trial 7/20-7/28/22)
Court and presiding judge and all counsel: Department 7: Judge Linda Bell Defense Counsel: Troy E. Peyton, Esq. Co-counsel (second chair): Wes LeMay, Jr., Esq.
Importance of the case to you and the case's impact on you: This case was unusual for several reasons: first, because it went to the overflow program in the wake of the Covid-19 pandemic; and second, because there was an evidentiary hearing in between jury selection and opening statements. This trial required last minute improvising and seemed to be a test of my ability to think on my feet. The outcome of the evidentiary hearing changed the triable issues and necessitated updating our game plan. We also tried the case in one of the municipal courtrooms, which does not have a jury box, and made for up close and personal interactions with our panel and jury. Every trial is unique and presents its own challenges, and this one was no exception. The trial of this case reminded me that even after decades of legal practice and a dozen trials under my belt, there is always more to learn. I believe the best trial judges were first trial lawyers, and if I am lucky enough to serve on the bench one day, I hope I remember the lessons I learned in the trenches.
Your role in the case: Lead counsel for Plaintiff

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

Yes

I served on the court-annexed arbitration panel for approximately five years, from 2012-2017 until required to resign while working as staff counsel. I returned to serving on the panel, and accepted a place of the panel of short trial judges, beginning in 2021. I enjoy serving litigants and gaining a new perspective as the neutral and finder-of-fact. These experiences also give me opportunities to learn from other advocates and take pointers on my own practice. I try to be conscientious in rendering and drafting decisions, and very much want the advocates and litigants to be able to understand the reasoning behind my determinations.

22. Describe any pro bono or public interest work as an attorney.

CAP program cases

Goldilocks program (education on legal system to elementary students), Young Lawyers Section of the State Bar

**Mock Trial judge
Transition into Practice (TIP) mentor**

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

**State Bar of Nevada
Southern Nevada Association of Women Attorneys, current President
Clark County Bar Association
Las Vegas Defense Lawyers, former board member
EJDC Bench-Bar Committee, served as “bar” chair from 2019-2023
Nevada Justice Association (former)**

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes**

Date	Course Name	Provider	General	Ethics	AAMH
12/07/2023	Women in Law Series - Discovery, Commissioners Truman and Young Presenters	Southern Nevada Association of Women Attorneys (SNAWA)	1.00	0.00	0.00
10/12/2023	The First Uber Trial in CA – Strategies to Apply in Other Cases	Wilson Elser Moskowitz Edelman & Dicker, LLP	1.00	0.00	0.00
09/12/2023	Civil Bench - Bar Meeting	Eighth Judicial District Court	0.50	0.00	0.00
07/26/2023	NTAT - Jury Selection in Serious Injury Cases	Wilson Elser Moskowitz Edelman & Dicker, LLP	1.00	0.00	0.00
06/28/2023	Women Trial Lawyers – Lessons from the Trenches	Wilson Elser Moskowitz Edelman & Dicker, LLP	1.00	0.00	0.00
06/22/2023	State Bar of Nevada Annual Bar Conference	State Bar of Nevada	3.50	1.00	1.00
06/01/2023	Navigating the Time Entry Life Cycle: Locate the Right Map (Guidelines), Communicate Often	Wilson Elser Moskowitz Edelman & Dicker, LLP	1.00	0.00	0.00

Date	Course Name	Provider	General	Ethics	AAMH
03/31/2023	2022 Fall TIP Mentor Program	State Bar of Nevada	4.00	1.00	1.00
03/07/2023	WAVE 2023 Spring Event	Wilson Elser Moskowitz Edelman & Dicker, LLP	0.00	0.00	1.00
02/13/2023	Mandatory Arbitrator Training	State Bar of Nevada	2.00	1.00	0.00
02/13/2023	Short Trial Judge Training	State Bar of Nevada	3.00	0.00	0.00
11/16/2022	Diversity Day 2022: Building Psychological Safety & Belonging	Wilson Elser Moskowitz Edelman & Dicker, LLP	0.00	1.00	0.00
11/03/2022	Networking Like a Boss	Southern Nevada Association of Women Attorneys (SNAWA)	1.00	0.00	0.00
10/06/2022	Panel Discussion on Trial Skills	Southern Nevada Association of Women Attorneys (SNAWA)	3.00	0.00	0.00
09/29/2022	2022 TIP Mentor Program Spring	State Bar of Nevada	4.00	1.00	1.00
09/13/2022	Updates Including Overview of AO on Depositions, and Amendments to ADR Rules	Eighth Judicial District Court	0.50	0.00	0.00
08/31/2022	Deposition Conduct Rules - Do's & Don'ts	Clark Co. Bar Association	1.00	0.00	0.00
08/02/2022	Boot Camp Part IV - #4) Mechanics of Trial and Jury Selection	Nevada Justice Association	2.00	0.00	0.00
07/14/2022	Diversity CLE Panel Event During Lunch Judge Allf & Sturman Will Be the Moderators	Southern Nevada Association of Women Attorneys	0.00	1.00	0.00

