

2013 Nevada Supreme Court Opinion Digest

Woods v. State, 129 Nev. Adv. Op. No. 1 (January 17, 2013) – The Court reverses a conviction pursuant to a bench trial of sex offender failure to notify appropriate agencies of change of address, ruling that the State's failure to file a responsive pleading in justice court, leading to dismissal of a criminal complaint, constituted conscious indifference to a defendant's procedural rights and/or important procedural rules barring a new prosecution for the same offense. The Court held that 1) conscious indifference analysis applies where the State's failure to oppose a defendant's motion to dismiss results in the dismissal of a criminal complaint; 2) the State's failure to file an opposition demonstrated conscious indifference to an important procedural rule, in this instance JCRRT 11(c); and 3) the district court erred by denying appellant's pretrial petition for a writ of habeas corpus.

Las Vegas v. Cliff Shadows Prof'l Plaza, 129 Nev. Adv. Op. No. 2 (January 31, 2013) – In an appeal and cross-appeal from district court orders in an eminent domain action involving property originally acquired by Cliff Shadows' predecessor-in-interest through a federal land patent that was issued pursuant to the Small Tract Act of 1938, the Court reverses in part, vacates in part, and remands, ruling that 1) the district court erred in determining that the federal land patent did not create a 33-foot-wide easement because the plain meaning of the patent's language creates a valid public easement; 2) the district court erred in determining that the City's proposed use of the easement constitutes a taking because the use of this easement is within its scope and does not strip Cliff Shadows of a property interest; and 3) consequently, Cliff Shadows was not entitled to just compensation or attorney fees.

Garcia v. Prudential Ins. Co. of America, 129 Nev. Adv. Op. No. 3 (January 31, 2013) – The Court affirms a district court order dismissing a contract and tort action, clarifying that *Bower v. Harrah's Laughlin*, 125 Nev. 470, 482, 215 P.3d 709, 718 (2009), which broadly required Nevada courts to apply federal law in determining whether a prior federal court determination should be given preclusive effect, applies only to federal question cases, and holding that when the federal court decides a case under its diversity jurisdiction, *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001), governs the treatment of claim and issue preclusion. The Court further rules that 1) New Jersey preclusion law applies under *Semtek*; 2) under New Jersey law, appellant would be precluded from relitigating her claims; 3) she is therefore precluded from litigating her claims in Nevada, and 4) although the district court erred by applying federal law instead of state law on this issue, it reached the correct result.

Attorney General v. Gypsum Resources, 129 Nev. Adv. Op. No. 4 (January 31, 2013) – The Court answers four certified questions pursuant to NRAP 5 from the United States Court of Appeals for the Ninth Circuit regarding the constitutionality of Senate Bill 358, 72d Leg. (Nev. 2003), in which the Nevada Legislature adopted amendments to Nevada law that prohibit Clark County from rezoning land in certain areas adjacent to Red Rock Canyon National Conservation Area, including land owned by respondent. The Court answers that 1) S.B. 358 violates Nev. Const. Art. 4, § 20 because it is a local law that regulates county business; 2) S.B. 358 violates Nev. Const. Art. 4, § 21 because a

general law could have been made applicable; 3) S.B. 358 violates Nev. Const. Art. 4, § 25 because it establishes a system of county government that is not uniform throughout the State; and 4) there is no applicable emergency or natural resource justification that renders S.B. 358 valid despite otherwise violating the Nevada Constitution.

Education Init. v. Comm. to Protect Nev. Jobs, 129 Nev. Adv. Op. No. 5 (January 31, 2013) – The Court reverses a district court's grant of declaratory and injunctive relief invalidating appellant's Education Initiative and enjoining the Secretary of State from presenting the Education Initiative to the 2013 Legislature and from placing it on the 2014 general election ballot, ruling that 1) in reviewing an initiative's description of effect in conformance with NRS 295.009(1)(b), the district court should assess whether the description contains a straightforward, succinct, and nonargumentative statement of what the initiative will accomplish and how it will achieve those goals; 2) the description of effect in the Education Initiative satisfies this requirement; and 3) the Education Initiative complies with NRS 295.009(1)(a)'s single-subject requirement in that its parts are functionally related and germane to each other and to the Initiative's purpose to fund education.

Building Energetix Corp. v. EHE, LP, 129 Nev. Adv. Op. No. 6 (February 14, 2013) – The Court affirms a district court order granting a deficiency judgment under NRS 40.455 after foreclosure, ruling that 1) a valid nonjudicial foreclosure sale may occur under NRS Chapter 107 after a delinquent-tax certificate has issued to the county treasurer under NRS Chapter 361; 2) consistent with NRS 107.080(5), a trust-deed beneficiary who acquires such property on credit bid at the foreclosure sale can later redeem, or obtain reconveyance of, the property from the county treasurer; and 3) since the foreclosure sale was proper, the deficiency judgment was as well.

Abdullah v. State, 129 Nev. Adv. Op. No. 7 (February 14, 2013) – The Court dismisses an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus, ruling that the district court clerk lacks authority to prepare and file a notice of appeal on an appellant's behalf unless authorized by statute or court rule, and direct the district court clerk to file a notice of appeal from the judgment of conviction consistent with the district court's order and NRAP 4(c).

Blackburn v. State, 129 Nev. Adv. Op. No. 8 (February 14, 2013) – The Court affirms a conviction, pursuant to an Alford plea, of attempted sexual assault, ruling, with regard to psychosexual evaluations, that 1) a risk assessment based on clinical judgment, in addition to psychological tests, comports with Nevada law because NRS 176A.110 and NRS 176.139 call for the use of clinical judgment in tandem with diagnostic tools; and 2) the evidence in the record supports the district court's decision to deny appellant's request for a new psychosexual evaluation and to reinstate the judgment of conviction.

Sowers v. Forest Hills Subdivision, 129 Nev. Adv. Op. No. 9 (February 14, 2013) – The Court affirms a district court order granting a permanent injunction against construction of a proposed residential wind turbine, ruling that substantial evidence exists to support the district court's conclusion that the proposed wind turbine 1) constitutes a nuisance; and 2) would create a nuisance in fact, when the aesthetics are combined with other factors, such as noise, shadow flicker, and diminution in property value.

Morrow v. Dist. Ct., 129 Nev. Adv. Op. No. 10 (February 14, 2013) – The Court grants a writ petition challenging a district court order that rejected, as untimely, a peremptory challenge for a change of judge under SCR 48.1, ruling that 1) the time to file a peremptory challenge begins to run upon proper notice of a hearing and may expire regardless of whether a party has appeared in the action; and 2) because SCR 48.1(3)(a)'s ten-day window excludes intermediate nonjudicial days, the instant peremptory challenge was timely filed.

Davis v. Dist. Ct., 129 Nev. Adv. Op. No. 11 (February 14, 2013) – The Court denies a writ petition challenging a district court order denying a motion to dismiss an indictment, ruling that facsimile service of a notice of intent to seek an indictment constitutes adequate service under NRS 172.241(2), as NRS 172.241(2) does not require personal service and NRS 178.589(1) permits facsimile transmission of motions, notices, and other legal documents where personal service is not required.

Peck v. Crouser, 129 Nev. Adv. Op. No. 12 (February 28, 2013) – The Court dismisses a pro per appeal from a district court order dismissing a complaint and from a post-judgment district court order declaring appellant a vexatious litigant, ruling that 1) since vexatious litigant orders are not independently appealable under NRAP 3A(b) or any statutory provision, the Court lacks jurisdiction to review an appeal from such an order; 2) post-judgment vexatious litigant orders may only be challenged by filing a writ petition pursuant to NRS Chapter 34; and 3) writ relief is the appropriate vehicle to review vexatious litigant orders because review of such orders will involve whether the district court manifestly abused its discretion or acted in the absence of jurisdiction.

In Re Parental Rights as to A.G., 129 Nev. Adv. Op. No. 13 (February 28, 2013) – The Court affirms a district court order denying a petition to terminate parental rights as to a minor child, ruling that when a child is placed into state custody based on the neglectful actions of one parent, keeping the child from the custody of the other parent, when that parent has not been found to have neglected the child, violates the nonoffending parent's fundamental constitutional rights to parent his or her child, and the nonoffending parent cannot be required to comply with a case plan and accept services under NRS 432B.560 for purposes of reunification.

I. Cox Constr. Co. v. CH2 Investments, 129 Nev. Adv. Op. No. 14 (March 7, 2013) – The Court affirms a district court order expunging a mechanic's lien, ruling that 1) the lien must be timely filed within 90 days of the completion of the "work of improvement," to be valid; and 2) the district court did not err in relying on Vaughn Materials v. Meadowvale Homes, 84 Nev. 227, 438 P.2d 822 (1968), to define the scope of a contract for a work of improvement and in determining a lien was untimely, even though the mechanic's lien statutes have been amended in the interim.

