

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT VII

Replace the highlighted spaces on this page with the vacancy you seek to fill
VII, XXIX, C or N
Candidates may only choose one department.

By

Craig S. Newman



Personal Information

1.	Full Name	Craig Samuel Newman
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?	Since May of 1989.
4.	City and county of residence	Las Vegas; Clark County.
5.	Age	59

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	Sklar Williams PLLC
Phone	(702) 360-6000
Physical Address & Website	410 South Rampart Boulevard, Suite 200 Las Vegas, NV 89145 https://www.sklar-law.com
Date(s) of Employment	April 2018 – present.
Supervisor's Name and Title	Henry Lichtenberger, Esq.
Your Title	Member
Describe Your Key Duties	<p>My main duty as counsel to my many clients is to get them through their legal issues with as little negative impact on them as possible. I regularly represent clients as both plaintiffs and defendants concerning their disputes both pre-litigation and through the litigation process.</p> <p>I represent casinos, other businesses, commercial landlords and individuals in all courts in Southern Nevada. I have been a first chair attorney since the mid 1990's and appear in Court frequently. I routinely and successfully argue dispositive motions in District Court.</p> <p>A crucial part of my practice is supervising, mentoring and training younger attorneys. I involve junior lawyers in all appropriate facets of my cases – always keeping in mind that I want to provide our clients value laden representation. While I have been blessed with a high-volume casino collection practice,</p>

	my practice also includes high level commercial disputes often critical to my clients overall financial health and viability. I have obtained hundreds (if not thousands) of judgments on behalf of my clients while simultaneously negotiating even more successful settlements. My experience and skill set also results in actual collection of money on behalf of my clients. Any good lawyer can get a deserving client a judgment, precious few can realize on such judgments and put a jingle in their clients' pockets. I do that.
Reason for Leaving	Still employed.

Current Employer	North Las Vegas Justice Court
Phone	(702) 455-7801
Address & Website	2428 North Martin Luther King Boulevard North Las Vegas, NV 89032 https://www.clarkcountynv.gov/government/departments/justice_courts
Date(s) of Employment	July 2017 – present.
Supervisor's Name and Title	Natalie Tyrrell Chief Judge
Your Title	Pro Tem Justice of the Peace
Describe Your Key Duties	Criminal case duties include initial custody bail hearings, misdemeanor and felony arraignments, preliminary hearings, misdemeanor trials, temporary protective orders, sentencing, pre and post-trial status checks. I have provided criminal defendants the speedy bail hearings they are required to receive by working nearly every Friday, Saturday, Sunday and holiday conducting such hearings since September of 2022. On the civil side, I rule on commercial and residential evictions, conduct small claims trials and handle all aspects of other justice court civil filings.
Reason for Leaving	Still employed.

Previous Employer	Durham Jones & Pinegar (now part of Dentons)
Phone	
Address & Website	111 South Main Street Suite 2400 Salt Lake City, UT 84111 https://www.dentons.com/
Date(s) of Employment	2013-2018

Supervisor's Name and Title	Michael Rawlins Managing Partner (Las Vegas office)
Your Title	Partner
Describe Your Key Duties	See description above in Sklar Williams PLLC section.
Reason for Leaving	Firm closed its Las Vegas office.

Previous Employer	Fennemore Craig, PC
Phone	(702) 692-8000
Address & Website	9275 W. Russell Road, Suite 240 Las Vegas, NV 89148 https://www.fennemorelaw.com/
Date(s) of Employment	2008-2013
Supervisor's Name and Title	Tim Berg Managing Partner
Your Title	Partner
Describe Your Key Duties	See description above in Sklar Williams PLLC section.
Reason for Leaving	I was recruited to join Durham Jones & Pinegar by longtime friends Timothy Cory and Michael Rawlins.

Previous Employer	Newman Morris and Dachelet, Ltd.
Phone	(702) 257-4122 (no longer in service)
Address & Website	200 Bank of America Plaza 300 S. 4 th Street, Suite 700 Las Vegas, NV 89101
Date(s) of Employment	1999-2008
Supervisor's Name and Title	No Supervisor
Your Title	Managing Partner
Describe Your Key Duties	Our firm was a small boutique litigation firm ranging from three to five attorneys. In addition to the same practice duties described regarding the subsequent firms listed above, I also managed the business side of the law firm and was the de facto human resources manager.
Reason for Leaving	We closed the firm to join Fennemore Craig PC who actively recruited us and made us a very attractive offer. Joining a firm also allowed me to return to focus most of my time to practicing law and representing my clients.

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.

(A) Stillwater High School
Stillwater, MN
1978-1981
High School Diploma
Graduated.

(B) Macalester College
1600 Grand Avenue
St. Paul, MN
1981-1985
B.A. Majors: Political Science & History
Minor: English
Graduated.

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

In high school, I participated in National Honor Society (3 years), Debate (2 years), Chess (2 years), Football (2 years) and Basketball (1 year). I was the captain of the chess team my senior year and was the class champion in chess in both my junior and senior years. I received highest honors in high school for those maintaining a 3.75 GPA or higher.

In college, I participated in intramural sports. I also wrote for and was copy editor of a campus newspaper called *The Alternative Voice*. I also regularly judged high school debate tournaments during college.

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 Minnesota Law School
229 S 19th Avenue
Minneapolis, MN 55455
J.D. (1989)
Graduated Cum Laude (the school would not provide a class rank).