Date	Course Name	Provider	General	Ethics	AAMH
03/31/2022	Embrace Your Inner Bad-Ass: IT'S BACK, BIGGER AND BADDER THAN EVER!	Nevada Justice Association	10.00	0.00	0.00
02/03/2022	Here Comes the Judge series CLE #1	Nevada Justice Association	0.00	1.00	0.00
01/27/2022	Short Trial Program Judge Training 2022	State Bar of Nevada	3.50	0.50	0.00
01/06/2022	Helping Young Lawyers Succeed	Southern Nevada Association of Women Attorneys	0.00	0.00	1.00
11/19/2021	2021 Arbitrator Training and Refresher	State Bar of Nevada	3.00	1.00	0.00
10/28/2021	Trial Lawyers University Live 2021	Trojan Horse, LLC	21.00	0.00	0.00
10/21/2021	Diversity in the Legal Profession	Clark County Bar Assoc-CLE Committee	0.00	1.00	0.00
10/19/2021	Helping Young Lawyers Succeed - Bench Bar CLE	Eighth Judicial District Court	0.00	0.00	0.50
10/08/2021	NJA's 45th Annual Convention/Seminar	Nevada Justice Association	8.50	3.00	2.00
10/05/2021	ADR: What do you Need to Know?	Clark County Bar Assoc-CLE Committee	1.00	0.00	0.00
09/28/2021	Hot Topics in Civil Discovery	Clark County Bar Assoc-CLE Committee	1.00	0.00	0.00
09/22/2021	Women in the Law Panel Discussion	Southern Nevada Association of Women Attorneys	1.00	0.50	0.00
09/14/2021	Best Practices for Virtual Appearances	Eighth Judicial District Court - Bench Bar	0.00	0.50	0.00

Date	Course Name	Provider	General	Ethics	AAMH
08/24/2021	Motions in Limine with Judge Timothy Williams	Nevada Justice Association	0.00	1.00	0.00
08/12/2021	Boundaries for Health Living	Southern Nevada Association of Women Attorneys	1.00	0.00	0.00
06/25/2021	Health Economics Calculating Reasonable and Customary Medical Values	Las Vegas Defense Lawyers	1.00	0.00	0.00
06/17/2021	2021 State Bar of Nevada Annual Bar Conference	State Bar of Nevada	5.00	2.00	1.00
03/30/2021	Intervertebral Disc Injury, Degeneration, and Causality	Las Vegas Defense Lawyers	1.00	0.00	0.00
01/26/2021	Memory Complaints & TBI Claims: How to Avoid Litigation Headaches	Las Vegas Defense Lawyers	1.00	0.00	0.00
01/14/2021	Substance Abuse with Justice Michael Cherry	Southern Nevada Association of Women Attorneys	0.00	0.00	1.00
12/15/2020	Distinguishing Between Post Traumatic Stress Disorder & Mild Neuroc	Las Vegas Defense Lawyers	1.00	0.00	0.00
12/01/2020	Rebut with a Billing & Coding Expert	Las Vegas Defense Lawyers	1.00	0.00	0.00
11/17/2020	Racial Biases & Prejudices	Howard D. McKibben Inn of Court, Las Vegas	0.00	1.00	0.00
11/05/2020	Handling e-Discovery with Limited Resources	Southern Nevada Association of Women Attorneys	1.00	0.00	0.00
10/20/2020	PLI's California MCLE Marathon 2019: Current Developments in Le	Practising Law Institute	1.00	1.00	1.00

Date	Course Name	Provider	General	Ethics	AAMH
10/20/2020	Documentary: Raise Hell: The Life & Times of Molly Ivins	UNLV-William S. Boyd School of Law	2.50	0.00	0.00
10/20/2020	Collecting Information & Securing Physical Evidence Before it is Sol	Las Vegas Defense Lawyers	1.00	0.00	0.00
09/29/2020	Cervical Whiplash Injury	Las Vegas Defense Lawyers	1.00	0.00	0.00
09/01/2020	Nevada Supreme Court Case Updates	Clark County Bench-Bar Committee	0.50	0.00	0.00
08/06/2020	Financial Planning During COVID	Southern Nevada Association of Women Attorneys	1.00	0.00	0.00
02/11/2020	Nevada Supreme Court Rule Updates & EDCR Changes	Clark County Bench-Bar Committee	0.50	0.00	0.00
12/17/2019	Ethics in Discovery 2019	Practising Law Institute	0.00	2.00	0.00
12/16/2019	Illinois Professional Responsibility MCLE Marathon 2019	Practising Law Institute	0.00	0.00	1.00
11/12/2019	Changes to Nevada Arbitration Rules by ADR Copmmissioner Erin Truman	Eighth Judicial District Court	0.50	0.00	0.00
10/03/2019	ADR in a Nutshell & Changes to the ADR Program	Southern Nevada Association of Women Attorneys	1.00	0.00	0.00
09/05/2019	Top 10 Ethical Traps	Southern Nevada Association of Women Attorneys	0.00	1.00	0.00
07/11/2019	Break Your Own Rules: How to Change Patterns that Block Women's Path	Southern Nevada Association of Women Attorneys	1.00	0.00	0.00