Stubbs v. Strickland, 129 Nev. Adv. Op. No. 15 (March 14, 2013) – The Court affirms a district court order dismissing an action for anti-SLAPP (Strategic Lawsuit Against Public Participation) relief and from a post-judgment district court order denying attorney fees and costs, ruling that if a plaintiff voluntarily dismisses the initial action before the defendant files either an initial responsive pleading or a special motion to dismiss pursuant to NRS 41.670, the defendant cannot file an anti-SLAPP suit against the plaintiff based on the initial action.

Ivey v. Dist. Ct., 129 Nev. Adv. Op. No. 16 (March 28, 2013) – The Court denies a writ petition challenging a district court order denying a request to recuse a district court judge in a divorce action, ruling that the judge was not disqualified from presiding over petitioner's motion by receiving contributions for the judge's reelection campaign from the opposing party, because doing so violated neither petitioner's due process rights nor Nevada law.

Patterson v. State, 129 Nev. Adv. Op. No. 17 (April 4, 2013) – The Court affirms a jury conviction of conspiracy to commit murder, murder with the use of a deadly weapon, and discharging a firearm at or into a vehicle, ruling that 1) appellant's Sixth Amendment right to counsel was violated when he was denied his counsel of choice at his preliminary hearing; 2) the error was harmless since appellant has not demonstrated how having different counsel at the preliminary hearing would have produced a different result at trial when the State presented overwhelming evidence of appellant's guilt; and 3) the State did not commit a Brady violation by not providing information that the FBI never records interviews.

Holcomb Condo. HOA v. Stewart Venture, 129 Nev. Adv. Op. No. 18 (April 4, 2013) – The Court reverses a district court order dismissing a construction defect action, ruling that 1) statutory limitations periods for constructional defect claims may be contractually modified provided there is no statute to the contrary and the reduced limitations period is reasonable and does not violate public policy; 2) NRS 116.4116 expressly permits a contractual reduction of its six-year limitations period for warranty claims to not less than two years if, with respect to residential units, the reduction agreement is contained in a separate instrument; 3) since the reduction provision is within an arbitration agreement that is attached to and incorporated into a purchase contract, the reduction provision does not qualify as a "separate instrument" and the arbitration agreement provision is unenforceable for appellant's breach of warranty claims; 4) the district court improperly dismissed appellant's breach of warranty claims as contractually time-barred; and 5) the district court improperly relied upon NRS 116.4116, which only governs warranty claims, in dismissing appellant's negligence-based claims, and in declining to allow appellant to amend its complaint to add additional claims for intentional conduct on the ground that these claims were also contractually time-barred.

Majuba Mining v. Pumpkin Copper, 129 Nev. Adv. Op. No. 19 (April 4, 2013) – The Court grants a motion to dismiss an appeal of a district court order in a quiet title action, ruling that the controversy over superior title was rendered moot when the Bureau of Land Management declared appellant's unpatented mining claims forfeit and void by operation of law.

Truesdell v. State, 129 Nev. Adv. Op. No. 20 (April 4, 2013) – The Court affirms a jury conviction of invasion of the home in violation of a temporary protection order, ruling that a party must initially challenge the validity of a temporary protective order under NRS 33.080(2) before the court that issued the order, and may not collaterally attack the order's validity in a separate criminal proceeding for violation of that order.

Rock Bay, LLC v. Dist. Ct., 129 Nev. Adv. Op. No. 21 (April 4, 2013) – The Court grants in part and denies in part a writ petition challenging district court orders refusing to quash subpoenas as to petitioner, ruling that discovery of a nonparty's assets under NRCPP 69(a) [which permits post-judgment discovery in aid of execution of a judgment] is not permissible absent special circumstances, which include, without limitation, those in which the relationship between the judgment debtor and the nonparty raises reasonable suspicion as to the good faith of asset transfers between the two, or in which the nonparty is the alter ego of the judgment debtor.

Gonzalez v. Dist. Ct., 129 Nev. Adv. Op. No. 22 (April 4, 2013) – The Court grants a writ petition challenging a district court order denying a motion to dismiss a criminal information, ruling that 1) the proper analysis of a Double Jeopardy Clause claim when it is based upon the doctrine of collateral estoppel is set forth in Ashe v. Swenson, 397 U.S. 436, 444 (1970); 2) the district court must examine the record of the first trial and determine whether a rational jury could have grounded its verdict on some other issue of fact; 3) in conducting this analysis, the district court may not consider the jury's inability to reach a verdict on the other counts; and 4) in this instance, the district court failed to apply the analysis required by Ashe when determining whether the jury's verdict on the lewdness count estopped the State from relitigating the issue of sexual touching in the sexual assault count.

Slaatte v. State, 129 Nev. Adv. Op. No. 23 (April 18, 2013) – The Court dismisses an appeal of a judgment of conviction, ruling that a judgment of conviction that imposes restitution in an uncertain amount is not an appealable final judgment and the Court therefore lacks of jurisdiction.

Newman v. State, 129 Nev. Adv. Op. No. 24 (April 18, 2013) – The Court affirms a jury conviction of battery by strangulation and willfully endangering a child as a result of child abuse, arising out of an incident in which Newman yelled at his son, Darian, in public; when Newman took off his belt to strike the boy, a witness, Thomas Carmona, tried to stop him and Newman grabbed Carmona's neck to choke him into submission. At trial, Newman admitted these facts and that he acted intentionally. His defense was justification: parental discipline privilege as to the child abuse charge and self-defense as to the battery charge. Newman's appeal challenges the district court's allowance of certain testimony to rebut Newman's testimony that he strangled Carmona in self-defense. First, the prosecution introduced evidence that Newman had struck his other son, Jacob, in public and that Newman got into a heated argument with nursing staff about Jacob while Darian was hospitalized for an appendectomy. The district court deemed this evidence admissible under NRS 48.045(2) to show absence of mistake or accident as to the child abuse charge. Second, the prosecution presented a surprise rebuttal witness, Connie Ewing, who reported that she, too, had a heated but nonphysical exchange with Newman over his disciplining a young boy outside a local Walmart. The Court rules that 1) evidence of one of the episodes involving Jacob was properly admitted to refute Newman's claim of parental privilege; 2) the other episodes involving Jacob were not proven by clear and convincing evidence, as required by case law, and it was an abuse of discretion to admit the Ewing testimony; and 3) the erroneously admitted evidence was a miniscule and unnecessary part of the

prosecution's case and merely repeated what jurors already knew based on admissible evidence—that Newman “is an admittedly aggressive, obnoxious man who hits his children and bullies anyone who criticizes his parenting.”

Egan v. Chambers, 129 Nev. Adv. Op. No. 25 (April 25, 2013) – The Court reverses a district court order dismissing a professional negligence action, ruling that professional negligence actions are not subject to the affidavit-of-merit requirement based on the unambiguous language of NRS 41A.071 (overruling, in part, Fierle v. Perez, 125 Nev. 728, 219 P.3d 906 (2009)).

Carter v. State, 129 Nev. Adv. Op. No. 26 (April 25, 2013) – The Court reverses a jury conviction of eight counts of burglary while in possession of a firearm, twelve counts of robbery with the use of a deadly weapon, and one count of coercion, ruling that a suspect who asks, "Can I get an attorney?" after he has been advised of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), unambiguously invokes his right to counsel, triggering the requirement that all interrogation immediately cease, and there may be no further interrogation unless the suspect reinitiates contact with the police, there is a sufficient break in custody, or the suspect is provided the aid of the counsel that he requested.

State v. Frederick, 129 Nev. Adv. Op. No. 27 (April 25, 2013) – The Court reverses a district court order granting respondent's postconviction motion to withdraw his guilty plea, ruling that Eighth Judicial District Court Rule (EDCR) 1.48, which allows justices of the peace to serve as district court hearing masters, does not violate the Nevada Constitution.

Falconi v. Secretary of State, 129 Nev. Adv. Op. No. 28 (April 25, 2013) – The Court denies a pro per writ petition challenging the issuance of a fictitious address under NRS 217.462-.471, ruling that because the court addressing such a petition will necessarily be required to make factual determinations, the district court is the appropriate tribunal for seeking relief.

State, Dep't of Taxation v. Chrysler Grp., 129 Nev. Adv. Op. No. 29 (May 2, 2013) – The Court reverses a district court order granting a petition for judicial review in a tax action, ruling that 1) neither Nevada's lemon law [NRS 597.630] nor the tax statutes provide for sales tax refunds to vehicle manufacturers upon reimbursing a buyer pursuant to the lemon law; 2) the Department's prior policy of allowing sales tax refunds to vehicle manufacturers was an erroneous interpretation of the law; and 3) the Department did not violate the Administrative Procedure Act because it was not required to undertake the formal rulemaking process to correct its prior erroneous policy.

