

SUMMARY OF NEVADA PUBLISHED OPINIONS

CIVIL LAW UPDATE

May 2021-Present

2022 Nevada Judicial Leadership Summit

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advocacy and mediation

ARBITRATION			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Direct Grading & Paving v. Eighth Jud. Dist. Ct.</i> 137 Nev. Adv. Op. 31, 491 P.3d 13 (2021)</p>	<p>District court intervention in arbitration for alleged misconduct</p>	<p>Petition for a writ of mandamus challenging a district court order granting a motion for district court intervention during binding arbitration.</p> <p>Petition granted</p>	<p>District court did not have: (1) authority under NRS 38.222 to intervene in an arbitration for alleged litigation misconduct where it did not order a provisional remedy; or (2) inherent authority because that matter was squarely before the arbitrator.</p>
<p><i>News+Media Capital Group v. Las Vegas Sun</i> 137 Nev. Adv. Op. 45, 495 P.3d 108 (2021)</p>	<p>Standard of review to overturn private arbitration</p>	<p>Appeal and cross-appeal from a district court judgment confirming an arbitration award in a commercial contract matter.</p> <p>Affirmed</p>	<p>In determining whether to vacate arbitration award under NRS 38.241(1)(d) if “arbitrator exceeded his or her powers,” the court may only conduct an abbreviated review limited to determining whether the award, on its face, (1) directly contradicts the express language of the contract, or (2) appears fanciful or otherwise not “colorable.”</p> <p>This statutory standard overlaps the common-law “unsupported by the agreement” standard and need not be evaluated separately.</p> <p>“Manifest disregard of the law” standard requires that an arbitrator knowingly disregard the law.</p>

ARBITRATION, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Maide, LLC v. Dileo</i> 138 Nev. Adv. Op. 9, 504 P.3d 1126 (2022)	Federal Arbitration Act, 9 U.S.C. §1 et seq., preempts NRS 597.995	Appeal from a district court order denying a motion to compel arbitration in a wrongful death action. Reversed and remanded	For a nursing home contract that involves interstate commerce, FAA preempts NRS 597.995's requirement that arbitration provision must include a separate authorization.

ATTORNEYS' FEES AND SANCTIONS			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Detwiler v. Eighth Jud. Dist. Ct.</i>, 137 Nev. Adv. Op. 18, 486 P.3d 710 (2021)</p>	<p>Contempt sanctions</p>	<p>Petition for a writ of prohibition or, in the alternative, writ of mandamus challenging a district court order sanctioning petitioner for contempt of court.</p> <p>Petition granted in part denied in part</p>	<p>An accused contemnor who did not seek a judge's recusal until after the contempt hearing waived his right to file a peremptory challenge pursuant to NRS 22.030(3).</p> <p>District judge did not abuse its discretion by holding in contempt manager of entity who had control over asset at issue and who first received notice and opportunity to be heard.</p> <p>Monetary sanctions should be treated as civil contempt fines if they are payable to the opponent and compensatory and may be invalid if they exceed the amount necessary to compensate the opponent for an actual loss arising from the contempt. No opportunity to purge is necessary for compensatory sanctions.</p> <p>Criminal contempt sanctions are those that are punitive and cannot inure to the benefit of a private litigant.</p> <p>Each contemnor may be jointly and severally liable for fees resulting from their contemptuous conduct.</p>

ATTORNEYS' FEES AND SANCTIONS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Nuveda, LLC v. Eighth Judicial District Court</i> 137 Nev. Adv. Op. 54, 495 P.3d 500 (2021)	Timeliness of indirect contempt motion for change of judge	Petition for a writ of prohibition or, in the alternative, mandamus challenging a district court order denying a motion to transfer indirect contempt proceedings to another judge under NRS 22.030(3). Petition denied	Motions for a change of judge under NRS 22.030(3) must be made with reasonable promptness under the circumstances. District court did not err in determining that motion filed 37 days after contempt trial date was set was untimely.
<i>Harrison v. Ramparts</i> 137 Nev. Adv. Op. 65, 500 P.3d 603 (2021)	NRCP 68 fee award	Appeal from a post-judgment order awarding attorney fees and costs, and directing that the award be paid from settlement funds by a codefendant, in a personal injury matter. Affirmed in part, reversed in part, remanded Opinion concurring in part and dissenting in part (as to fee award)	Dissenting opinion concluding that order imposing fees on losing party was legally insufficient due to unsupported or incomplete finding as to factors in <i>Beattie v. Thomas</i> , 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

ATTORNEYS' FEES AND SANCTIONS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Capriati Construction v. Yahyavi</i> 137 Nev. Adv. Op. 69, 498 P.3d 226 (2021)	Recovery of contingency fee as post-offer attorney fees under NRCP 68	Consolidated appeals from a final judgment pursuant to a jury verdict and a post-judgment order awarding attorney fees in a tort action. Affirmed	A plaintiff represented on a contingency-fee basis may recover the entirety of the contingency fee as post-offer attorney fees under NRCP 68.
<i>Oella Ridge Trust v. Silver State Schools Credit Union</i> 137 Nev. Adv. Op. 80, 500 P.3d 1253 (2021)	Attorney Fees	Appeal from a district court order granting a motion to dismiss in a declaratory relief action challenging attorney fees imposed under a deed of trust. Affirmed	A deed of trust that allowed the holder to add reasonable expenses incurred to protect its interest in the secured property, including attorney fees, allowed the holder to recover those fees as part of the secured debt without filing a fee motion under NRCP 54.
<i>Las Vegas Review Journal v. City of Henderson</i> 137 Nev. Adv. Op. 81, 500 P.3d 1271 (2021)	Attorney Fees	Appeal from a district court order denying a motion for attorney fees and costs in a public records matter. Affirmed in part, reversed in part, and remanded	Under fifth factor of catalyst theory adopted in <i>Las Vegas Metro. Police Dep't v. Ctr. for Investigative Reporting, Inc.</i> , 136 Nev. 122, 460 P.3d 952 (2020), district court must analyze whether requester – not government – reasonably attempted to settle. District court must engage in fact-intensive analysis and make findings regarding each factor.