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 worked part-time during law school at Brooks Superette in Stillwater, Minnesota (1987-1989). I also worked as a law clerk for Galen Watje, Esq. during the summer between my

second and third years and part-time during my third year (1988-1989).

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

I participated in the ABA Moot Court in Law School. I also participated in intramural football and basketball.

Law Practice

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

1989.

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% involved litigation matters.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0
Juvenile matters	0
Trial court civil	90%
Appellate civil	10%
Trial court criminal	0
Appellate criminal	0
Administrative litigation	0
Other: Please describe	0

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

My best estimate is that approximately 75% of my cases were set for jury trials and 25% set for non-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.

None. Over the past five years, all cases were either decided by dispositive motions, settled or are still pending. During the past five years, I have served as lead counsel in evidentiary hearings on pretrial matters and have conducted dozens of prove-up hearings.

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

District Court, Clark County, Justice Court – Clark County, Supreme Court, Nevada. United States District Court – Southern 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: Bellagio, LLC vs. Faical Jannani, February 2, 2002
Court and presiding judge and all counsel: Clark County, District Court Case No: 02A446025 Judicial Officer: Valerie Adair Defendant's counsel: Waldo DeCastroverde, Esq. and Orlando DeCastroverde, Esq.
Importance of the case to you and the case's impact on you: This case is significant to me because it was my first trial as lead counsel in State District Court. It is also was significant because the judge was Valerie Adair. She immediately impressed me with her demeanor and intelligence. Opposing counsel, was Waldo DeCastroverde who was a zealous and effective advocate for his client. The case was a large gaming marker collection case. The case was dual tracked as both a criminal case and a civil case. The defendant prevailed and was found not guilty in the criminal case (which alleged his dishonored gaming markers were "bad checks" under Nevada law). The Court was well aware that the criminal case had been decided in favor of the defendant and defendant's counsel exploited that result to defendant's advantage in the civil matter. We were able to

convince the Court that a different result was required in the civil case. At the conclusion of the civil trial, we prevailed on all issues.
Your role in the case: I was lead counsel for Bellagio, LLC.

Case 2
Case name and date: SNMARK LLC vs. Home Depot USA Inc., September 2, 2008
Court and presiding judge and all counsel: Clark County, District Court Case No. 07A544064, Judicial Officer: Judge James Brennan (State Court) /James Mahan (Federal Court) Defendant's counsel: Nancy Allf (State Court); Nicholas Santoro (Federal Court)
Importance of the case to you and the case's impact on you: This case was a David vs. Goliath experience. The defendant was retail giant Home Depot U.S.A., Inc. My client was SN Mark, LLC, a local company owned by the Mizrachi family that owned Cima's Furniture for years and now Big's Furniture. Home Depot had muscled its way onto the top of a large pylon sign off of the 95 freeway in Henderson. SNMark was contractually entitled to that position on the sign. We successfully filed a Motion for Mandatory Injunction to take over that top position. It was vigorously contested by Home Depot and its attorney Nancy Allf, Esq. (now District court judge). Despite a long history of maintaining that top position on the billboard and strong legal arguments against our client, Judge Brennan granted the injunction. Thereafter, Home Depot cunningly removed the case to Federal Court and hired new counsel – this time legal giants Nicholas Santoro and James Whitmire. The injunction that had been ordered had not yet been signed by Judge Brennan. We successfully convinced U.S. District Court Judge James Mahan that Judge Brennan got this matter right. Judge Mahan remanded the case to State Court. The case is memorable not only due the disproportionate financial strength and power of the defendant when compared to our client, but also because we succeeded against two separate top flight law firms in the same case.
Your role in the case: I was lead counsel for plaintiff – SNMark.

Case 3
Case name and date: Merrick Mint, Inc. v. Upper Deck Company, June 8, 2006
<p>Court and presiding judge and all counsel: United States District Court, District of Nevada (Las Vegas) 2:06-cv-00702-PMP-PAL Assigned to: Judge Philip M. Pro Referred to: Magistrate Judge Peggy A. Leen</p> <p>Plaintiff/Counter defendant Merrick Mint, Inc. represented by: Elissa F Cadish, Esq. (now Supreme Court Justice) Hale Lane Peek, et al</p>
<p>Importance of the case to you and the case's impact on you:</p> <p>This case was significant mostly due to its nature and factual backdrop. Plaintiff, Merrick Mint sued my client, Upper Deck over a contract to super impose images of NBA superstar Lebron James on coins which constituted United States Currency. After the contract was executed, the NBA refused to allow its licensed images to be placed on coins ("US Currency"). The parties tried to work around such refusal by obtaining images of Lebron James that were not NBA licensed. Ultimately, Lebron James did not approve use of such images because they made him look "too young."</p> <p>Merrick Mint sued for breach of contract alleging that Upper Deck had not used its best efforts to obtain approvals from the NBA and/or Lebron James. A small number of coins did circulate before the NBA pulled its plug on its approval (imagine the present value of those few coins).</p> <p>We moved for summary judgment on behalf of Upper Deck and it was granted by Judge Pro. I am proud of this successful result in this high-profile case.</p>
<p>Your role in the case: I was lead counsel for Upper Deck Company.</p>

Case 4
Case name and date: Check City Partnership, L.L.C. d/b/a Check City; et al vs. City of North Las Vegas, July 29, 2005
<p>Court and presiding judge and all counsel: Clark County, District Court Case No: 05A507733 Judicial Officer: Mark R. Denton Defendant's counsel: Todd L. Bice, Esq.</p>