Sylver v. Regents Bank, N.A., 129 Nev. Adv. Op. No. 30 (May 2, 2013) – On consolidated appeals from a district court order confirming an arbitration award and an amended judgment and order of sale, the Court affirms the order and judgment, ruling that 1) whether an arbitration award is obtained through undue means under NRS 38.241 requires the challenging party to prove by clear and convincing evidence that the award was secured through intentionally misleading conduct; 2) the district court correctly refused to vacate the arbitration award since the appellant did not satisfy this burden; and 3) because the arbitrator did not consciously disregard the applicable legal

standard when refusing to void a loan in the underlying dispute, there was no manifest disregard of the law.

City of Las Vegas v. Evans, 129 Nev. Adv. Op. No. 31 (May 2, 2013) – The Court affirms a district court order denying a petition for judicial review in a workers' compensation action. Considering the relationship between NRS 617.440 - a statute that, in conjunction with NRS 617.358, delineates the requirements for establishing a compensable occupational disease - and NRS 617.453 - a statute that provides for a qualified, rebuttable presumption that a firefighter's cancer constitutes a compensable occupational disease, the Court rules that 1) the district court did not err in denying judicial review and upholding the appeals officer's determination that a firefighter, such as Evans, who fails to qualify for NRS 617.453's rebuttable presumption can still seek workers' compensation benefits pursuant to NRS 617.440 by proving that his or her cancer is an occupational disease that arose out of and in the course of his or her employment; and 2) the appeals officer did not abuse her discretion in determining that Evans' cancer was a compensable occupational disease.

Jacinto v. PennyMac Corp., 129 Nev. Adv. Op. No. 32 (May 2, 2013) – The Court affirms a district court order granting a petition for judicial review in a Foreclosure Mediation Program (FMP) matter, ruling that 1) when the district court grants a homeowner's petition for judicial review, the homeowner may appeal from that final determination under NRAP 3A(b)(1) and challenge the nature and amount of sanctions imposed, if the type or amount of sanctions imposed adversely and substantially affects the homeowner to the extent that the homeowner is aggrieved as contemplated under NRAP 3A(a); 2) because the homeowner in this case was awarded monetary sanctions but denied the loan modification, the order adversely and substantially affects his property rights, and thus, the homeowner is aggrieved by the district court's order and has standing to challenge the order on appeal; and 3) the district court acted within its discretion in determining the sanctions.

Galardi v. Naples Polaris, LLC, 129 Nev. Adv. Op. No. 33 (May 16, 2013) – The Court affirms a district court order granting summary judgment in a contract action involving a written option contract in which Naples Polaris had the right to purchase real property from Galardi for \$8 million cash. The property was subject to a deed of trust securing approximately \$1.3 million in debt and the issue was which party was responsible for the debt. The Court ruled that the district court properly considered trade usage and industry custom in interpreting the option contract and ruling for Naples Polaris, and further ruled that requiring the optionee to take the property subject to an existing indebtedness would have to be set forth in the express terms of the contract.

Chapman v. Deutsche Bank Nat'l Trust Co, 129 Nev. Adv. Op. No. 34 (May 30, 2013) – The Court answers certified questions pursuant to NRAP 5 concerning whether Nevada law characterizes quiet title actions and unlawful detainer actions as proceedings in personam, in rem, or quasi in rem, responding that quiet title and unlawful detainer proceedings pertain to interests in a thing and are, thus, "in rem" or "quasi in rem" in nature. and declining the parties' invitation to expound on the federal prior-exclusive-jurisdiction doctrine, as those questions were not certified.

Cucinotta v. Deloitte & Touche, L.L.P., 129 Nev. Adv. Op. No. 35 (May 30, 2013) – The Court affirms a district court order granting summary judgment in a defamation action, albeit on different grounds, adopting the Restatement (Second) of Torts section 592A and holding that one who is required by law to publish defamatory matter is absolutely privileged to publish it when (1) the communication is made pursuant to a lawful process, and (2) the communication is made to a qualified person. The Court concludes that Deloitte's statement to GCA's Audit Committee is therefore absolutely privileged as a matter of law because Deloitte communicated information about alleged illegal acts in accordance with federal securities law.

Bisch v. Las Vegas Metro. Police Dep't, 129 Nev. Adv. Op. No. 36 (May 30, 2013) – The Court affirms a district court order denying a petition for judicial review and denying declaratory and injunctive relief in an employment matter arising from an LVMPD internal investigation of appellant Laurie Bisch regarding allegations of insurance fraud after Bisch's dog bit her daughter's friend, and Bisch represented to medical staff that the girl was her own daughter but did not use her employer-provided health insurance. Bisch was not provided a police protective association (PPA) representative during an internal investigation meeting because she had retained a private attorney. Although the charges of insurance fraud were ultimately dropped, the LVMPD issued Bisch a formal written reprimand for a violation of "[c]onduct unbecoming an employee" under LVMPD Civil Service Rule 510.2(G)(1). The Court rules that 1) NRS 289.080 did not impose a duty on the PPA to provide representation to Bisch during an internal investigation meeting; 2) Bisch's discipline was neither based on overly broad criteria nor politically motivated, but proper because the discipline bore directly on her fitness to perform her profession; and 3) despite the fact that Bisch established a prima facie case of political motivation, substantial evidence was presented to rebut the presumption of discrimination.

Brown v. MHC Stagecoach, 129 Nev. Adv. Op. No. 37 (May 30, 2013) – The Court dismisses a pro per appeal from a district court order statistically closing a case in an employment matter, ruling that the Court lacks jurisdiction as no statute or court rule authorizes an appeal from an order statistically closing a case and the order does not constitute a final, appealable judgment, as none was entered.

City of Sparks v. Sparks Mun. Court, 129 Nev. Adv. Op. No. 38 (May 30, 2013) – The Court affirms in part and reverses in part a district court order granting a preliminary injunction arising out of a dispute between the City of Sparks and the Sparks Municipal Court over the City's authority to make personnel and budget decisions for the Municipal Court given Municipal Court's broad authority to manage its own affairs. The Court rules that 1) the separation of powers doctrine and the Municipal Court's inherent authority bar the City from interfering with the Municipal Court's control over personnel decisions [affirming that portion of the district court's order enjoining the City from interfering with the Municipal Court's ability to make personnel decisions]; 2) the Municipal Court's inherent power over its budget must be weighed against the City's authority over government finances; and 3) because the parties have failed to develop the record sufficiently on the budget issue, the district court's order is reversed as to this issue and the matter remanded for further proceedings.

In re Fox, 129 Nev. Adv. Op. No. 39 (May 30, 2013) – The Court answers a certified question pursuant to NRAP 5 regarding permissible exemptions under NRS 21.090 for property belonging not only to the judgment debtor but also to her non-debtor spouse, adopting the plain language rationale embraced by the United States Bankruptcy Court for the District of Idaho in In re DeHaan, 275 B.R. 375 (Bankr. D. Idaho 2002), and concluding that, based on NRS 21.090(1)(f) and (z)'s plain language, Nevada law does not allow debtors to claim motor vehicle and wildcard exemptions on behalf of their non-debtor spouses.

Bergenfield v. Bank of Am., 129 Nev. Adv. Op. No. 40 (June 6, 2013) – The Court reverses a district court order denying a petition for judicial review in a Foreclosure Mediation Program (FMP) matter, ruling that 1) when the deed of trust to real property and the promissory note are held by two different entities and not reunified before mediation in the FMP, the note holder's attendance at the mediation on its own behalf is insufficient to meet the statutory requirement that the deed of trust beneficiary attend and participate in good faith; 2) in this instance Bank of America failed to satisfy NRS 107.086(4)'s attendance and participation requirement because while it was the holder of the note, it was not the beneficiary of the deed of trust; and 3) the district court therefore erred in determining that Bank of America had the authority to mediate and denying Appellant's petition for judicial review (remanded for further proceedings consistent with Pasillas v. HSBC Bank USA, 127 Nev. ___, 255 P.3d 1281, 1287 (2011), to determine appropriate sanctions against Bank of America).

Williams v. United Parcel Servs., 129 Nev. Adv. Op. No. 41 (June 6, 2013) – The Court reverses a district court order denying a petition for judicial review in a workers' compensation action arising when Appellant suffered a workplace injury in the course of his employment with respondent UPS and, after receiving medical treatment, missed the remainder of his scheduled work shift pursuant to his treating physician's orders. Appellant sought to reopen his workers' compensation claim more than one year after closure, UPS denied that request, and its decision was affirmed by an appeals officer. The Court rules that 1) NRS 616C.390(5) bars an employee from applying to reopen his or her workers' compensation claim after a year from its closure if the employee was not off work as a result of the injury; 2) In reaching her conclusion, the appeals officer interpreted NRS 616C.390(5) as requiring that an injured employee miss five days of work as a result of the injury to be considered "off work" within the bounds of that statute; 3) NRS 616C.390(5) does not include any such requirement for an employee to be considered off work and the appeals officer erred in reading a minimum-time-off-work requirement into the statute; and 4) since Williams missed the remainder of his shift on the day of his injury, he was off work as a result of his injury and was therefore not subject to the one-year limit on the reopening of claims (remanded directing the district court to remand this matter to the appeals officer to reexamine in light of NRS 616C.390(1)).