ATTORNEYS' FEES AND SANCTIONS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Cohen v. Padda</i> 138 Nev. Adv. Op. 18, 2022 WL 984324	Fee-sharing agreement	Consolidated appeals from a district court summary judgment and order denying attorney fees. Reversed in part, vacated in part, and remanded	Attorney who enters into a fee-sharing agreement with a member of her law firm, departs from the firm, and is later suspended from the practice of law may receive legal fees recovered by the firm during her suspension, so long as she completed her work on the cases subject to the agreement prior to suspension and the suspension was unrelated to the attorney's conduct in those cases.

CIVIL PROCEDURE			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Cervantes-Guevara v. Eighth Judicial District Court</i> 138 Nev. Adv. Op. 10, 505 P.3d 393 (2022)</p>	<p>Timeliness of service under NRCP 4</p>	<p>Petition for a writ a mandamus challenging a district court order denying a motion to enlarge time for service and serve by publication and dismissing a complaint as to the party who was not timely served.</p> <p>Petition denied</p>	<p>District court was within its discretion in denying, as untimely, plaintiff’s second motion to enlarge time for service of process because Governor’s Covid-related Emergency Directive did not apply to court rules to toll the deadline for service under NRCP 4(e).</p>
<p><i>TRP Fund VI, LLC v. PHH Mortgage Corporation</i> 138 Nev. Adv. Op. 21, 2022 WL 982707</p>	<p>Motion to stay</p>	<p>Emergency motion for stay and/or injunction pending appeal.</p> <p>Motion denied</p>	<p>Unless a party seeking a stay can demonstrate that first asking the district court for relief is truly impracticable, it must first seek a stay or injunctive relief pending appeal in the district court even when the district court has already denied it a preliminary injunction.</p>

CIVIL PROCEDURE, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Rives v Farris</i> 138 Nev. Adv. Op. 17, 2022 WL 984309</p>	<p>Motion for new trial</p>	<p>Consolidated appeals and a cross-appeal from a district court judgment in a medical malpractice action and a post-judgment order awarding attorney fees and costs.</p> <p>Reversed in part, vacated in part, and remanded</p>	<p>Party is not required to file a motion for a new trial in the district court to preserve its ability to request a new trial on appeal.</p> <p>District court abused its discretion in admitting evidence of an unrelated, prior medical malpractice suit because it did not address whether the defendant's conduct in the specific case fell below the applicable standard of care. Even if relevant, evidence is inadmissible because the danger of unfair prejudice, confusing the issues, or misleading the jury substantially outweighs its probative value.</p>

CONSTITUTIONAL CHALLENGES			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Legislature of the State of Nevada, et al. v. Hon. James A. Settlemeyer, et al.</i> 137 Nev. Adv. Op. 21, 486 P.3d 1276 (2021)</p>	<p>Supermajority provision of Nev. Const. Art. IV, §18(2).</p> <p>Legislative immunity</p>	<p>Appeal and cross-appeal from final judgment involving constitutional challenge to legislation.</p> <p>Affirmed</p>	<p>SB 542 and 551 each generate, create, or increase public revenue such that Art. 4, § 18(2) applies, and both houses of the Legislature were required to pass them by a two-thirds vote.</p> <p>Individual legislators were protected by legislative immunity under NRS 41.071 because the actions they performed were within the sphere of legitimate legislative activity.</p>
<p><i>Morency v. State Department of Education</i> 137 Nev. Adv. Op. 63, 496 P.3d 584 (2021)</p>	<p>Supermajority provision of Nev. Const. Art. IV, §18(2).</p> <p>Standing</p>	<p>Appeal from a district court summary judgment in a case involving a constitutional challenge to AB 458 (2019).</p> <p>Affirmed</p>	<p>AB 458 (2019), which eliminates future increases in the amount of tax credits available to businesses that donate to certain scholarship organizations, did not increase public revenue but instead redirected funds from a specific appropriation to the State General Fund and, therefore, was not subject to the supermajority requirement.</p> <p>Parents of scholarship recipients, a scholarship organization, and businesses that benefitted from tax credit lacked personalized injury for general standing, but established standing under the public-importance exception.</p>

CONSTITUTIONAL CHALLENGES, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>A Cab, LLC v. Murray</i> 137 Nev. Adv. Op. 84, 501 P.3d 961 (2021)	Minimum wage class action under Nev. Const. art. 15, § 16 and NRS 608.040	Appeal from a summary judgment and post- judgment orders in a minimum wage class action. Affirmed in part, reversed in part, and remanded	Plaintiffs in a class action may aggregate damages for the purpose of establishing jurisdiction (overruling <i>Castillo v. United Federal Credit Union</i> , 134 Nev. 13, 409 P.3d 54 (2018) to the extent it held otherwise). Minimum Wage Act does not require employer to provide each individual employee notice of current minimum wage; posting written notice in a common, conspicuous area to which each employee has access is sufficient.