<p>Importance of the case to you and the case's impact on you:</p> <p>This case was important to me because we were successful putting an arm on the city when it wrongfully denied our client a special use permit to open a location on Craig Road. It also stands out because we were successful obtaining a Writ of Prohibition or Mandamus before Judge Denton and were also successful in the Nevada Supreme Court when the City filed its own application for Writ of Mandamus challenging the District Court Order.</p> <p>Not only was this my first and only oral argument before the Nevada Supreme Court, it also was another David vs. Goliath case. We represented a client that owns a business that is politically unpopular. The City, as governmental entities sometimes do, chose to ignore its own ordinances to deny a special use permit to an unpopular applicant.</p> <p>Further, the City hired who I consider to be one of the top attorneys in Nevada – Todd Bice, Esq. to represent it throughout this case. Beating both the City and its top notch attorney makes this a particularly memorable case.</p>
<p>Your role in the case:</p> <p>I was lead counsel for Check City Partnership, L.L.C. in District Court and the Nevada Supreme Court.</p>

<p>Case 5</p>
<p>Case name and date: MGM Grand Hotel, LLC vs. Diana Emery, March 29, 2011</p>
<p>Court and presiding judge and all counsel: Clark County, District Court Case No. A-11-638030-C Judicial Officer: Kenneth Cory Defendant's counsel: Daniel J. Albregts, Esq. (now U.S. Magistrate)</p>
<p>Importance of the case to you and the case's impact on you:</p> <p>This case was significant because it tested, at trial, issues of capacity to contract. The lessons learned in this case have been used by me in dozens of subsequent cases wherein lack of capacity to contract was asserted as a defense.</p> <p>This was a large gaming collection case with interesting facts. Although there was no dispute as to whether defendant had executed the gaming markers and lost her chips at the gaming tables, she alleged that she lacked capacity to contract when she executed the markers due to intoxication (both by alcohol and prescription drugs). The defendant presented evidence that she had been referred by her casino host to a plastic surgeon who performed plastic surgery on or about her face. She alleged that she was encouraged to gamble and execute gaming markers even though she was still under the influence of prescription drugs and alcohol (provided by the casino). She was allegedly still bandaged about the head as she lost her chips at the gaming tables.</p>

We presented evidence that the defendant was not a heavy drinker and was totally coherent and had full mental capacity when she executed the markers and lost the chips. Summary Judgment was denied by Judge Cory who ruled that lack of capacity was a factual question to be decided at trial under the circumstances of this case.

We argued at trial that even if defendant lacked capacity when she executed the markers (which we adamantly contested), that she needed to disavow the contracts as soon as the lack of capacity ended. We presented evidence that defendant had never disavowed the enforceability of the contracts until years later. Daniel Albregt's did an excellent job representing the defendant's legal and factual positions. Ultimately, the lack of capacity defense was rejected by Judge Cory and our client prevailed on all issues at trial.

Your role in the case:

I was lead counsel for plaintiffs.

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

- (1) I have had the honor of serving as a private arbitrator. The case involved a commercial lease and option to purchase a leased premises. There were excellent attorneys on both sides of the case and our three-arbitrator panel issued a tough unanimous decision which was not appealed by either party. I found the experience to be rewarding as a learning experience. It improved my listening skills and also required a nonpartisan and neutral approach to resolving a legal dilemma.
- (2) I have served as a Pro Tem Justice of the Peace for North Las Vegas Township for 5 ½ years. The experience has opened my eyes to the struggles faced by people suffering the effects of poverty, drug addiction and mental illness. It has also focused my attention on how the Court system must protect the rights of victims – especially of violent crimes. When I first accepted this job as a favor for my friend and law school classmate, Natalie Tyrell, I had no idea that she was doing me a great service opening this opportunity to me. It has given me a massive amount of satisfaction and pleasure. It has made me a better man.

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

I have handled pro bono cases for the pro bono project. I have also volunteered for the Ask-A-Lawyer program mainly advising tenants facing eviction. Although not pro bono, my work as a Pro Tem is very low paying and is definitely providing a service to the people of North Las Vegas.

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.

I was formerly a member of the ABA and the Clark County Bar Association. I did not hold any offices.

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?

Date	Court Name	Provider
11/28/2022	Privacy and Cyber Breachers: Are You Next	National Academy of Continuing Legal Education
11/10/2022	The Uses of An Economist to Prove and Rebut Proof of Economic Damages in a Personal Injury Case	National Academy of Continuing Legal Education
11/07/2022	Legal Ethics Dos and Don'ts for Attorney Advertising	National Academy of Continuing Legal Education
11/03/2022	E-Signatures: Managing the New Reality	National Academy of Continuing Legal Education
11/02/2022	Navigating E-Discovery and Its Emerging Trends	National Academy of Continuing Legal Education
11/01/2022	Ethics of Legal Writing	National Academy of Continuing Legal Education
10/26/2022	Litigating False Claims Act Cases	National Academy of Continuing Legal Education
10/26/2022	Statutory Interpretation: How to Use It to Your Clients' Advantage	National Academy of Continuing Legal Education
10/25/2022	Discovery in a Tractor Trailer Case	National Academy of Continuing Legal Education
12/15/2021	Virtual Civil Jury Trial and Advanced Zoom Techniques	National Academy of Continuing Legal Education
12/14/2021	Third Annual Litigation Ethics Summit	National Academy of Continuing Legal Education
12/13/2021	Federal Court A-Z Everything you wanted or didn't want to know	National Academy of Continuing Legal Education
12/09/2021	A Trial Attorneys Strategy on How to Convince a Jury	National Academy of Continuing Legal Education
12/08/2021	The Second Most Powerful Civil Statute: A Must Watch for Civil Litigation	National Academy of Continuing Legal Education
12/07/2021	Gambling: The Secret Addiction	National Academy of Continuing Legal Education
12/06/2021	COVID 19 Fraud and Recent Trends in False Claims Act Litigation	National Academy of Continuing Legal Education

