

2014 Nevada Supreme Court Opinion Digest

Recontrust Co. v. Zhang, 130 Nev. Adv. Op. No. 1 (January 30, 2014) – On an appeal and cross-appeal from judgment and orders entered following reversal and remand by a panel of the Court in a real property dispute, the Court vacates and remands for the district court to decide the lender's equitable subrogation claim, which neither the trial nor the prior appeals resolved.

Gonzales-Alpizar v. Griffith, 130 Nev. Adv. Op. No. 2 (January 30, 2014) – On an appeal and cross-appeal from a final determination concerning a complaint for divorce, the Court affirms in part and reverses in part, ruling that 1) a spousal and child support order entered by a family court in Costa Rica is not enforceable in Nevada under the Uniform Interstate Family Support Act (UIFSA); 2) because the existence of the parties' premarital agreement was not disclosed to the Costa Rican court issuing the support order, the award for spousal support should not be recognized in Nevada as a matter of comity; and 3) the child support award may be recognized under the doctrine of comity, and the Court remands for the district court to make factual findings on Griffith's claim that the child support was obtained through fraud because Gonzales-Alpizar misrepresented Griffith's income and assets to the Costa Rican court.

Torres v. Goodyear Tire & Rubber Co., 130 Nev. Adv. Op. No. 3 (January 30, 2014) – The Court affirms a post-judgment order refusing to award compound post-judgment interest, ruling that NRS 17.130(2), the statute that provides a default interest rate for judgments, does not authorize compound interest, but rather only allows for the award of simple interest on judgments.

Liberty Mut. v. Thomasson, 130 Nev. Adv. Op. No. 4 (February 6, 2014) – The Court vacates and remands a district court order transferring venue of a petition for judicial review in a workers' compensation matter, ruling that 1) NRS 233B.130(2)(b), which provides that a petition for judicial review of an agency determination must be filed in Carson City, the aggrieved party's county of residence, or the county where the agency proceeding occurred, is a mandatory jurisdictional requirement; and 2) because Liberty Mutual is not a resident of Washoe County, the Second Judicial District Court lacked jurisdiction to consider its petition for judicial review and should have dismissed it rather than transfer venue (remanded to the district court with directions to dismiss petition).

DTJ Design v. First Republic Bank, 130 Nev. Adv. Op. No. 5 (February 13, 2014) – The Court affirms a district court summary judgment, certified as final under NRCP 54(b), in a lien foreclosure action, ruling that, regardless of whether a foreign firm employs a registered architect, NRS 623.349(2) and NRS 623.357 mandate that the firm be registered in Nevada in order to maintain an action on the firm's behalf.

Preciado v. State, 130 Nev. Adv. Op. No. 6 (February 13, 2014) – The Court affirms a jury conviction of voluntary manslaughter with the use of a deadly weapon, ruling that while the district court erred in failing to record numerous bench and in-chambers conferences and in failing to excuse for cause a prospective juror who was equivocal about her impartiality, these errors were harmless. The Court stresses that bench and in-chambers conferences should be memorialized either contemporaneously or by allowing counsel to make a record afterward; and that a prospective juror who is

anything less than unequivocal about his or her impartiality should be excused for cause.

Amezcuca v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 7 (February 13, 2014) – The Court denies a writ petition challenging a district court order affirming a judgment of conviction and denial of a motion for new trial, ruling that first-offense domestic battery under NRS 200.485(1) is a "petty" offense to which the right to a jury trial does not attach.

Lorton v. Jones, 130 Nev. Adv. Op. No. 8 (February 20, 2014) – The Court grants a writ petition challenging the eligibility of real parties in interest to run in the 2014 Reno mayoral election, ruling that Article 15, Section 3(2) of the Nevada Constitution bars a term-limited council member from thereafter being elected mayor of Reno based on the provisions of the Reno City Charter because 1) the Reno mayor is a member of the "local governing body," subject to the same limitations that apply to the other city council members and 2) while the Reno City Charter may assign additional duties to the Reno mayor, none of those added duties change the equality of all of the members of the city council or provide a basis for the unequal application of the limitations provision to all members of the "local governing body."