CONTRACTS			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Korte Construction Company v. State of Nevada Board of Regents</i> 137 Nev. Adv. Op. 37, 492 P.3d 540 (2021)</p>	<p>Equitable remedies; unjust enrichment</p>	<p>Appeal from a district court summary judgment certified as final under NRCP 54(b) in a construction contract action.</p> <p>Affirmed</p>	<p>Existence of NRS 108.2415 mechanics' lien bond was adequate remedy at law to preclude a contractor's unjust enrichment claim against the property owner.</p> <p>Adopts Restatement (Third) of Restitution and Unjust Enrichment §25 to conclude that contractor could not maintain an unjust enrichment claim against a property owner when contractor had a contract with the lessee, not the property owner.</p>
<p><i>Zurich American Insurance Company v. Ironshore Specialty Insurance Company</i> 137 Nev. Adv. Op. 66, 497 P.3d 625 (2021)</p>	<p>Burden of proving exception to an exclusion for coverage</p>	<p>Certified questions under NRAP 5 concerning the allocation of burdens of proof for the applicability of an exception to an exclusion in an insurance policy.</p> <p>Questions answered</p>	<p>Burden of proving the applicability of an exception to an exclusion for coverage in an insurance policy falls on the insured.</p> <p>Insured may rely on any extrinsic evidence that was available to the insurer at the time the insured tendered the defense to the insurer.</p>

CONTRACTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Helix Electric v. Apco Construction, Inc.</i> 138 Nev. Adv. Op. 13, 2022 WL 883471</p>	<p>Construction contract</p>	<p>Consolidated appeals and cross appeals from a district court judgment, certified as final pursuant to NRCP 54, and an award of attorney fees in a construction contract action.</p> <p>Affirmed</p>	<p>Subcontract's precondition to subcontractor's right to payment of retention upon general contractor's receipt of payment from owner was a void pay-if-paid provision but did not void remaining preconditions.</p> <p>General contractor effectively assigned its obligations under the subcontract to the owner and new general contractor after it left the project such that it did not owe further payment for the retention and could not enforce the attorney fees provision against the subcontractor.</p>

DISCOVERY			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Lyft, Inc. v. Eighth Judicial District Court</i> 137 Nev. Adv. Op. 86, 501 P.3d 994 (2021)</p>	<p>Mental/physical examination of a party during discovery</p>	<p>Petition for writ of mandamus challenging a district court order overruling an objection to the discovery commissioner's recommendation that examinations of a real party in interest's mental and physical condition proceed under NRS 52.380.</p> <p>Petition granted</p>	<p>NRS 52.380 violates the separation of powers doctrine because it attempts to abrogate NRCP 35 and encroaches on the inherent power of the judiciary.</p>
<p><i>Keolis Transit Services v. Eighth Judicial District Court</i> 138 Nev. Adv. Op. 8, 2022 WL 575608</p>	<p>Work product doctrine</p>	<p>Petition for a writ of prohibition challenging a district court order compelling disclosure of an insurer's surveillance videos and related reports in a tort action.</p> <p>Petition granted in part and denied in part</p>	<p>Insurance investigation materials are created in anticipation of litigation, and are therefore protected work product, only when they are created at the direction of counsel under circumstances demonstrating that counsel's involvement was reasonable and not for the mere strategic purpose of obtaining work-product protection for routinely created materials.</p> <p>Insurer's surveillance videos and related report were not protected work product because their production was not directed by insured's counsel.</p>

EVIDENCE			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Rives v Farris</i> 138 Nev. Adv. Op. 17, 2022 WL 984309</p>	<p>Reversible evidentiary rulings</p>	<p>Consolidated appeals and a cross-appeal from a district court judgment in a medical malpractice action and a post-judgment order awarding attorney fees and costs.</p> <p>Reversed in part, vacated in part, and remanded</p>	<p>District court abused its discretion in admitting evidence of an unrelated, prior medical malpractice suit because that case did not address whether the defendant's conduct in the specific case at issue fell below the applicable standard of care. Even if relevant, the evidence is inadmissible because the danger of unfair prejudice, confusing the issues, or misleading the jury substantially outweighs its probative value.</p> <p>Error was prejudicial, requiring new trial.</p>
<p><i>Cox v. Copperfield</i> 138 Nev. Adv. Op. 27, 2022 WL 1132225</p>	<p>Jury trial evidence</p>	<p>Appeal from judgment entered on a jury verdict and from a post-judgment order denying a motion for a new trial and for partial judgment as a matter of law in a personal injury action.</p> <p>Affirmed</p> <p>Dissenting opinion</p>	<p>District court did not abuse its discretion in admitting impeachment-by-contradiction evidence.</p>