12/03/2021	Litigation Support Services Performed by Forensic Accounts	National Academy of Continuing Legal Education
12/02/2021	Jury Selection in Civil Cases: What you need to know	National Academy of Continuing Legal Education
05/25/2021	2021 District Court Conference	United States District Court District of Nevada
02/18/2021	Lawful Establishment & Operations of Clients Trust Account	State Bar of Nevada
02/04/2021	Mediation Ethics in a Virtual World: The Good, The Bad, & The Ugly	UNLV – Williams S. Boyd School of Law
12/14/2020	Crimmigration: Where Criminal Law Collides with Immigration Law	National Academy of Continuing Legal Education
12/09/2020	Demystifying Jury Selection in a Criminal Case	National Academy of Continuing Legal Education
12/08/2020	The United States Supreme Court: A Foundation Model Approach	National Academy of Continuing Legal Education
12/08/2020	Crime & Entertainment	National Academy of Continuing Legal Education
12/07/2020	Achieving Precision in the Written World	National Academy of Continuing Legal Education
12/04/2020	Practical Problems in Everyday Practice: DWI Arrests	National Academy of Continuing Legal Education
12/04/2020	The New Discovery Law: Practical Impact in Criminal Practice	National Academy of Continuing Legal Education
12/04/2020	Practicing Law in a Pandemic: Remote Lawyering in the Age of COVID-1	National Academy of Continuing Legal Education
12/03/2020	Practicing Law in a Pandemic: Remote Lawyering in the Age of COVID-1	National Academy of Continuing Legal Education
11/26/2020	How to Prepare for High Profile Cases	National Academy of Continuing Legal Education
11/16/2020	The Realities of Mental Health & Substance Abuse & How to Practice	National Academy of Continuing Legal Education
11/16/2020	Planning for Business Exits from C Corporations: Intra-Family Business	National Academy of Continuing Legal Education
06/05/2020	The COVID-19 Pandemic & Business Interruption Litigation	State Bar of Nevada
11/04/2019	Offensive & Defensive Strategies in E-Discovery	National Academy of Continuing Legal Education
10/30/2019	Basic Principles of Liability for Personal Injury or Death of Passenger	National Academy of Continuing Legal Education
10/30/2019	Professionalism & Tips for Meeting Minimal Legal Standards	National Academy of Continuing Legal Education
10/09/2019	No Lawyer Left Behind: Substance Abuse Prevention Techniques to Save	National Academy of Continuing Legal Education

10/07/2019	The Deposition Whisperer: How to be the Alpha & Control the Room	National Academy of Continuing Legal Education
05/16/2019	2019 District Court Conference	United States District Court District of Nevada
05/01/2019	Criminal Record Sealing	Nevada Legal Services – Reno
12/28/2018	Trust Yourself: A Basic Guide to Using Trust Accounts for Legal Fees	National Academy of Continuing Legal Education
12/28/2018	Persuasive Legal Writing: Be Heard on Paper	National Academy of Continuing Legal Education
12/28/2018	Preparing & Presenting a Plaintiff for a Deposition	National Academy of Continuing Legal Education
12/27/2018	Trial Strategy: How to ask Questions	National Academy of Continuing Legal Education
12/26/2018	Ethical & Effective Social Media for Lawyers	National Academy of Continuing Legal Education
12/26/2018	Mindfulness & the Practice of Law	National Academy of Continuing Legal Education
05/11/2017	2017 District Court Conference	United States District Court District of Nevada
10/18/2016	Voting Rights	American Inn of Court, Reno
08/20/2016	The AON Ethics Quiz, How Confident Are You?	Durham Jones & Pinegar

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

Yes, our firm has Professional Liability Insurance.

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.

No.

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? 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

Yes, Newman Morris & Dachelet, Ltd.

- (a) Law Practice
- (b) Managing Partner
- (c) 100%
- (d) 9 years
- (e) 33 1/3%

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
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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?

No

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

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

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

I have taught two CLE courses. The first involved collecting money from a limited liability company in Nevada. It focused on the difficulty of navigating around the business-friendly laws of Nevada.

The second involved Gaming Collection Law. It was extremely well attended and well received by the audience. They kept me for questions for ninety minutes beyond the time set for the presentation.

I have also participated actively in the Nevada Inns of Court program and have served as the group leader on several occasions. The most memorable was when we presented a study of the Judicial Evaluations both from a sociological and practical perspective. We presented strong evidence of inherent biases against female judges. I recommended that we discontinue the judicial evaluations. Another was a review of the Business Courts in Nevada. A third examined the extreme advantage of "Drafting the Order" in motion practice before the Courts.