Date	Course Name	Provider	General	Ethics	AAMH
06/19/2019	Recent Changes to NRCP	Las Vegas Defense Lawyers	1.00	0.00	0.00
06/06/2019	What Will Happen to Your Practice or Your Interest in Your Firm When	Southern Nevada Association of Women Attorneys	1.00	0.00	0.00
05/14/2019	NRCP, Rule 26: Proportionality Standard of Discovery	Eighth Judicial District Court	0.50	0.00	0.00
04/09/2019	Medical Causation	Eighth Judicial District Court - Bench Bar	0.50	0.00	0.00
03/07/2019	Summary of Changes to the Nevada Rules of Civil Procedure	Southern Nevada Association of Women Attorneys	1.00	0.00	0.00
11/08/2018	Applying Value of Statistical Life Estimates in Litigation	Las Vegas Defense Lawyers	1.00	0.00	0.00
10/23/2018	Effective Surveillance: The Silent Witness	Las Vegas Defense Lawyers	1.00	0.00	0.00
10/11/2018	How the Bench Can Become More Diverse-Diversity Panel	Las Vegas Latino Bar Association	0.00	1.50	0.00
09/19/2018	Three Prong Approach for Combating Substance Abuse & Depression in t	Las Vegas Defense Lawyers	0.00	0.00	1.00
09/11/2018	Say What? A Brief Overview of Selected Proposed Changes to the Dis	Eighth Judicial District Court	0.50	0.00	0.00
04/25/2018	Proper Preparation & Presentation of Court-Annexed Arbitration Cases	Las Vegas Defense Lawyers	1.00	0.00	0.00
04/18/2018	Using Grit & Growth Mindset to Advance Women in Law	UNLV-William S. Boyd School of Law	1.50	0.00	0.00

Date	Course Name	Provider	General	Ethics	AAMH
03/01/2018	Gender & Negotiation: What About the Guys?	UNLV-William S. Boyd School of Law	1.00	0.00	0.00

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I have professional liability insurance through my current employer.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Since graduating from law school, I worked as a law clerk until receiving my bar results and starting my first associate position. I have been engaged in the practice of law ever since. In addition to that pursuit, I worked as an adjunct profession at the UNIVERSITY OF PHOENIX, Las Vegas Campus from approximately 2008-2014, teaching Business Law, Negotiations, and Ethics classes.

~~27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? **No** If so, please provide details as to:~~

- ~~a. the nature of the business
b. the nature of your duties
c. the extent of your involvement in the administration or management of the business
d. the terms of your service
e. the percentage of your ownership~~

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership. **None**

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

No

Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I applied for the judicial vacancy in Department 8 in 2019. I was a judicial candidate for Department 28 in 2020 but lost to the incumbent.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

Please see responses to Questions 23 and 32.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

CLE program (1 hour) – “How to Negotiate Like a Boss” (2015)

SNAWA panel “Women in Torts” (April 2019)

Trial Lawyer Bootcamp: Mechanics of Trial & Jury Selection (Aug 2022), Nevada Justice Association

Women in the Law: Trial Skills (moderator) (Oct 2022), Southern Association of Women Attorneys

Women in the Law: Network like a Boss (Nov 2022), Southern Association of Women Attorneys

WAVE CLE program: Navigating Male-Dominated Fields (panel moderator) (March 2023)

CLE panel with Discovery Commissioners (moderator) (Dec 2023), Southern Association of Women Attorneys

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I have always been active in my church, which depends on a volunteer, lay-clergy to operate. I currently serve as youth Sunday school instructor. Most of the church service I have provided relates to being a leader and teacher of youth and young adults. From 2012-2015, I taught early morning seminary, which is religious instruction from scripture for high school students before their secular classes begin (5:45-6:45 a.m.). A particular favorite assignment was serving as the children’s chorister for many years.

I also participated in the Emerge Nevada program (a state affiliate of Emerge America), which trains women to be future candidates for public office. I completed the course requirements in 2019, which included 40 volunteer hours of community activism.

33. List honors, prizes, awards, or other forms of recognition.

AV-rated, Martindale Hubbell (approx. 2015)

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

- **Law Review Article, *Catch-22: An Inquiry into the Competency of Mentally Disordered Offenders to Waive Their Right to Recommitment Hearings*, available at 32 M.L.R. 593 (Winter 2001).**
- **Published Nevada Supreme Court case, *Gardner v. Henderson Water Park, LLC, et al.*, 133 Nev. Adv. Op 54 (2017) affirming summary judgment for clients.**
- ***Enforceability of Fitness Club Waivers*, NEVADA LAWYER, August 2018, co-authored with Kevin Diamond, Esq.**
- ***Network Like a Boss*, NEVADA LAWYER, August 2022**

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

In addition to the foregoing activities, I am an avid San Francisco 49ers football fan and, since 2017, a fan of the Vegas Golden Knights. I self-identify as a foodie and enjoy all the restaurant options we have here in Las Vegas. I love to travel, and am planning a trip to South America this spring. I use any remaining free time to spoil my niece and nephew whenever I can.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

Yes

I was cited for a minor traffic violation in Utah in approximately 2005. I believe the citation was reduced and I paid a fine.

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

No

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

I applied for the judicial vacancy in EJDC Department 8 in 2019, but was not selected.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education,

experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

Please see my personal statement, submitted herewith.

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

Please see my personal statement, submitted herewith.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

Please see the excerpt from the trial brief in the *Howard v. Caesar's Linq* case (first 10 pages only), submitted herewith.

A. MCLEOD – PERSONAL STATEMENT

I am the ideal applicant for appointment to the District Court because of my unique combination of courtroom and life experience. Judges are the gatekeepers – the referees – in the courtroom. The best judges combine life experience and courtroom experience to develop a perspective that ensures all who come before the court are treated with respect, equality, and justice under the law. In the sports context, the ref is an authority figure who presides over the game from a neutral point of view. They must know how the game is played. They must make real time decisions to enforce the rules of the sport. To be an effective referee on the field or on the court, the ref must also earn and keep the respect of the players, as well as that of their colleagues and spectators. As illustrated below, these core qualities make me well-suited for the District Court bench.