JUDGMENTS			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Platte River Ins. Co. v. Jackson</i> 137 Nev. Adv. Op. 82, 500 P.3d 1257 (2021)	Judgment Execution	Appeal from a district court order granting claims of exemption from judgment execution. Affirmed	Judgment debtor may claim the “wildcard exemption” from execution under NRS 21.090(1)(z) to protect up to \$10,000 of disposable earnings not already exempted by the earnings exemption under NRS 21.090(1)(g).
<i>Flangas v. Perfekt Marketing, LLC</i> 138 Nev. Adv. Op. 26, 2022 WL 1132272	Foreign judgment	Appeal from a district court order denying a motion to set aside a domesticated foreign judgment. Affirmed	A foreign judgment is enforceable in Nevada if the judgment creditor domesticates that judgment according to the provisions of the Uniform Enforcement of Foreign Judgments Act within the rendering state’s limitations period and complies with the statutory notice provisions of the Act. Enforcement of a foreign judgment did not violate due process where creditor served the domestication notice by certified mail, as required by statute and which is reasonably calculated to reach interested parties.
<i>A Cab, LLC v. Murray</i> 137 Nev. Adv. Op. 84, 501 P.3d 961 (2021)	Amendment of judgment to substitute cell series LLC formed pursuant to NRS 86.296(3)	Appeal from a summary judgment and post-judgment orders in a minimum wage class action. Affirmed in part, reversed in part, and remanded	District court properly amended judgment to reflect that original LLC defendant no longer exists except under the changed name of the Series LLC. District court should have allowed defendants to offer evidence regarding existence of the individual series entities for the purpose of judgment collection.

JUDICIAL DISQUALIFICATION			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Debiparshad v. Eighth Judicial District Court</i> 137 Nev. Adv. Op. 71, 499 P.3d 597 (2021)</p>	<p>Validity of order while motion to disqualify is pending</p>	<p>Petition for a writ of mandamus challenging order that was entered while a motion to disqualify the judge was pending.</p> <p>Petition granted</p>	<p>Once a party files a motion to disqualify a judge pursuant to the Nevada Code of Judicial Conduct, that judge can take no further action in the case until the motion to disqualify is resolved.</p> <p>If the motion is granted and the judge is disqualified, any order entered by the judge after the motion to disqualify was filed is void.</p>
<p><i>Canarelli v Eighth Judicial District Court</i> 138 Nev. Adv. Op. 12, 506 P.3d 334 (2022)</p>	<p>Disqualification standard</p>	<p>Petition for a writ of mandamus or, alternatively, prohibition challenging the disqualification of a judge.</p> <p>Petition granted</p> <p>Dissenting opinion</p>	<p>Because district judge's review of privileged notes to resolve parties' discovery dispute was a core function, rather than an extrajudicial source, NCJC Rule 2.11(A) does not apply, and the disqualification standard set forth in <i>Kirksey v. State</i>, 112 Nev. 980, 923 P.2d 1102 (1996), controls.</p>

JUDICIAL REVIEW OF AGENCY DECISIONS			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>City of Henderson v. Eighth Jud. Dist. Ct.</i> 137 Nev. Adv. Op. 26, 489 P.3d 908 (2021)</p>	<p>Judicial review under NRS 278.3195(4)</p>	<p>Petition for writ of mandamus challenging a district court order denying a motion to strike a petition for judicial review filed within an existing civil action.</p> <p>Petition granted</p>	<p>A petition for judicial review of an administrative zoning decision pursuant to NRS 278.3195(4) may not be filed within an existing civil suit because of the appellate posture in which a petition for judicial review must be considered.</p>
<p><i>Nevada Gaming Commission v. Wynn</i> 138 Nev. Adv. Op. 20, 2022 WL 982700</p>	<p>Nevada Gaming Commission disciplinary proceeding</p>	<p>Appeal from a district court order granting a petition for judicial review of, or a writ of prohibition concerning, a Gaming Commission proceeding.</p> <p>Reversed and remanded</p>	<p>NRS 463.318(2) precludes a petition for a writ of prohibition challenging the jurisdiction of the Gaming Commission and the Nevada Gaming Control Board to arrest proceedings.</p> <p>An order by the Gaming Commission denying a motion to dismiss is not final under NRS 463.315(1) for the purposes of judicial review.</p>

JUDICIAL REVIEW OF AGENCY DECISIONS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Southwest Gas v. Public Utilities Comm'n of Nevada</i> 138 Nev. Adv. Op. 5, 504 P.3d 503 (2022)</p>	<p>PUCN rate setting</p> <p>Constitutional-fact doctrine</p>	<p>Appeal from a district court order denying a petition for judicial review in a public utilities general rate case.</p> <p>Affirmed</p>	<p>Utilities do not enjoy a presumption of prudence with respect to the expenses they incur and, instead, must show that the expenses were prudently incurred.</p> <p>Court would not adopt constitutional-fact doctrine to review agency decisions de novo when a regulated party's constitutional rights are implicated. Instead, court must employ a deferential standard of review in a rate-making case, as in other cases involving judicial review of agency actions.</p> <p>Return on equity allowed by PUCN was not an unconstitutional taking because it was measured against returns on investment earned by other enterprises having corresponding risks.</p>

PARTIES			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Detwiler v. Eighth Jud. Dist. Ct.</i>, 137 Nev. Adv. Op. 18, 486 P.3d 710 (2021)</p>	<p>Error in party name</p>	<p>Petition for a writ of prohibition or, in the alternative, writ of mandamus challenging a district court order sanctioning petitioner for contempt of court.</p> <p>Petition granted in part, denied in part</p>	<p>Distinguishes between “misnomers” and “misidentifications” in naming a party, holding that where “the correct parties are involved and the error is not misleading, a misnomer amounts to nothing but a typographical or clerical error, which may be corrected ‘whenever one is found in a judgment, order, or other part of the record.’” (quoting NRCP 60(a)).</p>