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

I have served as a volunteer youth soccer and basketball coach. I have participated, but not in a leadership position, in church activities.

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

I am rated A-V (5.0 out of 5.0) by Martindale-Hubbell and have been rated A-V since the mid 1990's. I have been included in Super Lawyers, Nevada Legal Elite and Best Lawyers. Supposedly, I am top 1% lawyer based upon such recognitions.

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. N/A.

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.

I am an avid fan of the Minnesota Vikings and the Vegas Golden Knights. I enjoy golf, bowling and poker. I enjoy fine dining and experiencing the entertainment available in Las Vegas.

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

In law school, I was convicted of a DWI (Driving while intoxicated). In 1994, I was convicted of Driving Under the Influence in Henderson, Nevada. I no longer consume any alcohol. I have been alcohol free and completely sober since 1994.

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.

Yes

Since 2015, I have struggled to pay all federal income taxes assessed against me. A tax lien exists. I have entered into payment plans with the IRS to address amounts owed and currently have a payment plan with the IRS.

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.

Yes.

I may be required to recuse myself from matters involving my existing clients for a certain period of time.

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.

No.

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).

See Exhibit 1.

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.

I love living and working in Las Vegas. I have strong ties to the community and an impeccable professional reputation among the Bar. My extensive civil experience in complex commercial litigation disputes also make me a good option to be selected as a Business Court Judge. If appointed, I am well situated to run for retention and re-election and am willing to do what is necessary to make this job my last job.

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.

See Exhibit 2.

EXHIBIT “1”

Question 47-Statement

C. Newman

#47 – Craig Newman Statement

To have the opportunity to serve as the next District Court Judge in Department 7 would be one of the highest honors of my professional career. If selected for such an appointment, I promise not to disappoint the Selection Committee or the Governor. Be assured that you will be making the right selection.

Education and Experience:

My professional and educational journey began at the academically challenging Macalester College in St. Paul Minnesota where I had the opportunity to be submerged in a diverse and fascinating community. The college offered me the opportunity to create relationships with people from all over the world and thoroughly changed my life. Upon graduation I attended and graduated Cum Laude at the University of Minnesota Law School, a top-tier law school presently ranked 21st by US News & World Report.

In addition to a superior academic pedigree, my working career has provided not only the most relevant but the broadest experience of all applicants. Over the last 32 years, I have practiced civil litigation at the highest level in Nevada and received training from some of the finest litigators in Las Vegas who helped lay the groundwork so I could become one of them.

There have been two very influential litigators who inspired and advanced my professional development: Dennis Kennedy and Charles E. (Chuck) Thompson. These two not only practiced law, they also treated their work as both an art and a science. Dennis taught me to write persuasively and to put in the hard work that was necessary to win in court. He was, and is, a master tactician. Chuck was the fiercest advocate I have ever seen. He maintained an intense sense of urgency and

commitment and the ready willingness to throw down against even the strongest opponents without fear. His level of creativity and confidence in court was a sight to behold. I gobbled up their instruction and guidance, and after about seven years of practice I transitioned to being a first-chair lawyer. Over the next two decades, my clients have included many of the largest casinos in Las Vegas and other businesses and individuals faced with complex legal dilemmas.

My level of success has been outstanding as I rarely lose any motions – let alone cases. I have both obtained tens of millions of dollars in judgments for my clients and saved them similar amounts when defending them against claims of others. Such success has not gone unnoticed. I am a highly decorated lawyer – AV Rated (5.0 out of 5.0) by Martindale-Hubbell; a Super Lawyer, one of Nevada’s Legal Elite, and a Best Lawyer. Allegedly, I am one of America’s Most Honored Professionals – Top 1%.

Over the past five and a half years, I decided to give back to the community that has provided me so much by sitting as a Pro Tem Justice of the Peace in North Las Vegas. Not only has this experience been rewarding, it also provides me with a sense of vigor and enthusiasm. Ultimately, sitting as a Pro Tem is one of the best decisions of my life. The experience has been humbling and has made me a more caring and compassionate man – both for the accused and even more importantly for the victims of crime. On the civil side, I have presided over multiple trials and routinely rule on commercial and residential evictions. This position has not been a sporadic resume builder. Over the past four months, I have been on the Bench 59 days including conducting bail hearings every Friday, Saturday, and Sunday and most Holidays since last September.

Based on my vast civil experience and my judicial experience, I am uniquely well-suited to be a District Court Judge.

///

Personality and Character Traits

I am no stranger to adversity. Having spent most of my life successfully battling addiction issues, I have been blessed to be sober for over 25 years despite going through the harsh trials of life. Tragically, my wife of sixteen years passed while our two daughters were just teenagers. Initially, I struggled as a single father before realizing that my only duty was to provide unconditional love and support and maintain a beautiful relationship with both of them. Those two are my heroes, my homegirls, and my safe place. I am immensely proud of the women they have become.

I am told that I am thoughtful and generous; however, there are few who could counter my confidence in my abilities and skill set. Being a problem solver is a natural state of mind, even so, my driven nature does not cloud my ability to listen patiently, be gracious with my time and resources, and make honest decisions – though only after thoughtful consideration of all options. I have trained countless lawyers with the same attention and conscious regard for their professional development that I was fortunate enough to receive from my mentors.