Halcrow, Inc. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 42 (June 27, 2013) – The Court grants a writ petition challenging a district court order granting real parties in interest's motions for leave to amend their third- and fourth-party complaints in order to plead claims for negligent misrepresentation, indemnity, contribution, and apportionment, ruling that that the economic loss doctrine bars negligent

misrepresentation claims against commercial construction design professionals where the recovery sought is solely for economic losses.

Frei v. Goodsell, 129 Nev. Adv. Op. No. 43 (July 3, 2013) – The Court affirms a district court judgment on a jury verdict in a legal malpractice action following Frei's lawsuit against the trustee of his deceased wife's estate, claiming that the trustee had improperly transferred Frei's assets into the trust; in that action Frei successfully sought to disqualify Goodsell, the attorney who prepared the trust documents, from representing the trustee based on the district court's conclusion that a prior attorney-client relationship existed between Frei and Goodsell, which created a conflict of interest. The Court rules that the district court 1) properly refused to apply the doctrine of issue preclusion insofar as the issue of an attorney-client relationship between Frei and Goodsell was not necessarily litigated in the previous trust action; and 2) did not abuse its discretion in applying the parol evidence rule to preclude evidence of Frei's intent in executing a number of unambiguous documents prepared by Goodsell.

County of Clark v. Howard Hughes Co., 129 Nev. Adv. Op. No. 44 (July 3, 2013) – The Court affirms a district court order denying a motion for change of venue, ruling that 1) the First Judicial District Court is an appropriate venue for filing a petition for judicial review from a State Board of Equalization property tax valuation, irrespective of the physical location of the property, because it is a "court of competent jurisdiction in the State of Nevada" as required by NRS 361.420(2); and 2) the statutory language provides that a property owner with property located in any Nevada county may file a property tax valuation action in any district court in the state.

Mountain View Rec. v. Imperial Commercial, 129 Nev. Adv. Op. No. 45 (July 3, 2013) – The Court reverses a district court order granting a motion to change venue from Nye County to Clark County based on the doctrine of forum non conveniens and its findings that existing courtroom facilities in Pahrump were inadequate to accommodate a trial in the underlying matter, ruling that the district court abused its discretion by granting the motion because it 1) failed to cite sufficient evidence supporting a change of venue pursuant to the doctrine of forum non conveniens; 2) failed to conduct a proper analysis, under NRS 3.100(2) and *Angell v. Eighth Judicial District Court*, 108 Nev. 923, 839 P.2d 1329 (1992), regarding the adequacy of courtroom facilities in a county; and 3) failed to consider the docket congestion in Clark County before reaching its decision.

Rugamas v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 46 (July 3, 2013) – The Court grants a writ petition challenging a district court order denying a pretrial petition for a writ of habeas corpus based on alleged deficiencies in grand jury proceedings in which the State sought an indictment against Rugamas on charges of sexual assault and lewdness involving a child who was under 10 years of age. During the grand jury proceedings, the State presented testimony about out-of-court statements made by the child victim describing the alleged sexual conduct. The Court rules that the statements were not properly before the grand jury: 1) NRS 172.135(2) prohibits a grand jury from receiving hearsay; 2) because the victim was not subject to cross-examination concerning the out-of-court statements, those statements were not excluded from the definition of hearsay under NRS 51.035(2)(a); 3) the exception in NRS 51.385 for trustworthy statements by a child-victim of sexual assault does not apply to grand jury proceedings; 4) because the statements were hearsay and did not fall within an

exception that makes hearsay admissible, the grand jury could not consider the statements; and 5) absent the hearsay evidence, there was not sufficient legal evidence to support a finding of probable cause and the indictment cannot stand.

Nevada Power Co. v. 3 Kids, L.L.C., 129 Nev. Adv. Op. No. 47 (July 3, 2013) – The Court affirms a district court judgment on a jury verdict in an eminent domain action, reviews a jury instruction regarding the determination of fair market value, and rules that 1) although the jury instruction at issue provided an overbroad reading of City of North Las Vegas v. Robinson, 122 Nev. 527, 134 P.3d 705 (2006), no prejudice was established because a separate jury instruction remedied the error; and 2) the district court did not abuse its discretion by allowing testimony provided by respondent 3 Kids, LLC's expert regarding her paired sales analysis.

Clay v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 48 (July 11, 2013) – The Court grants in part a writ petition challenging an order of the district court denying a pretrial petition for a writ of habeas corpus; at issue is whether a district attorney violates NRS 172.095(2) when he or she seeks an indictment for child abuse or neglect under NRS 200.508(1) based on a nonaccidental physical injury but fails to inform the grand jurors of the definition of "physical injury" set forth in NRS 200.508(4)(d). The Court rules that 1) regardless of the theory pursued under NRS 200.508(1), "abuse or neglect" is an element of the offense; 2) when the alleged "abuse or neglect" is based on a nonaccidental physical injury, the district attorney must inform the grand jurors of the statutory definition of "physical injury" because that definition is more limited than the meaning that a layperson would attribute to the term; and 3) because the failure to inform the grand jurors of the statutory definition of "physical injury" likely caused the grand jury to return an indictment on less than probable cause for one of the two counts of child abuse, the petition is granted as to that count.

Bielar v. Washoe Health Sys., Inc., 129 Nev. Adv. Op. No. 49 (July 11, 2013) – The Court affirms in part and reverses in part a district court judgment in a contract action in which the predominant issue for determination on appeal is whether a settlement agreement with a third-party tortfeasor who allegedly caused the injuries necessitating the medical services is another "contractual provision for the payment of the charge by a third party" rendering the inpatient ineligible for the statutory billing discount under NRS 439B.260(1)(a); the Court rules that because a patient's eligibility for the statutory discount is determined at the commencement of hospital services, a later settlement agreement with a third party for the payment of such services does not disqualify the patient for the discount.

Leventhal v. Black & LoBello, 129 Nev. Adv. Op. No. 50 (July 11, 2013) – The Court reverses an order adjudicating a law firm's charging lien for fees against its former client under NRS 18.015, ruling that 1) the firm did not serve the statutory notices required to perfect its lien until the case was over; 2) under NRS 18.015(3), a charging lien only attaches from the time of service of the notices required by the statute; and 3) since the decree became final months before the lien was perfected—and no prospect of post-perfection recovery appeared—the lien should not have been adjudicated under NRS 18.015(4).

State v. Beckman, 129 Nev. Adv. Op. No. 51 (July 11, 2013) – The Court affirms a district court order granting a motion to suppress evidence of contraband in a prosecution for drug trafficking and possession arising from a traffic stop for speeding and the driver’s subsequent detention until the arrival of a drug-sniffing dog. The Court holds that, although the district court appropriately suppressed the evidence since exigent circumstances did not justify the warrantless search, its conclusion is far more compelling based on an illegal seizure because the highway patrol officer unreasonably prolonged the traffic stop. A traffic stop that is legitimate when initiated becomes illegitimate when the officer detains the car and driver beyond the time required to process the traffic offense, unless the extended detention is consensual, de minimis, or justified by a reasonable articulable suspicion of criminal activity. The prolonged stop in this case met none of these exceptions and violated the United States and Nevada Constitutions, warranting exclusion of the subsequently discovered evidence.

State v. Eighth Jud. Dist. Ct. (Logan D.), 129 Nev. Adv. Op. No. 52 (July 25, 2013) – The Court grants the State’s writ petition challenging an order of the juvenile court granting the real party in interest’s motion to declare Assembly Bill 579 unconstitutional as applied to juvenile sex offenders. A.B. 579, enacted by the 2007 Nevada Legislature, removed the juvenile court’s discretion to determine whether a juvenile sex offender should be subject to registration and community notification as an adult and mandated that all juveniles aged 14 and older who are adjudicated for certain sex offenses register as adult sex offenders and be subject to community notification; the law prohibited the imposition of these requirements on juvenile offenders under the age of 14. The Court rules that 1) retroactive application of A.B. 579 to juvenile sex offenders does not violate the Due Process or Ex Post Facto Clauses of the United States and Nevada Constitutions; and 2) mandatory sex offender registration and community notification for juvenile sex offenders are not “punishments” implicating the right to a jury trial.