REAL PROPERTY			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Lakes v. US Bank Trust</i> 137 Nev. Adv. Op. 85, 501 P.3d 426 (2021)	Quiet title	Appeal from a district court summary judgment quieting title in a real property action. Affirmed	The fact that an assignment of a first deed of trust was recorded after purchaser at HOA foreclosure sale recorded grant, bargain, sale deed did not affect first-deed-of-trust holder's right to enforce its lien because the assignment did not change the subordinate status of the HOA purchaser's right.
<i>SFR Investments Pool 1, LLC v. US Bank N.A.</i> 138 Nev. Adv. Op. 22, 2022 WL 1051628	Clearance of real property lien from public records under NRS 106.240	Petition for rehearing of an order affirming a district court judgment in a quiet title action. Rehearing denied	Because a notice of rescission rescinds a previously recorded notice of default, it resets NRS 106.240's 10-year period for clearing a real property lien from public records.
<i>Moretto v. Elk Point Country Club</i> 138 Nev. Adv. Op. 24, 2022 WL 1051755	HOA power to adopt rules restricting individually owned properties	Appeal from judgment in an action for injunctive and declaratory relief concerning a common-interest-community HOA's power to adopt rules. Affirmed in part, reversed in part, and remanded.	Adopts sections 6.7 (use restrictions) and 6.9 (design restrictions) of the Restatement (Third) of Property: Servitudes to hold that a homeowners associations do not have the implied power to impose use or design restrictions on individually owned properties. Rather, the governing documents must expressly authorize the imposition of such restrictions.

SPECIFIC STATUTORY PROVISIONS			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Anthony v. Miller</i> 137 Nev. Adv. Op. 25, 488 P.3d 573 (2021)	Right to new election under NRS 293.465	Appeal from a final judgment dismissing a complaint in an election matter. Affirmed	Losing Clark County Commission candidate was not entitled to a new election pursuant to NRS 293.465 because nothing prevented the election from occurring or voters from casting their votes in the election. Rather, when a candidate challenges an election based on errors in the conduct of the election, an election contest pursuant to NRS 293.407-.435 is the exclusive avenue for relief.
<i>Sciarratta v. Foremost Insurance Company Grand Rapids Michigan</i> 137 Nev. Adv. Op. 32, 491 P.3d 7 (2021)	Application of NRS 687B.147 to insurance policy exclusion	Appeal from a district court order granting summary judgment, certified as final under NRCP 54(b), in an insurance action. Affirmed	NRS 687B.147, which requires certain disclosure of an exclusion in a “policy of motor vehicle insurance,” does not apply to umbrella policies. Insured who asserts nondisclosure of exception must offer supporting admissible evidence to prevent summary judgment for insurer.

SPECIFIC STATUTORY PROVISIONS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Pope Investments, LLC v. China Yida Holdings</i> 137 Nev. Adv. Op. 33, 490 P.3d 1282 (2021)</p>	<p>Right to dissent to corporate merger under NRS 92A.380 and NRS 92A.390</p>	<p>Consolidated appeals from a district court summary judgment and post-judgment order awarding attorney fees in action related to corporate merger.</p> <p>Reversed and remanded</p>	<p>A board's resolution for the purpose of approving a merger is the expression of its intent to bind the corporation to a specific course of conduct, when the directors are acting as agents of the corporation.</p> <p>For a shareholder to exercise dissenters' rights when the market-out exception applies, the resolution must "expressly provide otherwise" than that "there is no right to dissent." The resolution need not expressly provide a right to dissent.</p>
<p><i>Myers v. Reno Cab Company</i> 137 Nev. Adv. Op. 36, 492 P.3d 545 (2021)</p>	<p>Employee status under Nevada Constitution's Minimum Wage Amendment and NRS 608.0155</p>	<p>Consolidated appeals from a district court order granting summary judgment in minimum wage matters.</p> <p>Reversed and remanded</p> <p>Concurring opinion</p>	<p>Same worker may be "employee" for the purpose of one law but "independent contractor" for the purpose of another.</p> <p>Employee status for MWA is determined only by the "economic realities" test, but employee status for purposes of statutory waiting time penalties for late-paid wages may be affected by the presumption in NRS 608.0155.</p> <p>Contractual recitation that a worker is not an employee is not conclusive for either test.</p> <p>Employee status for the purposes of either the MWA or NRS Chapter 608 is not affected by the Nevada Transportation Authority's approval of a taxi lease under NRS 706.473.</p>

SPECIFIC STATUTORY PROVISIONS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Endo Health Solutions v. Second Judicial District Court</i> 137 Nev. Adv. Op. 39, 492 P.3d 565 (2021)	Limitation on City's power to bring and litigate action under modified Dillon's Rule, NRS 268.001(3) and NRS 268.0035(1)(c)	Petition for a writ of mandamus challenging a district court order denying in part a motion to dismiss in a tort action. Granted in part and denied in part	City had no express grant of power or one implied from an express power granted in the Nevada Constitution, a statute, or the city charter to bring lawsuit against opioid makers, but the action may be a "matter of local concern" as defined by NRS 268.003(1).
<i>Saticoy Bay, LLC v. Peccole Ranch Community Association</i> 137 Nev. Adv. Op. 52, 495 P.3d 492 (2021)	Pre-filing mediation requirement under NRS 38.310	Appeal from a district court order granting a motion to dismiss in a tort action arising out of a homeowners' association foreclosure sale. Reversed and remanded	NRS 38.310's mediation requirement did not apply to claim simply because it arose out of an HOA foreclosure sale because it did not require "interpretation, application or enforcement" of HOA CC&Rs, rules, bylaws, or regulations. Dismissal without prejudice pursuant to an exhaustion statute is a final appealable judgment.
<i>State of Nevada, Department of Business and Industry v. Titlemax of Nevada</i> 137 Nev. Adv. Op. 55, 495 P.3d 506 (2021)	Regulation of title loans under NRS 604A	Appeal from a district court summary judgment in a declaratory relief action. Affirmed in part and reversed in part	Unambiguous language of NRS 604A.065 (defining "extension") includes a refinance. Only the principal loan amount is included in the fair market value limitation calculation under NRS 604A.5076(1).