My temperament is well suited to sitting on the Bench. All three permanent judges at North Las Vegas Justice Court regularly request me to sit in their departments and the clerks, bailiffs, and correction officers in such departments have commented on how well I conduct myself on the Bench. Due to this Judicial experience, there will be no significant transition period before I am comfortable in this new role. I would love to devote the next part of my career to being your District Court Judge in Department 7. To be given such an opportunity would be an honor.

EXHIBIT “2”

Question 49-Writing Sample

C. Newman



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12 **EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 Dawn Chandler, *individually and on behalf of*
15 *all others similarly situated,*

16 Plaintiff,

17 vs.

18 Koster Finance LLC,

19 Defendant.

CASE NO.: A-19-796851-C
DEPT. NO.: 6

Hearing Date: September 24, 2019
Hearing Time: 9:30 a.m.

20 **KOSTER FINANCE, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS**

21 Defendant, Koster Finance, LLC ("Koster Finance") submits its reply in support of
22 motion to dismiss. Initially, Koster Finance requests that the court take judicial notice,
23 pursuant to NRS 47.130, of the fact that Plaintiff (and presumably numerous other
24 members of the potential class) is a "repeat customer" who, less than three years ago, was
25 sued by Koster Finance in Justice Court Case No. 16C019500 to collect payments due on
26 a contract which was identical in all relevant aspects to the present contract. In that case,
27 Plaintiff did not attempt to compel arbitration of the collection matter since she
28 presumably read the contract which contained the very same conspicuous (capitalized)
and unambiguous exception to arbitration that is contained in this contract.¹ Instead,
Plaintiff allowed Koster Finance to reduce the debt to a civil judgment which she did not

¹ See copy of contract between Koster Finance and Plaintiff that was the subject of the earlier Justice Court matter, attached as Ex. A.

1 appeal or challenge, but instead satisfied by payment. This background is important
2 because it undercuts Plaintiff's new argument that this Court should either ignore the
3 existence of the exact same provision excepting collection matters from arbitration or
4 interpreting such exception in a way that subverts its plain meaning.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I.

7 LEGAL ARGUMENT

8 Tellingly, Plaintiff does not begin to address the actual substance of Koster
9 Finance's motion until more than half-way through her opposition at page 9, wherein she
10 shockingly argues that the arbitration exception cannot be reviewed by the Court in its
11 consideration of the motion because it is "information outside the four corners of the
12 Complaint." (See Opp'n at 9:3-4.) However, Plaintiff's unsupported contention that a
13 court cannot review contract language in a motion to dismiss simply because it was not
14 mentioned by the non-moving party in its complaint is flat wrong.

15 First, it bears repeating that a court may review a *contract* central to a claim when
16 considering a motion to dismiss, as the contract is not considered a matter outside the
17 pleadings for the purposes of NRCP 12(b)(5). Breliant v. Preferred Equities Corp., 109
18 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). This necessarily means the whole contract
19 — not just favorable parts of a contract. Additionally, Plaintiff does not cite any legal
20 authority that prevents a court from considering any other contract language besides the
21 cherry-picked language contained in the complaint, especially when the unfavorable
22 language is central to the motion. Therefore, the Court should reject Plaintiff's frivolous
23 argument. Plaintiff's other arguments are addressed below.

24 ***A. The Contract's Arbitration Clause Contains an Unambiguous Provision*** 25 ***Excluding Collection Matters from Arbitration; Therefore, Dismissal is Appropriate.***

26 Plaintiff next attempts to get around the express provision that excludes collection
27 matters from arbitration by asserting the contract is ambiguous and, therefore, should be
28 interpreted against Koster Finance and in favor of arbitration for all matters. Specifically,

1 Plaintiff advances two arguments that the arbitration clause is ambiguous, neither of
2 which have any merit. Performing some guesswork, Plaintiff appears to argue first that
3 the *entire* arbitration clause is ambiguous because three sentences have to do with the
4 arbitration of disputes while just one sentence provides for an exception to arbitration.
5 However, Plaintiff provides no legal authority that support her “three is greater than one,
6 therefore we win” rule to contract interpretation. (See Pl.’s Opp’n at 7:8 – 8:22.)
7 Instead, Plaintiff cites to AT & T Technologies, Inc. v. Communications Workers of
8 America, 475 U.S. 643, 106 S. Ct. 1415 (1986), which is easily distinguishable from the
9 facts at bar and does not support Plaintiff’s theory.

10 In AT&T, the issue before the Supreme Court was whether it was for the district
11 court or arbitrator to decide whether a collective bargaining agreement in a labor dispute
12 required the parties to arbitrate a grievance concerning layoffs predicated on “lack of
13 work” determination by the company. In its analysis, the Supreme Court laid out precepts
14 applicable to the industrial relations community which generally relies on arbitration,
15 rather than strikes or lockouts, as the preferred method for resolving disputes arising
16 during the term of a collective-bargaining agreement. *Id.* at 648, 1418. In her opposition,
17 Plaintiff conveniently plucks from AT &T the precept that there is a presumption of
18 arbitrability of a particular grievance unless “it may be said with positive assurance that
19 the arbitration clause is not susceptible of an interpretation that covers the asserted
20 dispute.” *Id.* at 650, 1419. (See Pl.’s Opp’n at 6:25 – 7:3.) Unlike AT &T, this is a
21 matter involving an unpaid consumer loan, not an industrial relations dispute. As such,
22 this case does not present any serious implications (e.g., strikes or lockouts) that exist in
23 industrial relations matters which necessitate a heightened standard in favor of arbitration.
24 However, even assuming for sake of argument that this court were to apply a heightened
25 standard in favor of arbitrability, AT &T does not stand for the proposition that the court
26 could simply read out of the contract the arbitration exception for collection of payments
27 because there are three other sentences that provide for arbitration in other contexts. In
28 fact, the Supreme Court did not analyze the arbitration exception in the contract because

1 that issue was not before the Court. In sum, because Plaintiff's over broad theory of
2 contract ambiguity is not supported by the facts or law, her argument has no merit and
3 must be rejected.