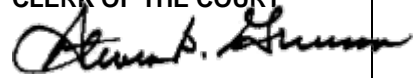
In over 20 years of litigation and trial practice, I have learned the rules of the game and taken cases from pre-litigation or filing, through discovery, and on to trial, and in several instances through the appeal process. Since my admission to the Bar, I have witnessed first-hand how civil practice has evolved dynamically for the last two decades in our State. As a litigator, I have been tenacious in my advocacy for my clients, and have completed more than 15 jury trials. I have represented corporations and had to ensure that if any money was delivered to a plaintiff, it was due compensation. I have represented individuals who were seriously injured through no fault of their own and had to ensure that they got every penny they deserved. I am especially proud of having done so while establishing rapport with colleagues on both sides of the aisle, as I anticipate my letters of recommendation will attest. Knowing the law and the rules of procedure have been essential my success, but knowledge about how to communicate and relate to other human beings is equally, if not more, important. My life experience and unique outlook that set me apart from my peers and make me the best candidate to serve in Department 27.

As teenager, my father's work required our family to move overseas. We boarded three different planes and, eventually, landed in Saudi Arabia. During the years that followed, I was fortunate to travel to Europe, to the Middle East, and to Africa with my family. I spent a term abroad in Spain and learned to speak another language. I met new people of every color and every shape. I acquainted myself with people of diverse cultures, customs, and beliefs. I tasted exotic foods. Once, I was even offered 100,000 camels for my hand in marriage. I learned that laughter sounds the same in any language across the globe. I learned that although people celebrate on different dates and for different reasons, they usually do it the same way: by surrounding themselves with family and friends and food (lots of food!). Most of all, I learned that listening to people is how you show them dignity and it is the foundation of respect.

My travels also fostered my love of the law. During these adventures, I got to see some of the wonders of the world and also saw firsthand the systems of justice and government in other parts of the globe. In some of those places there are little to no safeguards of "due process." For just one example, my family was visiting one Middle Eastern city when we were forced to cut short a day of sightseeing to spend it sequestered in our hotel room instead. We were someone was being executed that day, and passersby – especially foreigners – would be compelled to witness the beheading in order to fulfill the sentence of the execution being public. What I remember most about that day is how alarmed the experience made me and how affronted I was that my four-year-old little brother could have been subjected to such a sight. I realized how privileged I was to grow up in our American system of justice. By contrast after that day and after several years in a country where women were literally and not just figuratively second-class citizens, I realized how privileged I was to grow up to have a voice. When I came back to the United States, I knew exactly how I could both serve my community and ensure that our legal system continues to be the best in world.

We need honorable judges with diverse backgrounds, deep ties to our community, and balanced temperaments to safeguard the integrity of our court system. We also need judges with open minds and sharp intellects to make on-the-fly decisions when required on the bench (such as the response to an objection at trial), and who have the wisdom to know when deliberation is best (such as a decision on a complicated dispositive motion). Trial practice and oral argument have helped me hone the ability to think quickly on my feet. I have spent the last two decades collaborating with colleagues, mentoring less experienced lawyers, and writing thoughtful law and motion and arbitration decisions. All of these tasks have helped me hone my perception by looking at issues from more than one point of view. I have worked to promote the efficient operation of the EJDC with the civil bench-bar. I serve the greater community through volunteering and through my church. Judges are most effective when they are active in our community, contribute to positive relations between the bench and the bar, and work to empower advocates, jurists, and Clark County citizens alike. That is the kind of judge I will be if appointed.

If selected to serve on the bench, I want most to remember that the law and the decisions judges make directly impact everyday people, families, and businesses. I will strive to keep those values in mind as a judge. Because I understand that the right to show up and be heard is essential to dignity, I promise to listen to the people that come into my courtroom and to their advocates. I will draw on my world view to be both empathic and fair. I will defend due process and make my courtroom a safe place for those who are called before the court. I will work every day to make our justice system more fair and more efficient, and to preserve the respectability that the offices requires.



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DISTRICT COURT
CLARK COUNTY, NEVADA

BRENT HOWARD, an individual;

Plaintiff,

vs.

CAESARS LINQ, LLC d/b/a THE LINQ
PROMENADE, a foreign limited-liability
company; CAESARS ENTERTAINMENT
CORP., a foreign corporation; LVNV RG, LLC
d/b/a OFF THE STRIP AT THE LINQ, a
domestic limited-liability company; 3535 LV
NEWCO, LLC d/b/a THE LINQ HOTEL &
CASINO, a foreign limited-liability company;
DOE EMPLOYEE, an individual; DOES 1
through 10, individuals; ROE CORPORATIONS
11 through 20; and ABC LIMITED LIABILITY
COMPANIES 21 through 30;

Defendants.