Brass v. State, 129 Nev. Adv. Op. No. 53 (July 25, 2013) – The Court denies a motion for abatement of conviction and remands a criminal matter arising from a prosecution in which Brass timely appealed his convictions [of conspiracy to commit kidnapping and murder, first-degree kidnapping, and first-degree murder with the use of a deadly weapon] but died before his appeal was decided. Brass’s attorney filed a suggestion of death and a motion for abatement arguing that the Court should abate the conviction and remand the case to the district court with instructions to dismiss the charging document; however, no party was properly substituted as Brass’s personal representative. The Court rules that an attorney lacks authority to act on the deceased client’s behalf in such circumstances, denies counsel’s motion for abatement, and further concludes that if a party dies pending a review of his appeal, the appeal will be dismissed unless the decedent’s personal representative is substituted in as a party to the appeal within 90 days of the decedent’s death.

Armenta-Carpio v. State, 129 Nev. Adv. Op. No. 54 (July 25, 2013) – The Court affirms a jury conviction of five counts of lewdness with a child under the age of 14 years, attempted lewdness with a child under the age of 14 years, and one count of child abuse and neglect; at trial defense counsel made a strategic decision to concede that there had been sexual contact between Armenta-Carpio and the victim and to

concentrate on the extent of the contact and whether the State had charged Armenta-Carpio with more offenses than the evidence could support. The trial court sua sponte inquired whether defense counsel had discussed the concession strategy with Armenta-Carpio and whether Armenta-Carpio had agreed to the strategy, and received affirmative responses to both questions. The Court rules that 1) consistent with Florida v. Nixon, 543 U.S. 175, 188 (2004), a concession-of-guilt strategy is not the equivalent of a guilty plea and therefore the trial judge has no obligation to canvass a defendant concerning a concession-of-guilt strategy; 2) instead, the reasonableness of counsel's performance is to be determined based on the inquiry that generally applies to ineffective-assistance-of-counsel claims; and 3) because canvassing a defendant to determine whether he knowingly and voluntarily consented to a concession strategy is unnecessary, Armenta-Carpio is not entitled to relief on the ground that the district court's canvass was inadequate [overruling Hernandez v. State, 124 Nev. 978, 194 P.3d 1235 (2008)].

State v. Robles-Nieves, 129 Nev. Adv. Op. No. 55 (July 25, 2013) – The Court grants the State's motion for a stay of trial court proceedings on Robles-Nieves' prosecution for murder with the use of a deadly weapon, pending resolution of the State's appeal from an order granting Robles-Nieves' motion to suppress his incriminating statement to police based on a claim that his statement was procured through the use of extrinsic falsehoods. The Court rules that the four factors that govern its exercise of discretion in ruling on a stay motion in a civil proceeding under NRAP 8(c) are relevant to its exercise of discretion to grant a stay of a criminal proceeding pending resolution of an interlocutory suppression appeal: 1) whether the object of the appeal will be defeated if the stay is denied; 2) whether the appellant will suffer irreparable or serious injury if the stay is denied; 3) whether the respondent will suffer irreparable injury if the stay is granted; and 4) whether the appellant is likely to prevail on the merits in the appeal. The Court concludes that the first factor is most significant in this case insofar as there has not been a sufficient showing of irreparable harm to Robles-Nieves or that there is not a likelihood of success on the merits to counterbalance the fact that if a stay is denied and the trial commences, the object of the appeal will be defeated, as will the purpose of NRS 177.015(2). The Court also notes that, due to concerns with disrupting a criminal proceeding wherein a defendant has a constitutional and statutory right to a speedy trial, it will expedite appeals from orders granting motions to suppress evidence to the extent its docket permits.

Moon v. McDonald, Carano & Wilson, L.L.P., 129 Nev. Adv. Op. No. 56 (August 1, 2013) – The Court affirms a district court judgment dismissing appellants' complaint in a legal malpractice action, ruling that 1) under NRS 11.207(1), the statute of limitations for a legal malpractice claim commences on the date the plaintiff discovers, or through due diligence should have discovered, the material facts that constitute the cause of action; 2) the statutory limitation period for a claim of legal malpractice involving the representation of a client during litigation does not commence until the underlying litigation is concluded [citing Hewitt v. Allen, 118 Nev. 216, 221, 43 P.3d 345, 348 (2002)]; and 3) an attorney's alleged negligence in representing a creditor in the non-adversarial parts of a bankruptcy proceeding does not constitute litigation malpractice causing the so-called Hewitt litigation tolling rule to apply.

Khan v. Bakhsh, 129 Nev. Adv. Op. No. 57 (August 1, 2013) – The Court reverses a district court judgment after a bench trial in a contract and tort action and remands with instructions. At trial, the district court excluded under the statute of frauds certain evidence the Khans presented of an allegedly written, but lost or destroyed, agreement to purchase a certain restaurant and land from Bakhsh. The Court rules that 1) the district court erred in that the statute of frauds does not apply to a writing that is subsequently lost or destroyed, and oral evidence is admissible to prove the existence and terms of that lost or destroyed writing; 2) the district court further erred when it improperly excluded evidence concerning whether a prior agreement was induced by fraud or modified by a subsequent agreement because the parol evidence rule does not preclude such evidence; and 3) because actual damages were ascertainable and the liquidated damages provision operated as a penalty, the district court erred by awarding liquidated damages.

State v. Greene, 129 Nev. Adv. Op. No. 58 (August 1, 2013) – The Court reverses a district court order granting respondent's untimely and successive fifth post-conviction petition for a writ of habeas corpus after a hearing at which the district court determined that respondent Greene received ineffective assistance of counsel at his resentencing hearing and directed Greene's counsel to draft the order granting the petition but refused to provide an explanation for its decision. The Court reiterates that when the district court directs a prevailing party to draft an order resolving a post-conviction petition for a writ of habeas corpus, it must provide sufficient direction regarding the basis for its decision to enable the prevailing party to draft the order; and rules that the district court erroneously determined that Greene established good cause sufficient to excuse the procedural bars to a consideration of his petition on the merits.

Holmes v. State, 129 Nev. Adv. Op. No. 59 (August 22, 2013) – The Court affirms a jury conviction of first-degree murder and robbery, both with the use of a deadly weapon, ruling that 1) Holmes was not deprived of a fair trial by the admission into evidence of inflammatory rap lyrics he wrote while in jail in California that describe details that mirrored the crimes charged, since the district court did not abuse its discretion in determining that the risk they carried of unfair prejudice did not substantially outweigh their probative value; 2) Holmes was not deprived of a fair trial by the admission into evidence of a coconspirator's out-of-court statement that Holmes "went off" and "just started shooting" since an abuse of discretion amounting to plain error does not appear in the record; and 3) Holmes was not deprived of a fair trial by the admission into evidence of unwarned statements that Holmes made to the Nevada detectives who interviewed him in California before his arrest, since the interrogation was not custodial and the district correctly found that the statement was voluntary.

Bradford v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 60 (August 29, 2013) – The Court denies a writ petition challenging a district court order dismissing a divorce complaint, ruling that petitioner Geanie Bradford's failure to timely appeal the order precludes writ relief, since the validity of the parties' marriage was an issue capable of review on appeal and an appeal would have been an adequate legal remedy.

State of Nevada v. Tatalovich, 129 Nev. Adv. Op. No. 61 (September 19, 2013) – The Court affirms a district court order granting a petition for judicial review of a Private Investigator's Licensing Board decision, ruling that investigative work undertaken for the

purpose of developing and giving expert opinion testimony in a Nevada civil court case does not require a Nevada private investigator's license.

Loeb v. First Jud. Dist. Ct., 129 Nev. Adv. Op. No. 62 (September 19, 2013) – The Court denies a writ petition challenging a district court order denying a motion to serve individual defendants by publication. The Court rules that a party residing outside of the United States whose foreign address is known may not be served by publication pursuant to NRCP 4(e)(1)(i) and (iii), but must be served under the terms of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters in one of the following manners: 1) "through the central authority of the receiving country," 2) "through diplomatic or consular agents that the receiving country considers nonobjectionable." or 3) "by any method permitted by the internal law of the receiving country" [citing Dahya v. Second Judicial Dist. Court, 117 Nev. 208, 212, 19 P.3d 239, 242 (2001)].

Vanguard Piping v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 63 (September 19, 2013) – The Court denies a writ petition challenging a district court order compelling disclosure of insurance policies. The Court rules that NRCP 16.1(a)(1)(D), which requires disclosure of any insurance agreement that may be liable to pay a portion of a judgment, compels disclosure of all insurance agreements, regardless of whether the policy limits exceed the amount of potential liability or whether the policies provide secondary coverage.

Adept Mgmt. v. McKnight Family, L.L.P., 129 Nev. Adv. Op. No. 64 (October 3, 2013) – On consolidated appeals from a district court order dismissing a complaint pursuant to NRS 38.310 and from a post-judgment order denying a motion for attorney fees and costs in a case regarding a dispute over unpaid HOA property assessments, the Court affirms in part, reverses in part and remands, ruling that while the district court was correct in determining that most of McKnight's claims were subject to NRS 38.310 and should have been submitted to a form of alternative dispute resolution before being brought in district court, the district court erred to the extent that it dismissed McKnight's claim for quiet title because that claim was not subject to NRS 38.310. The Court reverses the dismissal of McKnight's quiet title claim and the district court's order denying the motion to set aside the trustee's sale.