4 Second and alternatively, Plaintiff argues the arbitration exception itself is
5 ambiguous because it could be susceptible to a different meaning. Specifically, Plaintiff
6 argues that while the word "Payment(s)" could refer to loan/contract payments it could
7 also refer to "payments due pursuant to an arbitrator's award after the parties have settled
8 all disputes through arbitration." (See Pl.'s Opp'n at 9:6 – 10:18.) In support of her
9 alternative argument, Plaintiff cites to a string of cases concerning a federal court's
10 authority to confirm arbitration awards in accordance with the Federal Arbitration Act
11 (FAA), and the interplay between the FAA and consent-to-confirmation provisions in a
12 contract. See e.g., Phoenix Aktiengesellschaft v. Ecoplas, Inc., 391 F.3d 433 (2nd. Cir.
13 2004); see also PVI, Inc. v. Ratiopharm GmbH, 135 F.3d 1252 (8th Cir. 1998).
14 However, these cases have absolutely no bearing on the determination of the motion
15 because the Contract does not contain a consent-to-confirmation provision. Without a
16 consent-to-confirmation provision to evaluate, Plaintiff's proffered interpretation of the
17 word "payment" is toothless, and therefore must be rejected.

18 Additionally, because words derive meaning from context the Contract cannot be
19 declared ambiguous without consulting the context in which the parties have exchanged
20 promises in the Contract. Galardi v. Naples Polaris, LLC, 129 Nev. 306, 310-11, 301
21 P.3d 364, 367. Here, Plaintiff's strained interpretation of the word "payment" should be
22 rejected because it is inconsistent with a plain reading of the Contract, which essentially
23 provides the meaning of "payment" over and over. For example, the very top of the
24 Contract defines "Total of Payments" as "[t]he amount I will have paid after I have made
25 all payments as scheduled. \$462.31" Similarly, just under the very top of page 1 the
26 Contract defines "Payment Schedule" as follows: "5 payments of \$77.05 each, starting on
27 01/12/2019, due every 14 days. 1 final payment of \$77.06 due on 03/23/2019."
28 Moreover, the last sentence at the bottom of page 1 of the Contract reads in all bold and

1 capitalized letters as follows: "ALL PAYMENTS ARE TO BE MADE BY CASH,
2 CHECK, MONEY ORDER OR DEBIT CARD." Given this context it hardly could be
3 clearer that the term "payment" in the Contract refers to loan/contract payments and not
4 payments due pursuant to an arbitrator's award. Therefore, dismissal is appropriate.

5 ***B. This Court Should Reject Plaintiff's Anticipated Argument That The***
6 ***Arbitration Clause is One-Sided in Favor of Koster Finance and Therefore***
7 ***Unconscionable.***

8 Although Plaintiff does not address it in her motion, it is anticipated that Plaintiff
9 may argue at the hearing, for the first time, that the arbitration clause is unconscionable
10 because it reserves the right of access to the court only for Koster Finance. On this point,
11 Plaintiff will direct the Court to Berent v. CMH Homes, Inc., 466 S.W.3d 740 (2015), or
12 other similar cases in *other* jurisdictions which discuss the validity of one-side arbitration
13 provisions that permit the merchant to seek relief in a judicial forum, but require the
14 consumer to arbitrate all claims. However, Berent and other similar cases present facts
15 that are inapposite to the facts of this case. Also, their holdings are not binding on this
16 Court.

17 In Berent, the contract included an arbitration provision under which the seller
18 retained the right to seek relief in a judicial forum for limited purposes. After the buyer
19 took possession of the home, he filed a lawsuit against the sellers for breach of contract,
20 and the sellers filed a motion to compel arbitration. Similarly, each of the cases reviewed
21 by the Supreme Court of Tennessee in Berent concerned the same exact fact pattern in
22 which the party that was subject to arbitration wanted to invalidate the arbitration clause
23 and be allowed the same right to pursue its claims in court. Ultimately, the Supreme
24 Court of Tennessee held that the sellers' retention of a judicial forum for limited purposes
25 did not render the arbitration clause *per se* unconscionable. Id.

26 Unlike Berent or other similar cases from other jurisdictions, this case presents an
27 entirely different scenario which does not implicate any concerns over the fairness of
28 limiting a consumer to arbitration. Here, the Plaintiff does not want to invalidate a one-

1 sided arbitration provision. Rather, she is trying to impose arbitration on Koster Finance
2 in the face of a clear exception to arbitration in the parties' Contract. Therefore, this court
3 should refuse to apply Berent or any other similar non-binding cases to this matter which
4 involves different facts.