CASE NO: A-20-820182-C

DEPT NO: VII

**PLAINTIFF'S TRIAL BRIEF TO
ESTABLISH FAULT OR, IN THE
ALTERNATIVE, PRECLUDE
EVIDENCE AND ARGUMENT
THAT DEFENDANTS INSPECTED
THE SUBJECT AREA**

COMES NOW Plaintiff, BRENT HOWARD, by and through his counsel, Alexandra B. M^cLeod, Esq., and Wesley H. LeMay Jr., Esq., of **NETTLES | MORRIS**, and hereby submits the following PLAINTIFF'S TRIAL BRIEF TO ESTABLISH FAULT OR, IN THE ALTERNATIVE, PRECLUDE EVIDENCE AND ARGUMENT THAT DEFENDANTS INSPECTED THE SUBJECT AREA.

NETTLES | MORRIS
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(702) 434-8282 / (702) 434-1488 (fax)

1 This Trial Brief is filed pursuant to EDCR 7.27 and based on the following pleadings and
2 papers on file, Memorandum of Points and Authorities, and oral argument as may be allowed.

3 MEMORANDUM OF POINTS & AUTHORITIES

4 I. INTRODUCTION & STATEMENT OF RELEVANT FACTS

5 Plaintiff, Brent Howard suffered severe foot injury and nerve damage from stepping on a
6 large piece of broken glass outside the restaurant, Off the Strip, at the Linq Promenade on
7 August 29, 2018. This laceration to the right foot caused significant injury to the saphenous
8 medial plantar nerves as a direct result of the initial injury. Plaintiff's damages include \$8,000 in
9 past medical bills, future treatment including a surgery at a cost of \$70,000, and \$6,000 per
10 month in past and future wage loss. As of this writing, Mr. Howard continues to have paresthesia
11 and discomfort related to the trauma and resulting injuries of the above-identified nerves.

12 Specifically, Plaintiff testified that after the laceration occurred, he immediately sat
13 down and saw what appeared to be a large piece of the bottom of a broken pint glass. *See Dep.*
14 *of Brent Howard, at 16:9–14, attached hereto as EXHIBIT 1.* As Mr. Howard sat on the floor,
15 security personnel arrived to assist with bandaging Mr. Howard's injury. *Id. at 16:15–19.* One
16 of the security guards took the piece of the broken pint glass that lacerated Mr. Howard's foot
17 and threw it into the nearby bushes. *Id. at 17:10–12.*¹ Based on such testimony and events,
18 Plaintiff requested video surveillance footage of the area where the incident occurred prior to,
19 during, and after the incident, and only one photograph of a bloody walkway was produced. *See*
20 *Caesar's Linq, LLC's Response to Plaintiff's Request for Production of Documents, at*
21 *Response No. 2, attached hereto as EXHIBIT 2. See also Caesar's Entertainment Defendants'*
22 *Initial Disclosure, at 3:11-17; 6, attached hereto as EXHIBIT 3.*

23 Additionally, Defendants at no time produced Daily Activity Reports (DAR's) which
24 should have documented security patrols and inspections. As one more nail in the evidentiary
25 coffin, the Defendants failed to produce a 30(b)(6) witness at the properly noticed and
26 rescheduled deposition to answer these unresolved questions about the Subject Event or the

27
28 ¹ Plaintiff anticipates that Plaintiff's account of events will be corroborated by the testimony of witnesses Kimberly Costa and Trasie Mason.

1 outstanding discovery. *See Nonappearance Statement of the Rule 30)(6) Deposition of*
2 *Caesars Linq, LLC, attached hereto as EXHIBIT 4.*

3 *A. Contradictory Statements Made by Defendants related to Existence of Video*
4 *Surveillance*

5 Contradictory statements regarding the existence of video surveillance were made and
6 no video surveillance footage was ever produced. Specifically, the incident report states that
7 “There No Surveillance Coverage Of The Incident” which was reported and documented a little
8 over two hours after the incident—which is not reasonably enough time to conduct such a
9 proper and thorough investigation. **EXHIBIT 3 at 5 (Error in original)**. At the same time,
10 Caesars Linq, LLC admitted that “video, audio, and/or photographic surveillance footage of the
11 Subject Area was captured on the day of the Subject Incident.” *See Caesars Linq, LLC’s*
12 *Response to Plaintiff’s Request for Admissions, at Request No. 14, attached hereto as*
13 **EXHIBIT 5**. However, when asked if video surveillance footage of the area where the incident
14 occurred was captured, Caesars Linq stated there is no surveillance coverage of the incident,
15 which did not properly address or respond to the question, which was *if* surveillance footage *of*
16 *the area* was captured. *See Caesars Linq, LLC’s Answers to Plaintiff’s Interrogatories, at*
17 **Response No. 3, attached hereto as EXHIBIT 6 (emphasis added)**.

18 Defendants failed to make a good faith effort to participate in and to fulfill their duty to
19 supplement discovery and their actions have continually been evasive, improper, and in
20 violation of the Rules of Civil Procedure. For example, Defendants continually stated that issues
21 were being investigated and that adequate supplementation or responses would occur at a later
22 date. No supplementation, no additional responses, and no supplemental disclosures were
23 provided whatsoever. Specifically, Defendants often claimed they were “in the process” of
24 obtaining information that would be supplemented—even if such supplementation never
25 occurred. *See EXHIBIT 2 at Responses No’s. 1, 5, 7, 10, & 12. See also EXHIBIT 5, at*
26 **Responses No’s. 3, 8, 10, 12, 21, & 27.**

27 In short, Defendants claimed 14 times that they were “in the process” of investigating
28 and obtaining information that would be supplemented or later disclosed, and yet, no

1 supplementation, no additional responses, and no supplemental disclosures were ever provided
2 to Plaintiff, essentially thwarting Plaintiff's efforts to search out and obtain evidence in support
3 of his case in chief.