Nev. Pub. Emps. Ret. Bd. v. Smith, 129 Nev. Adv. Op. No. 65 (October 3, 2013) – The Court reverses a district court order granting declaratory and other relief as to certain statutes governing the Public Employees' Retirement System in a case involving interpretation of retirement eligibility under NRS 286.541(2). The Court rules that the district court erred in its interpretation of the controlling statute and in reviewing the PERS Board's decision de novo, rather than deferentially. Under PERS interpretation of the statute, a member who goes from one PERS-eligible job to another without a break in service and retiring from PERS may not thereafter retire and receive benefits from PERS, until the member effectively retires from his or her new PERS-eligible job. The district court had disagreed and ruled that 1) NRS 286.541(2) determines retirement benefit dates, not retirement eligibility; 2) PERS should have allowed respondent Douglas Smith to retire and receive benefits from PERS based on his prior public service, even after he was sworn in as a district court judge, another PERS-eligible position; and 3) under NRS 286.190(3)(a), PERS could and should have equitably

excused Judge Smith's noncompliance with NRS 286.541, and allowed him to reverse his eventual election to transfer from PERS to the Judicial Retirement System (JRS), despite NRS 1A.280(6), which makes such an election irrevocable.

In re Discipline of Serota, 129 Nev. Adv. Op. No. 66 (October 3, 2013) – In a review of a Southern Nevada Disciplinary Board hearing panel's recommendation that an attorney be disbarred from the practice of law and related petitions, the Court rules that clear and convincing evidence supported the panel's findings that Serota failed to safekeep his client's property, a violation of RPC 1.15, that he engaged in misconduct, a violation of RPC 8.4, and that the egregiousness of misappropriating \$319,000 in client funds warrants disbarment.

Newmar Corp. v. McCrary, 129 Nev. Adv. Op. No. 67 (October 3, 2013) – On consolidated appeals from a district court judgment in a revocation of acceptance and breach of warranty action and from a postjudgment order awarding attorney fees, the Court affirms in part and reverses in part, ruling that the purchaser of a motor home may revoke acceptance and recover the purchase price from the motor home's manufacturer under the Uniform Commercial Code where, as here, privity exists between the manufacturer and the buyer because the manufacturer interjected itself into the sales process and had direct dealings with the buyer to ensure the completion of the transaction, but that ,while the district court properly awarded incidental and consequential damages, it abused its discretion in awarding attorney fees and that portion of the judgment is reversed.

St. Mary v. Damon, 129 Nev. Adv. Op. No. 68 (October 3, 2013) – The Court reverses a district court order determining custody of a minor child in a same sex relationship, ruling that 1) the district court erred in relying on a previous order that recognized Damon as the child's legal mother and granted her the right to be added as a mother to the child's birth certificate to conclude that St. Mary was a mere surrogate, and abused its discretion in refusing to uphold the parties' co-parenting agreement or consider whether St. Mary was a parent entitled to any custodial rights; 2) the Nevada Parentage Act does not preclude St. Mary and Damon from both being legal mothers of the child; and 3) the district court erred in deeming the co-parenting agreement unenforceable under NRS 126.045, since the agreement's plain language indicated that it was not a surrogacy arrangement within the scope of that statute, and the agreement aligns with Nevada's policy of encouraging parents to enter into parenting agreements that resolve matters pertaining to their child's best interest.

Markowitz v. Saxon Special Servicing, 129 Nev. Adv. Op. No. 69 (October 3, 2013) – The Court affirms a district court order denying a petition for judicial review in a Foreclosure Mediation Program matter. The Court rules that, because the mediation rule requiring an appraisal or broker's price opinion that is no more than 60 days old at the time of the mediation is based on the principle that a current appraisal or broker's price opinion is intended to facilitate good-faith mediation negotiations, the rule's content-based provision governing the appraisal's age is directory rather than mandatory, and thus, substantial compliance with the 60-day provision satisfies the mediation rule.

In re CityCenter Constr. & Lien Litig., 129 Nev. Adv. Op. No. 70 (October 3, 2013) – The Court grants a writ petition challenging a district court order denying petitioner's motion to dismiss real parties in interest's third- and fourth-party complaints in a construction defect action. The Court rules that 1) Century's and PCS's initial causes of action brought actions that were within the scope of NRS 11.2565(1)'s definition of an action involving nonresidential construction; 2) because their pleadings identified Converse's professional engineering services [NRS 625.050(1)(a)], their pleadings were against a design professional [NRS 11.2565(2)(b)], thereby subjecting them to NRS 11.258's attorney affidavit and expert report requirements; 3) Otak Nevada, L.L.C. v. Eighth Judicial District Court [127 Nev. , 260 P.3d 408 (2011)] correctly construed NRS 11.259(1) as requiring the dismissal of an amended pleading—not an entire action—that followed an initial pleading that was filed without adhering to NRS 11.258; and 4) the district court must dismiss the amended pleadings against Converse as they were void ab initio for their failure to comply with NRS 11.258.

Wells Fargo Bank, N.A. v. O'Brien, 129 Nev. Adv. Op. No. 71 (October 3, 2013) – The Court dismisses an appeal from a district court order granting a petition for judicial review of a foreclosure mediation, awarding sanctions, and remanding the matter to the Foreclosure Mediation Program for further mediation. The Court rules that an order remanding for further mediation generally is not final and therefore not appealable [NRAP 3A(b)(1)].

N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs, 129 Nev. Adv. Op. No. 72 (October 3, 2013) – The Court affirms a district court order denying a writ petition seeking payment under NRS Chapter 474 in a matter arising from the Washoe County Commissioners' decision to withhold collected property taxes from the North Lake Tahoe Fire Protection District. The Court adopts the factors set forth in Baker v. Carr [369 U.S. 186, 217 (1962)] and concluding that because respondents were within their authority to withhold distributions, and because the manner in which they did so was discretionary, the political question doctrine precludes judicial review.

In re Steven Daniel P., 129 Nev. Adv. Op. No. 73 (October 3, 2013) – The Court reverses a district court juvenile division order dismissing a delinquency petition and referring the juvenile for informal supervision and remands for further action. The Court rules that 1) NRS 62C.230(1)(a) grants the juvenile court authority to dismiss a petition and refer a juvenile for informal supervision only when the requirements of NRS 62C.200 have been met, including the requirement that the district attorney give written approval for placement of the juvenile under informal supervision where the acts alleged in the petition would be a felony or gross misdemeanor if committed by an adult; and 2) the juvenile court is limited by the provisions of NRS Title 5 when exercising its authority to carry out its duties in overseeing juvenile justice matters.

Paley v. Second Jud. Dist. Ct., 129 Nev. Adv. Op. No. 74 (October 3, 2013) – The Court denies a writ petition challenging a juvenile court order holding petitioner in direct contempt of court based on a positive drug test; the respondent district court judge vacated the contempt order while the writ petition was pending. The Court rules that an exception to the mootness doctrine allowing judicial review when the contested issue is likely to arise again but will evade review does not apply because it is clear that a positive drug test alone will not support a finding of direct contempt under NRS 22.010.

Trujillo v. State, 129 Nev. Adv. Op. No. 75 (October 10, 2013) – The Court affirms a district court order denying a petition for a writ of *coram nobis*, ruling that the common-law writ of *coram nobis* is available in Nevada only for petitioners who are no longer in custody on the judgment being challenged and only to address errors of fact outside the record that were not known to the court entering the judgment, could not have been raised earlier, and affect the validity and regularity of the decision itself in that they would have precluded the judgment from being rendered.

Stilwell v. City of N. Las Vegas and City of Boulder City, 129 Nev. Adv. Op. No. 76 (October 31, 2013) – The Court dismisses consolidated appeals from district court orders denying motions for attorney fees and costs arising from Stilwell's convictions in municipals courts of riding a motorcycle without wearing proper headgear in violation of NRS 486.231. After Stilwell appealed his convictions to the district court for trial anew as provided by NRS 5.073(1) and NRS 266.595, the prosecution dismissed them with prejudice and refunded the fines and costs Stilwell had paid to exonerate bail and appeal his convictions. The district court subsequently denied Stilwell's motion for attorney fees and court costs pursuant to NRS 176.115, ruling that the municipal court convictions provided prima facie evidence of probable cause and malice was not independently claimed. The Court rules that pursuant to NEV. CONST. art. 6, § 6 the district court's appellate jurisdiction is final and the Court lacks jurisdiction.