5 Even if this Court were to consider other cases outside Nevada, it is unlikely that
6 Nevada would adopt a *per se* rule that any degree of non-mutuality in remedies in an
7 arbitration agreement is unconscionable. Under Nevada law, the question of whether a
8 given contract is unconscionable depends on all of the facts and circumstances of a
9 particular case. Burch v. Second Judicial Dist. Court of State ex rel. County of Washoe,
10 118 Nev. 438, 49 P.3d 647 (2002). Therefore, if asked to analyze the issue, the Nevada
11 Supreme Court will take into account the particulars of the Contract, such as the degree of
12 non-mutuality. Here, Koster Finance has only retained the right to file an action in court
13 to collect payments. Any other potential claims between the parties must proceed to
14 arbitration. Therefore, the arbitration clause would not be held to be unconscionable.

15 ***C. Plaintiff Has Failed to Make any Showing of Entitlement to Damages;***
16 ***Therefore, Dismissal is Appropriate.***

17 In her Opposition, Plaintiff makes the circular and patently erroneous argument
18 that she has sufficiently pled damages because she has pled injunctive and declaratory
19 relief. Additionally, Plaintiff makes the equally spurious argument that her breach of
20 contract claim entitles her to recover attorney fees as "special damages." (See Pl's Opp'n
21 at 12:19 – 13:8).

22 Plaintiff's first argument fails because injunctive relief and declaratory relief are
23 equitable remedies that are distinct from monetary damages, which is a legal remedy.
24 While Plaintiff attempts to blur the clear distinction between the two, a quick review of
25 her Complaint reveals the invalidity of her argument. The caption of Plaintiff's
26 Complaint states, "**Complaint for Declaratory Relief and Damages.**" Similarly, the
27 prayer for relief recognizes the difference between the two as each such remedy is
28

1 parceled out in bullet point format as follows: “WHEREFORE, Plaintiff respectfully
2 requests that the Court grant relief in Plaintiff’s favor and against Defendant as follows:

- 3 • Award damages...
- 4 • Order injunctive relief...
- 5 • Order declaratory relief...”

6 Clearly, even Plaintiff implicitly recognizes injunctive and declaratory relief are
7 not the same as damages. Therefore, her argument should be disregarded. Plaintiff’s
8 second argument should also be rejected because attorney fees may only be awarded “as
9 special damages in limited circumstances.” Liu v. Christopher Homes, LLC, 130 Nev.
10 147, 151, 321 P.3d 875, 878 (2014) quoting Horgan v. Felton, 123 Nev. 577, 583, 170
11 P.3d 982, 987 (2007). In Liu, the Court held, among other things, that attorney fees may
12 be an element of damage in cases when a plaintiff becomes involved in a thirty-party
13 legal dispute and the fees are incurred in defending the third-party action (i.e., actions to
14 remove cloud on title or liens, etc.). In this case, attorneys’ fees are not recoverable as
15 special damages for the simple reason that no such special circumstances are presented.
16 Not only is this a run-of-the-mill two-party contract action *initiated by the Plaintiff* to
17 contest an arbitration clause, Plaintiff does not even contest the fact she owes money to
18 Koster Finance for failing to repay her loan. For all these reasons, Plaintiff’s contract
19 claim fails as a matter of law.

20 ***D. Plaintiff’s Failure to Show That Koster Finance is a Deferred Deposit***
21 ***Lender, Title Loan Service or Sells or Leases Goods Requires Dismissal of the FDCPA***
22 ***and Deceptive Trade Practice Claims.***

23 Plaintiff does not dispute the fact that Koster Finance is (1) not a deferred deposit
24 lender under NRS 604A.5014, or (2) title loan service under NRS 604A.5068. (See Pl.’s
25 Opp’n at 11:16-27.) Therefore, Koster Finance could not have violated the FDCPA with
26 respect to its alleged conduct because its business does not fall within those statutes.
27 Similarly, with regard to Plaintiff’s Deceptive Trade Practice claim, Plaintiff fails to
28 demonstrate how Koster Finance could have committed a deceptive trade practice act

1 under NRS 598.0923(2) or (3) when the challenged conduct has no relation to the sale of
2 goods or services. Therefore, these claims should be dismissed.

3 *E. "Exploitation" is a defined Term under NRS 41.1395; the Fact That*
4 *Plaintiff Fails to Allege any Facts Showing "Exploitation" Requires Dismissal of her*
5 *Elder Abuse Claim.*

6 In her Opposition, Plaintiff pays lip service to the statutory definition of elder
7 "exploitation," yet she totally fails to explain how the facts of the case could possibly give
8 rise to exploitation. Instead, Plaintiff nonsensically states that exploitation "is not
9 necessarily a question that goes to the sufficiency of Plaintiff's complaint, but rather to
10 damages." (See Pl.'s Opp'n at 13:14-28.) In sum, Plaintiff has failed to present any facts
11 showing that Koster Finance converted money of any older person with the intent of
12 permanently depriving such older person of her money. Therefore, this claim also fails as
13 matter of law.

14 **II.**

15 **CONCLUSION**

16 As shown in the motion and this reply, the arbitration clause in the Contract is
17 straightforward and unambiguous, notwithstanding Plaintiff's arguments to the contrary.
18 Plaintiff cannot point to any law or facts demonstrating why the Court should ignore or
19 read out the exception to arbitration in the arbitration clause, and she does not contest any
20 of the other reasons which require dismissal (i.e., failure to allege damages). As such,
21 Koster Finance respectfully request that this Court dismiss Plaintiff's lawsuit in its
22 entirety.

23 DATED this 17 day of September, 2019.

24 **SKLAR WILLIAMS PLLC**

25 By: 

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