SPECIFIC STATUTORY PROVISIONS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Aerogrow International v. Eighth Judicial District Court</i> 137 Nev. Adv. Op. 76, 499 P.3d 1193 (2021)	Dissenter rights of beneficial stockholder	Petition for a writ of mandamus challenging a district court order directing compliance with Nevada's Dissenter's Rights Statutes. Petition granted	NRS 92A.400(2)(a), when read in conjunction with NRS 92A.410-.440, unambiguously requires a beneficial stockholder to obtain the stockholder of record's consent before a vote on the corporate merger is held in order to dissent from the merger.
<i>City of Henderson v. Wolfgram</i> 137 Nev. Adv. Op. 79, 501 P.3d 422 (2021)	Workers' Comp	Appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Affirmed	Fire fighter was incapacitated from earning "full wages" for the period in which he could not earn overtime, entitling him to reopen his claim more than one year after its closing pursuant to NRS 616C.400(1).
<i>Nevada Independent v. Whitley</i> 138 Nev. Adv. Op. 15, 2022 WL 883032	Public records law	Appeal from a district court order denying a petition for a writ of mandamus in a public records matter. Affirmed	Where federal Defend Trade Secrets Act classifies documents as confidential trade secrets, they are shielded from disclosure under the Nevada Public Records Act.

STATUTES OF LIMITATIONS AND REPOSE			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Somerset Owners Association v. Somerset Development Company</i> 137 Nev. Adv. Op. 35, 492 P.3d 534 (2021)	NRS 11.202 statute of repose in construction defect action	Appeal from a district court summary judgment in a construction defect action. Affirmed	Common-law definition of substantial completion that must be applied to NRS 11.202 means sufficiently complete so that the owner can occupy or utilize the improvement.
<i>Kushnir v. Eighth Judicial District Court</i> 137 Nev. Adv. Op. 41, 495 P.3d 137 (2021)	Tolling of statute of limitations in medical malpractice action pursuant to NRS 41A.097	Petition for a writ of mandamus challenging a district court order denying a motion for summary judgment in a medical malpractice action. Petition granted	Because plaintiffs had all necessary medical records and were therefore on inquiry notice of the claim more than a year before filing the complaint, and because the defendant's alleged concealment did not hinder the plaintiffs' ability to procure an expert affidavit, one-year statute of limitations in NRS 41A.097 was not tolled and had expired.
<i>Dekker/Perich/Sabatini Ltd v. Eighth Judicial District Court</i> 137 Nev. Adv. Op. 53, 495 P.3d 519 (2021)	NRS 11.202 statute of repose in construction defect action	Petition for writ of mandamus or, alternatively, prohibition Petition denied	AB 421 (2019), which extended NRS 11.202's statute of repose period from 6 to 10 years, applied retroactively to allow construction defect action filed after original six-year repose period expired but before new legislation took effect. Defendant's due process rights were not violated by retroactive application of 10-year repose period because it had no vested right to be free from construction defect claims after original repose period expired and, even if it did, Legislature had a legitimate legislative purpose.

STATUTES OF LIMITATIONS AND REPOSE, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<i>Salloum v. Boyd Gaming Corp.</i> 137 Nev. Adv. Op. 56, 495 P.3d 513 (2021)	Enlargement of limitation period on previously expired claims	Appeal from a district court order granting a motion to dismiss in an employment discrimination matter. Affirmed	Absent explicit provision, Legislature's expansion of limitations period in NRS 613.430 did not revive previously expired claims. Plaintiff did not satisfy the requirements for equitable tolling.
<i>Panorama Towers v. Hallier</i> 137 Nev. Adv. Op. 67, 498 P.3d 222 (2021)	NRS 11.202 statute of repose in construction defect action	Appeal from a district court order granting summary judgment, certified as final under NRCP 54(b), in a construction defect action. Vacated and remanded	AB 421 (2019), which extended NRS 11.202's statute of repose period from 6 to 10 years, applied retroactively to warrant alteration of judgment even though construction defect claim was time barred at the time judgment was entered because district court should have evaluated change in controlling law to conclude that claim was no longer time barred at time NRCP 59(e) motion was filed.
<i>Wilson v. Las Vegas Metro Police</i> 137 Nev. Adv. Op. 70, 498 P.3d 1278 (2021)	Tolling of statute of limitations under <i>Shively</i>	Appeal from a district court order dismissing a complaint in a tort action. Affirmed	LVMPD's Citizen Review Board proceeding does not toll statute of limitations under <i>Shively</i> because plaintiff was not required to bring tort claims to the CRB before filing suit. Equitable tolling principles did not apply because plaintiff was not diligent and no extraordinary circumstance prevented plaintiff from timely filing suit.