Blanco v. Blanco, 129 Nev. Adv. Op. No. 78 (October 31, 2013) – The Court reverses a divorce decree entered by default in the district court in which a wife representing herself failed to comply with several of the husband's discovery requests and the district court entered a default divorce decree against her as a sanction. The Court rules that 1) it is not permissible to resolve child custody and child support claims by default as a sanction for discovery violations because the child's best interest is paramount and compels a decision on the merits; 2) as for the division of community property and debt, the court must make an equal disposition as required by statute; 3) regarding all other claims, the court may enter a default, but only after a thorough evaluation and express findings of whether less severe sanctions are appropriate; and 4) because the district court did not make any express findings as to appropriateness of less severe sanctions before entering the default, the default divorce decree is reversed and remanded for further proceedings.

Wynn v. Baldonado, 129 Nev. Adv. Op. No. 79 (October 31, 2013) – The Court reverses a district court order granting a petition for judicial review of the Nevada Labor Commissioner's decision regarding a tip-pooling policy and whether an administrative agency can grant class action certification, ruling that 1) NRS 608.160 allows employers to require employees to pool their tips with other employees of a different rank; and 2) the district court erred in failing to defer to the Labor Commissioner's interpretation of NAC 607.200 in declining class certification in the matter.

State v. Lloyd, 129 Nev. Adv. Op. No. 77 (October 31, 2013) – The Court reverses a district court order granting a motion to suppress evidence in a drug possession and trafficking case that originated when Lloyd ran a red light; during the subsequent stop, a drug detection dog's alert led to a warrantless automobile search. The Court rules that 1) the Nevada constitution compels no different automobile exception to its warrant requirement than the Fourth Amendment does; 2) the constitutional protection in the

federal automobile-exception caselaw lies in the requirement of probable cause to believe the vehicle contains contraband or evidence of a crime and the car's inherent mobility, not the peripheral factors identified in State v. Harnisch (Harnisch II) [114 Nev. 225, 954 P.2d 1180 (1998)] and related caselaw; 3) exigency is not a separate requirement of the automobile exception to the constitutional warrant requirement; and 4) the drug detection dog's alert gave the officers probable cause to search Lloyd's car, which was parked in a public place and readily mobile (reversing the district court's order and remanding for further proceedings).

Civil Rights for Seniors v. AOC, 129 Nev. Adv. Op. No. 80 (October 31, 2013) – The Court affirms a district court order denying a petition for a writ of mandamus seeking to compel the Administrative Office of the Courts to disclose records under Nevada's Public Records Act related to Nevada's Foreclosure Mediation Program, ruling that the district court properly rejected access to the requested information based on the confidentiality provisions set forth in the Foreclosure Mediation Rules promulgated by the Court.

LVMPD v. Yeghiazarian, 129 Nev. Adv. Op. No. 81 (November 7, 2013) – The Court affirms a district court judgment in a wrongful death action arising from a traffic collision involving a police patrol car, and vacates in part a post-judgment order awarding attorney fees and costs, ruling that 1) the district court did not abuse its discretion by excluding evidence of the deceased's blood alcohol content (BAC) to show his comparative negligence, since admission requires additional evidence suggesting intoxication from either a percipient witness or an expert who can testify regarding that person's commensurate level of impairment; 2) the district court did not abuse its discretion in allowing an expert to testify based in part on a determination that the proposed testimony was the product of reliable methodology under Hallmark v. Eldridge [124 Nev. 492, 498, 189 P.3d 646, 650 (2008)]; 3) the district court correctly applied comparative negligence and calculated damages under NRS 41.035; 4) the district court did not abuse its discretion in awarding attorney fees that included charges for nonattorney staff; and 5) the award of attorney fees and costs is vacated in part and remanded for further analysis of the claims pursuant to the factors set forth in Brunzell v. Golden Gate National Bank [85 Nev. 345, 349, 455 P.2d 31, 33 (1969)].

Brooksby v. Nev. State Bank, 129 Nev. Adv. Op. No. 82 (November 7, 2013) – The Court reverses a district court order denying a petition for a hearing concerning the return of bank account funds under NRS 21.120 (third-party claims on writs of garnishment in aid of execution) and NRS 31.070 (third-party claims), and remands for an evidentiary hearing. In post-judgment proceedings below, a judgment creditor garnished the funds in bank accounts held by the judgment debtor jointly with her nondebtor children; the district court summarily denied a timely petition from the children asserting that the garnished funds belonged to them alone (a judgment creditor may garnish only a debtor's funds that are held in a joint bank account, not the funds in the account owned solely by the nondebtor).

State, Dep't of Taxation v. Masco Builder, 129 Nev. Adv. Op. No. 83 (November 7, 2013) – The Court affirms a district court post-judgment order awarding pre- and post-judgment interest in a tax case arising from a refund of overpaid taxes, ruling that 1) the taxpayer is not required to affirmatively request interest in its initial refund claim; and 2)

the Department of Taxation may not withhold interest on tax refunds when it has failed to timely make a determination under NRS 372.665 as to whether any overpayment has been made intentionally or by reason of carelessness.

Elizondo v. Hood Mach., Inc., 129 Nev. Adv. Op. No. 84 (November 7, 2013) – The Court reverses a district court order denying a petition for judicial review in a workers' compensation matter, ruling that 1) the appeals officer's conclusory order in the matter lacked findings of fact and conclusions of law, failed to meet the statutory requirements of NRS 233B.125, and was procedurally deficient; and 2) the appeals officer erred by applying the doctrines of issue and claim preclusion to bar Elizondo's request to reopen his industrial injury claim under NRS 616C.390.

Humphries v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 85 (November 7, 2013) – The Court grants a writ petition challenging a district court order requiring the plaintiffs in a premises liability action to join the plaintiffs' assailant as a defendant, on the grounds that the assailant was a party necessary to the litigation. The Court rules that the assailant was not a necessary party under NRCP 19 because the district court can afford complete relief to the parties, the defendant is able to implead the assailant as a third party under NRCP 14, and creating a *per se* joinder requirement would unfairly burden plaintiffs.

Otak Nev., L.L.C. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 86 (November 7, 2013) – The Court grants a writ petition challenging a district court order declining to dismiss a third-party complaint, ruling that 1) NRS 17.245(1)(b) bars all claims that seek contribution and/or equitable indemnity when the settlement is determined to be in good faith; and 2) the contractor's remaining third-party claims in this matter are "de facto" contribution claims barred by NRS 17.245(1)(b).

Sandpointe Apts. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 87 (November 14, 2013) – The Court denies a writ petition challenging a district court order denying a motion for partial summary judgment and granting a countermotion for partial summary judgment in a deficiency and breach of guarantee action, ruling that 1) NRS 40.459(1)(c), a statute limiting the amount of judgments in instances where a right to obtain a judgment against the debtor, guarantor, or surety has been transferred from one person to another, would have an improper retroactive effect if applied to the facts underlying the writ petition; 2) NRS 40.459(1)(c) only applies prospectively and the limitations in the statute apply to sales, pursuant to either judicial foreclosures or trustee's sales, occurring on or after the effective date of the statute; and 3) in cases where application of NRS 40.459(1)(c) would not have a retroactive effect, it applies to any transfer of the right to obtain a deficiency judgment, regardless of when the right was transferred.

PERS v. Reno Newspapers, 129 Nev. Adv. Op. No. 88 (November 14, 2013) – The Court affirms in part and vacates in part a district court order granting a petition for a writ of mandamus to compel public access to government records arising from the Reno Gazette-Journal's (RGJ) request for the names of all individuals who are collecting pensions, the names of their government employers, their salaries, their hire and retirement dates, and the amounts of their pension payments, as part of an investigation concerning government expenditures and the public cost of retired government

employee pensions. The Court rules that NRS 286.110(3) protects only the individuals' files maintained by PERS and the district court correctly interpreted that statute's scope of confidentiality and did not abuse its discretion in ordering PERS to provide the requested information to the extent that it is maintained in a medium separate from individuals' files, but vacates the district court's order to the extent that the district court ordered PERS to create new documents or customized reports by searching for and compiling information from individuals' files or other records.

Clancy v. State, 129 Nev. Adv. Op. No. 89 (November 27, 2013) – The Court affirms a jury conviction of leaving the scene of an accident, ruling that 1) NRS 484E.010 is not unconstitutionally vague or ambiguous; 2) actual physical contact between two vehicles is not required for a person to be involved in an accident under the statute; 3) the State is required to prove that the driver had actual or constructive knowledge that he had been involved in an accident; and 4) in this instance, sufficient evidence was presented to support the jury's finding that appellant knew or should have known that he was involved in an accident before leaving the scene.

Perez v. State, 129 Nev. Adv. Op. No. 90 (November 27, 2013) – The Court affirms a jury conviction of six counts of lewdness with a child under 14 years of age and two counts of sexual assault of a minor under 14 years of age in an appeal concerning the admissibility of expert testimony related to sex offender grooming behavior and the effect that behavior has on a child victim. The Court rules that 1) whether expert testimony on grooming behavior is admissible in a case involving sexual conduct with a child must be determined on a case-by-case basis, considering the requirements that govern the admissibility of expert testimony; 2) considering those requirements, the district court did not abuse its discretion in admitting the expert testimony in this case; 3) the expert's testimony did not improperly vouch for the complaining witness's testimony; and 4) the State's pretrial notice was sufficient.