4 ***B. Defendants Failed to Produce a 30b6 Witness***

5 Unfortunately, Plaintiff was also denied the opportunity to obtain additional testimony
6 regarding the existence of video surveillance footage or clarify discovery responses from
7 Caesars Linq because its 30(b)(6) witness failed to appear for a noticed (and rescheduled at their
8 request) deposition. **See EXHIBIT 4.** Plaintiff first noticed the 30(b)(6) deposition of Caesars
9 Linq on January 27, 2022, specifically requesting a competent witness to testify regarding video
10 surveillance, surveillance logs, surveillance cameras and installation, and responsibilities and
11 policies for inspecting the area where Plaintiff was injured. **See *Third Amended Notice of***
12 ***30(b)(6) Deposition of Caesars Linq LLC at 3:28-6:14, attached hereto as EXHIBIT 7. See***
13 ***also Previous Notices of 30(b)(6) Deposition of Caesars Linq, LLC, originally attached as***
14 ***Exhibits to the Notice of Non-Appearance, attached hereto as EXHIBIT 8.*** One day before that
15 deposition was set to occur, on February 10, 2022, defense counsel requested that the deposition
16 be rescheduled. Plaintiff accommodated the defense's request and issued a first amended
17 deposition notice with the future date to be determined. ***Id.*** Admittedly, deposition scheduling
18 was difficult as counsel for both parties were in trial during the month of March.

19 The matter was set over for mediation in May, and a second amended notice of
20 deposition was issued on May 17, 2022, resetting the deposition for June 3, 2022 in the event
21 that mediation was unsuccessful. ***Id.*** Based on a May 18, 2022 email from Mr. Peyton's
22 assistant, Alondra Reynolds, advising that the date of June 3rd did not work and providing
23 alternate availability, the third amended deposition notice was served on May 20, 2022, noticing
24 the deposition for June 6, 2022. ***Id.***

25 Regrettably, even after repeatedly rescheduling the deposition date to accommodate the
26 busy schedules of the 30(b)(6) witness for Caesars Linq and his/her counsel, on June 6, 2022, no
27 30(b)(6) witness appeared to provide binding testimony on behalf of Caesars Linq, and Plaintiff
28 rightfully filed a Notice of Non-Appearance. **See EXHIBIT 4. See Also Declaration of**

1 **Alexandra B. McLeod, Esq., attached hereto as EXHIBIT 9.** Even more, Defendant’s Counsel,
2 on the record, stated that “there is no nefarious reason behind this” and that he would “work
3 diligently with [Plaintiff’s Counsel] to get this back on track.” *See EXHIBIT 4, at 5:17–19.*
4 However, following the non-appearance, Plaintiff made a good faith effort to provide another
5 opportunity to schedule and take a 30(b)(6) deposition to which Caesars Linq did not respond.
6 *See EXHIBIT 9.*

7 **II. IN ORDER TO LEVEL THE PLAYING FIELD WHEN A PARTY REFUSES TO**
8 **PROVIDE EVIDENCE THROUGH GAMESMANSHIP OR WRONGFUL**
9 **CONDUCT, THIS COURT IS AUTHORIZED TO ESTABLISH FACTS FOR**
10 **PURPOSES OF TRIAL**

11 Nevada Rule of Civil Procedure 37, authorizes courts in this State to address wrongful
12 conduct in discovery, when and if such orders are justified by the inappropriate and harmful
13 actions of a party that refuses to fulfill its legal duty to participate in discovery in good faith.
14 Indeed, NRCP 37 permits the court to tailor orders as necessary when and if a party fails to
15 make appropriate disclosures during discovery or if a party refuses to appear for a scheduled
16 deposition. Specifically, NRCP 37(a)(4) states that “an evasive or incomplete disclosure,
17 answer, or response must be treated as a failure to disclose, answer, or respond.” NRCP
18 37(a)(4). Most importantly, NRCP 37 permits the court to issue appropriate and just orders to
19 properly address bad faith discovery practices and permit equitable relief where the wrongful
20 conduct of a party halts the litigation process. The purpose of such a rule is to provide the court
21 with the authority to level the playing field when a party refuses to provide evidence through
22 gamesmanship or wrongful conduct.

23 Under NRCP 37(b)(1) if a witness designated under Rule 30(b)(6) fails to provide or
24 permit discovery, including an order under Rule 35 or 37(a), the court may make appropriate
25 and just orders, which are identified pursuant to NRCP 37(b)(1) and include the following:

- 26 (A) directing that the matters embraced in the order or other designated facts be
27 taken as established for purposes of the action, as the prevailing party claims;
28 (B) prohibiting the disobedient party from supporting or opposing designated
claims or defenses, or from introducing designated matters in evidence;
(C) striking pleadings in whole or in part;
(D) staying further proceedings until the order is obeyed;

- 1 (E) dismissing the action or proceeding in whole or in part;
2 (F) rendering a default judgment against the disobedient party; or
3 (G) treating as contempt of court the failure to obey any order except an order to
4 submit to a physical or mental examination.
5 NRCPC 37(b)(1) (emphasis added).