STATUTES OF LIMITATIONS AND REPOSE, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>US Bank v. Thunder Properties</i> 138 Nev. Adv. Op. 3, 503 P.3d 299 (2022)</p>	<p>Statute of limitations period for quiet title and declaratory relief actions</p>	<p>Certified questions under NRAP 5 concerning statutory limitations periods for declaratory judgment and quiet title actions.</p> <p>Questions answered</p> <p>Opinion concurring in part and dissenting in part</p>	<p>Declaratory relief actions are not categorically exempt from statutes of limitations. Only declaratory relief claims for ongoing violations of constitutional rights are exempt.</p> <p>NRS 11.220 applies to an action to determine the validity of a non-possessory lien under NRS 40.010.</p> <p>Statute of limitations does not begin to run until titleholder affirmatively repudiates the lien, which does not necessarily happen at the foreclosure sale.</p>

TORTS			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Motor Coach Industries v. Khiabani</i> 137 Nev. Adv. Op. 42, 493 P.3d 1007 (2021)</p>	<p>Loss-of-support awards; causation element of failure-to-warn claims; special verdict forms</p>	<p>Appeal from a judgment after a jury verdict in a tort action.</p> <p>Affirmed in part, reversed in part, remanded</p>	<p>Plaintiffs do not need to provide the jury with a specific proposed warning in failure-to-warn cases.</p> <p>Special verdict form should be read together with jury instructions to determine whether new trial is warranted.</p> <p>Evidence of gross income is appropriate for loss-of-support damages award under NRS 41.085(4).</p> <p>NRS 17.245 applies to strictly liable defendants to require offset by settlement amounts of other defendants who were liable for the same injury.</p>

TORTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Williams v. Lazer</i> 137 Nev. Adv. Op. 44, 495 P.3d 93 (2021)</p>	<p>Anti-SLAPP</p> <p>Absolute litigation privilege</p>	<p>Appeal from a district court order denying an anti-SLAPP motion to dismiss in action for defamation, negligence, business disparagement, and IIED.</p> <p>Reversed and remanded with instructions</p>	<p>General allegations of racism, sexism, and unprofessional and unethical conduct in a complaint to Nevada Real Estate Division were non-actionable opinion.</p> <p>Sworn declaration expressing subjective belief that every statement was true and explaining the basis for that belief was sufficient to show that statements were truthful or made without knowledge of their falsehood satisfied movant's burden under first prong of anti-SLAPP framework.</p> <p>Absolute litigation privilege applies at the second prong of the anti-SLAPP analysis because a plaintiff cannot show a probability of prevailing if a privilege applies to preclude the defendant's liability.</p> <p>Statements in complaint filed with NRED, regardless of whether it proceeds to a hearing, are protected by absolute privilege for a quasi-judicial proceeding that satisfies the factors in <i>Spencer v. Klementi</i>, 136 Nev. 325, 332, 466 P.3d 1241, 1247 (2020).</p>

TORTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Superpumper v. Leonard</i> 137 Nev. Adv. Op. 43, 495 P.3d 101 (2021)</p>	<p>Subject matter jurisdiction</p>	<p>Appeal from a final judgment and order awarding attorney fees and costs in a fraudulent conveyance action.</p> <p>Affirmed</p>	<p>State and federal courts share concurrent jurisdiction over certain "core" proceedings in bankruptcy, including fraudulent transfer actions.</p> <p>Bankruptcy trustee had standing to maintain fraudulent transfer action in state court.</p> <p>A defendant's objection to in rem or quasi in rem jurisdiction is waived if not raised in a pre-answer motion or as an affirmative defense.</p>
<p><i>Clarke v. Service Employees International Union</i> 137 Nev. Adv. Op. 46, 495 P.3d 462 (2021)</p>	<p>Conflict- preemption of wrongful termination claim</p> <p>Attorney fees</p>	<p>Consolidated appeals from district court orders granting summary judgment and denying post-judgment motions for attorney fees in an employment matter.</p> <p>Affirmed in part, reversed in part, remanded</p> <p>Opinion concurring in part and dissenting in part</p>	<p>Nevada's wrongful termination claims do not significantly conflict with any concrete federal interest expressed by the Labor Management Reporting and Disclosure Act and, therefore, are not preempted.</p>

TORTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Eggleston v. Georgina Stuart</i> 137 Nev. Adv. Op. 51, 495 P.3d 482 (2021)</p>	<p>Exhaustion of administrative remedies in action under 42 U.S.C. §1983</p>	<p>Appeal from a district court order dismissing an action raising federal civil rights and state law tort claims for failure to exhaust administrative remedies.</p> <p>Affirmed in part, reversed in part, remanded</p>	<p>Plaintiff was not required to exhaust administrative remedies before filing a §1983 civil rights claim because plaintiff alleged substantive, rather than procedural, due process claim that, looking at the “heart of the complaint,” was separate from the agency proceeding.</p> <p>Plaintiff was not required to exhaust administrative remedies before filing tort claims because allegations did not arise from administrative process, agency process could not provide remedy sought by plaintiff, and some of the defendants were not an agency.</p> <p>Allegations that, if true, showed defendant state employee acted outside the scope of employment meant employee was acting in individual, rather than official, capacity and could be liable for punitive damages.</p>

TORTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Harrison v. Ramparts</i> 137 Nev. Adv. Op. 65, 500 P.3d 603 (2021)</p>	<p>Offsetting of settlement funds from a third party to pay fee award owed by plaintiff</p>	<p>Appeal from a post-judgment order awarding attorney fees and costs, and directing that the award be paid from settlement funds by a codefendant, in a personal injury matter.</p> <p>Affirmed in part, reversed in part, remanded</p> <p>Opinion concurring in part and dissenting in part (as to fee award)</p>	<p>Equitable offsets are only applicable where a debtor obtains a subsequent judgment against one of his or her creditors. There must be mutually owed judgments to offset.</p> <p>Unless reduced to a judgment, funds from a settlement agreement cannot be subject to offset.</p>
<p><i>Capriati Construction v. Yahyavi</i> 137 Nev. Adv. Op. 69, 498 P.3d 226 (2021)</p>	<p>Admissibility of liability insurance under NRS 48.135(2); recovery of contingency fee as post-offer attorney fees under NRCP 68</p>	<p>Consolidated appeals from a final judgment pursuant to a jury verdict and a post-judgment order awarding attorney fees in a tort action.</p> <p>Affirmed</p>	<p>Evidence of a defendant's liability insurance is admissible under NRS 48.135(2) if the defendant first introduces evidence suggesting its inability to pay a judgment.</p>

TORTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Parsons v. Colt's Manufacturing</i> 137 Nev. Adv. Op. 72, 599 P.3d 602 (2021)</p>	<p>Scope of immunity under NRS 41.131 for gun manufacturers and distributors</p>	<p>Certified questions under NRAP 5 concerning the scope of immunity NRS 41.131 affords firearm manufacturers and distributors and Nevada's negligence per se doctrine.</p> <p>Questions answered in part</p>	<p>Allegation of illegality in a complaint does not allow wrongful death and negligence per se claims by parents of victims of gun violence to proceed against gun manufacturers and distributors because NRS 41.131(1) provides gun manufacturers and distributors immunity from the claims.</p>
<p><i>Petsmart v. Eighth Judicial District Court</i> 137 Nev. Adv. Op. 75, 499 P.3d 1182 (2021)</p>	<p>Pet store's liability for attack by dog adopted at store's event held by independent charitable organization</p>	<p>Petition for a writ of mandamus challenging a district court order denying summary judgment in a tort action.</p> <p>Petition granted</p>	<p>Pet store typically owes no duty to an individual injured by a dog adopted at an event held at store but run by charitable organization.</p> <p>Store can be held liable only if it assumes a duty of care or has an agency relationship with the charitable organization that conducted the adoption event.</p>

TORTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Spirtos v. Yemenidjian</i> 137 Nev. Adv. Op. 73, 499 P.3d 611 (2021)</p>	<p>Anti-SLAPP</p>	<p>Appeal from a district court order denying an anti-SLAPP motion to dismiss in a tort action.</p> <p>Affirmed</p>	<p>Under plain language of NRS 41.660(3)(a), fact that party filing anti-SLAPP motion to dismiss denies having made the alleged communication has no relevance in determining “whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.”</p> <p>In step-one of the anti-SLAPP analysis, district court must evaluate the statement alleged in the plaintiff’s complaint and the plaintiff’s clarifying declarations, not the movant’s denial the statement was ever made.</p> <p>A statement about alleged corruption in the agency overseeing the cannabis industry made in a private conversation at a public event was “made in direct connection with an issue of public interest in a place open to the public or in a public forum” within the meaning of NRS 41.637(4) but still must satisfy the good-faith requirement.</p>

TORTS, cont'd			
CASE NAME	TOPIC	POSTURE	SUMMARY
<p><i>Montanez v. Sparks Family Hospital</i> 137 Nev. Adv. Op. 77, 499 P.3d 1189 (2021)</p>	<p>Medical malpractice</p>	<p>Appeal from a district court order dismissing a complaint in a medical malpractice action.</p> <p>Affirmed</p>	<p>Exemption to medical expert affidavit requirement in NRS 41A.100(1)(a) is not ambiguous, and “foreign substance other than medication or a prosthetic device was unintentionally left within the body of a patient following surgery” does not include bacteria.</p> <p>Absence of affidavit made medical malpractice claim, and premises liability claim that sounded in medical malpractice, void ab initio.</p>
<p><i>Porchia v. City of Las Vegas</i> 138 Nev. Adv. Op. 4, 504 P.3d 515 (2022)</p>	<p>Public duty doctrine</p>	<p>Appeal from a district court order granting a motion to dismiss a tort action.</p> <p>Affirmed in part, reversed in part, and remanded</p>	<p>A failure to render medical assistance or to transport a patient to the hospital based solely on their socioeconomic status may qualify as an affirmative act exempted from the public duty doctrine and as gross negligence, which would render the Good Samaritan statute inapplicable.</p>
<p><i>Willick v. Eighth Judicial District Court</i> 138 Nev. Adv. Op. 19 2022 WL 983077</p>	<p>Anti-SLAPP</p>	<p>Petition for a writ of mandamus and prohibition challenging a district court order vacating a notice of voluntary dismissal.</p> <p>Petition denied</p>	<p>District court had jurisdiction to vacate a plaintiffs notice of voluntary dismissal in a defamation action in which an anti-SLAPP motion was filed, denied, appealed, and remanded back to the district court.</p>