Clay v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 91 (November 27, 2013) – The Court grants a writ petition challenging a juvenile court order unsealing and releasing petitioner's sealed juvenile court records for use in a criminal prosecution in which petitioner stands charged with two counts of first-degree murder and associated offenses for which he faces the death penalty. The Court rules that 1) neither NRS 62H.170(3) nor NRS 62H.170(2)(c) allow the State to inspect a person's sealed juvenile records for use against the person in subsequent criminal proceedings; and 2) the juvenile court therefore manifestly abused its discretion by unsealing and releasing petitioner's records.

In re Estate of Bethurem, 129 Nev. Adv. Op. No. 92 (November 27, 2013) – The Court reverses a district court order invalidating a will as the product of the beneficiary's undue influence (and directing distribution of property according to a former will), ruling that 1) a rebuttable presumption of undue influence is raised if the testator and the beneficiary shared a fiduciary relationship, but undue influence may also be proved without raising this presumption; 2) in the absence of the presumption, a will contestant bears the burden of proving undue influence by a preponderance of the evidence; and 3) the respondent-will contestants failed to meet this burden of proof.

Aspen Fin. Servs. v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. No. 93 (November 27,

2013) – The Court denies a writ petition challenging a district court order quashing a subpoena, ruling that 1) the motion to quash the subpoena properly asserted the news shield privilege under NRS 49.275; 2) assertion of the privilege may be raised, as it was here, by a reporter's attorney in a motion to quash a subpoena, without the need to file a supporting affidavit, so long as the motion demonstrates that the information sought by the subpoena is facially protected by the statute; and 3) petitioners have failed to overcome the privilege.

Watters v. State, 129 Nev. Adv. Op. No. 94 (November 27, 2013) – The Court reverses a jury conviction of possession of a stolen vehicle, grand larceny of a vehicle, and failure to stop on the signal of a police officer, ruling that 1) the State's use of a PowerPoint during opening statement that includes a slide of the defendant's booking photo with the word "GUILTY" superimposed across it constitutes improper advocacy and undermines the presumption of innocence essential to a fair trial; and 2) a presumption-of-innocence error is of constitutional dimension and the State failed to prove, beyond a reasonable doubt, that the error did not contribute to the verdict obtained (citing Chapman v. California, 386 U.S. 18, 24 (1967)).

Carrigan v. Nev. Comm'n on Ethics, 129 Nev. Adv. Op. No. 95 (November 27, 2013) – Remanded from the U.S. Supreme Court, Nev. Comm'n on Ethics v. Carrigan, 564 U.S. ___, 131 S. Ct. 2343 (2011), which held that Sparks City Councilman Carrigan's vote on the Lazy 8 hotel/casino project did not constitute protected speech, and reversed the Nevada Supreme Court's decision in Carrigan v. Comm'n on Ethics, 126 Nev. ___, 236 P.3d 616 (2010), that the First Amendment overbreadth doctrine invalidated the conflict-of-interest recusal provision in Nevada's Ethics in Government Law, NRS Chapter 281A. On remand, the Court affirms, ruling that the conflict-of-interest recusal provision in NRS 281A.420(2)(c) 1) is not unconstitutionally vague in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments, since NRS 281A.420(8)(e), which requires recusal for relationships "substantially similar" to four enumerated ones, can be clearly construed in reference to the enumerated relationships; and 2) does not unconstitutionally burden the First Amendment freedom-of-association rights shared by Nevada's elected officials and their supporters, since any burden is scant when compared to the state's important interest in avoiding conflicts of interest and self-dealing by public officials entrusted with making decisions affecting citizens.

Cnty. of Clark v. LB Props., Inc., 129 Nev. Adv. Op. No. 96 (December 12, 2013) – The Court reverses a district court order setting aside the Nevada Tax Commission's decision upholding the County Assessor's assessment of a remainder parcel for tax abatement purposes, ruling that the record supports the conclusion that the Assessor's method did not lead to unequal taxation but rather appears likely led to more equitable taxation than the method set forth in NAC 361.61038, appears to be the method generally used prior to the regulation's enactment and in harmony with NRS 361.4722(2)(a)(1), and since the Assessor's method does not conflict with existing statute or practice, it does not violate the Constitution.

In re Aboud Inter Vivos Trust, 129 Nev. Adv. Op. No. 97 (December 19, 2013) – The Court affirms in part and reverses in part a district court judgment in trust action concerning trust property that was transferred from the trust to a limited partnership for consideration and by consent of all of the trust beneficiaries, and subsequently

transferred the property to a third-party business. The Court rules that 1) because in rem jurisdiction only extends to property and the disputed assets were no longer trust property after they were transferred to the limited partnership, NRS 164.010(1) and NRS 164.015(6) did not confer jurisdiction upon the district court to enter a constructive trust on those assets and a personal monetary judgment against the former trustee and third-party company; and 2) because the claims against the former trustee arose from alleged breaches of fiduciary duties to the limited partnership and not to the trust, the district court erred by entering a personal judgment against the former trustee in a trust accounting action.

Lytle v. Rosemere Estates Prop. Owners, 129 Nev. Adv. Op. No. 98 (December 26, 2013) – The Court reinstates the briefing schedule on consolidated appeals after ruling that 1) NRAP 4(a)(4) tolling applies to appellants' NRCP 59(e) motion to alter or amend a post-judgment order awarding supplemental attorney fees, since the supplemental attorney fees order is independently appealable as a special order after final judgment, and thus, falls under the definition of “judgment” provided in NRCP 54(a); and 2) consequently, the notice of appeal was timely filed and the consolidated appeals may proceed.

Taylor v. Dep't of Health & Human Servs., 129 Nev. Adv. Op. No. 99 (December 26, 2013) – The Court affirms a district court order denying a petition for judicial review in a state employment matter, reviewing a State Personnel Commission hearing officer's decision and ruling that the hearing officer did not err or abuse her discretion in determining that, while the relevant statutory provisions of NRS Chapter 284 grant a hearing officer the power to review for reasonableness, and potentially set aside, an appointing authority's dismissal, demotion, or suspension decision, they do not make hearing officers appointing authorities or provide them with explicit power to prescribe the amount of discipline to be imposed.

Dogra v. Liles, 129 Nev. Adv. Op. No. 100 (December 26, 2013) – The Court reverses a district court order, certified as final under NRCP 54(b), dismissing a personal injury action based on lack of personal jurisdiction. The appellants sued respondent Jane H. Liles and her adult daughter Susan Liles, both California residents, for an auto accident that occurred when Susan was driving Jane's car in Nevada. On the central issue on appeal the Court rules that a nonresident defendant is not subject to personal jurisdiction in Nevada when the sole basis asserted is his or her adult child's unilateral act of driving the defendant's vehicle in Nevada. The Court further rules that Jane did not waive her right to object to the court's exercise of personal jurisdiction over her by filing a motion to consolidate in a Nevada court, because the consolidation motion did not implicate the parties' substantive legal rights and filing it did not amount to a request for affirmative relief sufficient to constitute a waiver. Finally, the Court rules that an interpleader action filed by Jane's insurance company could subject Jane to personal jurisdiction in Nevada courts if the insurance company was acting as Jane's agent in filing the action; however, because the issue surrounding the interpleader action was not adequately addressed in the district court, the Court remands for further consideration.

In re Nilsson, 129 Nev. Adv. Op. No. 101 (December 26, 2013) – The Court answers a question certified pursuant to NRAP 5 regarding the ability of a debtor to claim Nevada's

homestead exemption when only the debtor's minor children reside on the property, ruling that a debtor must actually reside on the property that is the subject of a claimed homestead exemption under NRS 21.090(1)(l) and NRS Chapter 115, in order to qualify for the exemption.

State v. Kincade, 129 Nev. Adv. Op. No. 102 (December 27, 2013) – The Court affirms a district court order granting a motion to suppress evidence, ruling that the district court properly excluded evidence seized pursuant to a search warrant where the warrant did not comply with NRS 179.045(5)'s requirement that a warrant include a statement of probable cause or have the affidavit upon which probable cause was based attached. The Court reaffirmed State v. Allen, 119 Nev. 166, 69 P.3d 232 (2003), and concluded that failure to comply with NRS 179.045(5) triggers exclusion despite the contrary holding in United States v. Grubbs, 547 U.S. 90, 97 (2006), because the Court may grant broader protections to its citizens than required by the U.S. Constitution, and the good-faith exception set forth in United States v. Leon, 468 U.S. 897, 906 (1984), will not apply where statutory requirements are not followed.