6 Similarly, NRCPC 37(d) permits for any of the above orders when and if a party, including a
7 30(b)(6) witness fails to appear for a deposition and provide testimony. Even more, NRCPC 37(c)
8 provides a self-executing sanction as follows:

9 If a party fails to provide information or identify a witness as required by Rule
10 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use
11 that information or witness to supply evidence on a motion, at a hearing, or at a
12 trial, unless the failure was substantially justified or is harmless. NRCPC 37(c)
13 (emphasis added).

14 Moreover, pursuant to NRCPC 26(e), a party “is under a duty to timely supplement or correct the
15 disclosure or response to include information thereafter acquired” after making initial
16 disclosures or responding to discovery requests. Additionally, NRCPC 37(c) permits that any
17 failure to disclose or supplement, including as required by NRCPC 26(e), justifies and permits
18 any further orders as listed in section (b)(1).

19 Aside from the specific provisions of NRCPC 37, courts have inherent equitable powers
20 to issue orders that address abusive litigation practices which permits appropriate orders for
21 discovery and other litigation abuses not specifically proscribed by statute. *Young v. Johnny
22 Ribeiro Bldg.*, 106 Nev. 88, 787 P.2d 777 (1990). However, such orders are generally
23 appropriate where there has been willful noncompliance with a court order or ***where the
24 adversary process has been halted by the actions of the unresponsive party.*** *GNLV Corp. v.
25 Serv. Control Corp.*, 111 Nev. 866, 869-70, 900 P.2d 323, 325 (1995) (emphasis added).

26 Fundamental notions of fairness and due process require that actions taken to address
27 wrongful conduct in discovery be just and relate to the specific conduct at issue. *Id.* In this
28 respect, any court orders based on discovery abuses operate as an equitable remedy to
compensate a party for evidence it was wrongfully deprived of through the bad actions of
another party or even through an overall lack of diligence.

///

1 The testimony of a 30(b)(6) witness represents the knowledge of the corporation, and
2 where properly noticed deposition topics are provided, a knowledgeable 30(b)(6) witness is
3 required to provide binding answers to deposition questions which are not limited only to the
4 personal knowledge of the deponent. *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251
5 F.R.D. 534, 538 (D. Nev. 2008). While a 30(b)(6) deposition is not supposed to be a memory
6 contest of any and all facts, a corporation has a good faith duty to designate knowledgeable
7 individuals who are fully prepared to provide deposition testimony and answer questions in a
8 reasonable manner. *Id.* at 539. The fact that an organization might no longer employ individuals
9 with actual knowledge of the events or documents at issue does not relieve the organization and
10 30(b)(6) witness from the obligation to review available information, facts, and documents to
11 the extent that such information is reasonably available and useful. *Id.* To the extent that a party
12 is deprived of a 30(b)(6) deposition, that party is deprived of evidence and binding testimony
13 regarding matters within the knowledge and understanding of the corporate entity.

14 **III. PLAINTIFF WAS UNFAIRLY DENIED NECESSARY EVIDENCE BY**
15 **DEFENDANTS' SLOPPINESS OR OUTRIGHT GAMESMANSHIP**

16 Defendants have failed to participate in or supplement their discovery and due to their
17 failure, an order to establish duty, breach, and injury causation is justified, fair, and appropriate.
18 In the alternative, should the Court find some reason to excuse Defendants' failure, at a
19 minimum, arguments that the area where Plaintiff's foot was lacerated by a broken pint glass
20 was inspected should be precluded from trial under NRCPC 37(c). Plaintiff was unfairly denied
21 evidence because Defendants refused to disclose and supplement evidence as required by court
22 rules and the 30(b)(6) witness for Caesars Linq refused to appear for a scheduled deposition.
23 Based on such wrongful conduct, an order is necessary and justified to level the evidentiary
24 playing field and ensure that Plaintiff is not prejudiced by the wrongful actions of parties that
25 refused to fulfill their discovery obligations.

26 In short, Defendants made no supplemental disclosures, provided no discovery response
27 supplements, and no 30(b)(6) witness appeared to provide deposition testimony, and such
28 wrongful actions and bad faith participation in discovery cannot be permitted without any

1 consequences. Reasonably, because Plaintiff was wrongfully denied the opportunity to obtain
2 necessary evidence to prove his claims at trial, it is fair and reasonable to permit elements of his
3 claims to be taken as established at trial, or at a minimum to preclude arguments that
4 Defendants inspected the area where Plaintiff was injured. Bad faith participation in discovery,
5 including failure to disclose and supplement, as well as failure to provide a 30(b)(6) witness to
6 provide binding testimony on behalf of Caesars Linq, is not justified or excused. On the other
7 hand, it is fair and reasonable to level the evidentiary playing field, especially when and if one
8 party is prejudiced by the wrongful actions of another party.

9 ***A. Because Defendants Failed to Supplement Discovery Responses and Failed to***
10 ***Produce a NRCP 30(b)(6) Witness, an Order Establishing Duty, Breach, and***
11 ***Causation is Appropriate and Justified***

12 ***i. Failure to Supplement Written Discovery***

13 Plaintiff was wrongfully denied evidence to prove critical facts and elements of his
14 claims by the inappropriate and unjustified actions of Defendants. Therefore, it is reasonable,
15 appropriate, and fair to order the elements of duty, breach, and causation as established ahead of
16 trial. Such an order directly addresses the inappropriate actions of various defendants which
17 improperly denied Plaintiff the opportunity to obtain necessary evidence for trial to prove his
18 claims, specifically information related to duty and breach. There is no excuse for failing to
19 disclose and supplement information and documents or provide a 30(b)(6) witness to provide
20 deposition testimony, and therefore, it is appropriate and justified to establish elements of
21 Plaintiff's claims ahead of trial pursuant to NRCP 37(b)(1).

22 Plaintiff was denied the opportunity to obtain necessary evidence regarding the existence
23 and/or fate of video surveillance footage of the area where he was injured. Here, as previously
24 explained, Caesars Linq provided contradictory testimony and responses regarding the existence
25 of video surveillance evidence. Specifically, Caesars Linq denies there is video evidence of
26 Plaintiff's incident. **EXHIBIT 3 at 5; EXHIBIT 6 at Response No. 2.** At the same time, Caesars
27 Linq also admitted there is video surveillance footage of the area. **EXHIBIT 5 at Response No.**
28 **14.**

///

1 It is not clear if video surveillance of the area where Plaintiff was injured exists, if the
2 subject incident was caught on surveillance footage, or if video surveillance captured how the
3 glass came to be broken. Defendants have offered differing accounts in their discovery
4 responses that leave Plaintiff without key information. If the area where Plaintiff was injured is
5 indeed covered by surveillance cameras, Plaintiff is entitled to know where that surveillance
6 video is, why it was not disclosed, and whether or not the video showing Plaintiff’s injury was
7 preserved for trial. Additionally, Defendants did not supplement their answers to Plaintiff’s
8 written discovery as required by the rules to clarify any of these points.

9 There is no excuse or justification for Defendants to claim that they are investigating
10 issues and evidence and will supplement their responses, only to provide no supplementation,
11 no clarification, and no supplemental disclosures. Here, Defendants claim 14 times that they are
12 “in the process” of obtaining information that will be supplemented. **See EXHIBIT 2 at**
13 **Responses No’s. 1, 4, 5, 7, 10, & 12. See also EXHIBIT 6 at Responses No’s. 3, 8, 10, 12, 14,**
14 **21, & 27.** Yet, no supplementation or additional disclosures were forthcoming.

15 Similarly, information regarding policies, procedures, and/or practices for inspecting the
16 area where Plaintiff was injured, as well as how employees were trained on any policies,
17 procedures, and/or practices, was supposed to be supplemented, but no new information was
18 ever provided. **Id. at No’s. 8 & 14.** By extension, information about employees responsible for
19 inspecting the area, as well as stationed in the area, was supposed to be supplemented, but no
20 new information was provided. **Id. at Responses No’s. 10 & 21.**

21 Additionally, information about any actions taken to inspect the area was being
22 investigated and the results of the investigation was supposed to be supplemented, but no new
23 information was provided. **Id. at Response No. 12.** Finally, information about policies and
24 procedures for glassware in or around the area where plaintiff was injured was supposed to be
25 obtained and supplemented, but no new information was provided.

26 Plaintiff expects that Defendants will argue that Plaintiff should have attempted to
27 compel discovery. However, Plaintiff did not wish to burden the court and increase the expenses
28

1 of all parties to this litigation, and Defendants continued to request extensions and affirm that
2 supplemental disclosures and information was forthcoming. *See EXHIBIT 9.*

3 **ii. Defendants Failed to Produce a 30b6 Witness**

4 To complicate matters further, Defendants failed to produce a 30b6 witness that could
5 have testified as to the existence of surveillance video, what that surveillance video showed, and
6 the documents that were not supplemented by Defendants. *See EXHIBIT 4.* Further, even after
7 ensuring that they would attempt to reschedule on the record, attempts to reschedule the NRCP
8 30b6 witness were thwarted. *Id.*, at 5:17–19. *See also EXHIBIT 9.* Without such evidence
9 Plaintiff cannot verify how or when the glass ended up on the floor, if employees observed or
10 passed by it without acting, if employees inspected the area, or if this area was even inspected.

11 Such issues are critical to establish constructive notice of the hazard. By extension
12 Plaintiff is not aware if there was video evidence of the security guard throwing the glass into
13 the bushes, which can verify his testimony and possibly justify spoliation inferences. Similarly,
14 Plaintiff cannot request spoliation sanctions based on the destruction of evidence if there was no
15 video evidence preserved showing a security guard disposing of the glass. Additionally,
16 Plaintiff is unable to request sanctions based on evidence that was never supplemented or based
17 on the testimony of the NRCP 30(b)(6) witness designated by Defendants. No supplementation
18 was provided, and the 30(b)(6) witness did not appear for the properly noticed deposition.
19 Therefore, Plaintiff is unable to elicit binding testimony to clarify key disputed facts and the
20 existence and/or fate of video surveillance evidence.

21 Such wrongful actions clearly violate the Nevada Rules of Civil Procedure and
22 prevented Plaintiff from obtaining key evidence necessary for trial. Information regarding
23 which defendants were responsible for inspecting the area where Plaintiff was injured was
24 supposed to be supplemented, but no new information was ever provided. *See EXHIBIT 6 at*
25 **Response No. 3.** In short, Defendants claimed they would investigate key issues in this
26 litigation regarding the area where Plaintiff was injured including who is responsible for the
27 area, how it was inspected, who had a duty to inspect, how employees were trained to inspect,
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