Gunderson v. D.R. Horton, Inc., 130 Nev. Adv. Op. No. 9 (February 27, 2014) – On an appeal and cross-appeal from a district court judgment on a jury verdict in a construction defect action and an appeal from an order denying a new trial, the Court affirms the district court's order denying the homeowners' motion for a new trial, reverses the district court's order regarding the issuance of sanctions, and remands. The Court rules that the district court did not abuse its discretion in denying appellants'/cross-respondents' motion for a new trial based on allegations of attorney misconduct, but did abuse its discretion regarding the issuance and apportionment of sanctions. Specifically, the Court rules that 1) the district court was statutorily required to issue sanctions under NRS 17.115 and NRCP 68; 2) when a district court issues sanctions against multiple offerees pursuant to NRS 17.115 and NRCP 68, it has and must exercise its discretion to determine whether to apportion those sanctions among the multiple offerees or to impose those sanctions with joint and several liability; 3) when sanctions are issued against multiple homeowner offerees pursuant to NRS 17.115 and NRCP 68 in a construction defect action, a district court abuses its discretion by imposing those sanctions jointly and severally against the homeowners; and 4) on remand the district court must apportion sanctions issued against the homeowners based on their individual offers of judgment.

Sanchez-Dominguez v. State, 130 Nev. Adv. Op. No. 10 (February 27, 2014) – The Court affirms a jury conviction of first-degree murder with the use of a deadly weapon, aggravated stalking, and burglary, clarifying that the meaning of "in the perpetration or attempted perpetration of" a burglary under the first-degree felony murder statute does not require that a killing must be caused by, and occur at the exact moment of, a burglar's entry into a protected structure, because NRS 200.030(1)(b) holds felons strictly responsible for killings that result from their felonious actions (the killing in this instance occurred after the burglary offense was complete).

Jones v. Nev. Comm'n on Jud. Discipline, 130 Nev. Adv. Op. No. 11 (February 27, 2014) – The Court denies a writ petition seeking relief in a judicial discipline proceeding against Nevada Family Court Judge Steven E. Jones, ruling that the petition is premature as most of the issues raised are not yet ripe for review, since “at this investigatory stage in the judicial discipline proceedings, Judge Jones has not demonstrated actual prejudice stemming from any procedural or substantive violations sufficient to warrant writ relief at this time, although he may be able to establish such harm in the future.”

City of Reno v. Howard, 130 Nev. Adv. Op. No. 12 (February 27, 2014) – The Court affirms a district court order denying a writ petition challenging the admissibility of the declaration of a person who collects blood for evidentiary testing under NRS 50.315(4), and the provision in NRS 50.315(6) that a defendant in a misdemeanor DUI trial waives the right to confront the maker of such a declaration unless the defendant can show a substantial and bona fide dispute regarding the facts in the declaration. The Court rules that, in light of the U.S. Supreme Court ruling in Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009), the substantial-and-bona-fide-dispute requirement of NRS 50.315(6) impermissibly burdens the right to confront the declarant [overruling City of Las Vegas v. Walsh, 121 Nev. 899, 124 P.3d 203 (2005)]. The Court further rules that the district court in this instance did not err when it determined that admission of such a declaration into evidence over the defendant's objection would have violated defendant's right to confrontation, and the district court did not abuse its discretion by denying the City's petition for a writ of mandamus.

Las Vegas Sands v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 13 (February 27, 2014) – The Court grants a writ petition challenging a district court order compelling disclosure of purportedly privileged documents, ruling that a witness's review of purportedly privileged documents prior to testifying constitutes a waiver of any privilege under NRS 50.125, such that the documents become subject to discovery by an adverse party; however, under the specific facts of this case, where the adverse party failed to demand production, inspection, cross-examination, and admission of the documents at or near the hearing in question and instead waited until well after the district court had entered its order, the demand was untimely under NRS 50.125(1).

In re Cay Clubs, 130 Nev. Adv. Op. No. 14 (March 6, 2014) – On consolidated appeals from a district court summary judgment certified as final under NRCP 54(b) and from an order awarding costs, in a case arising from appellants' purchase of condominiums in the Las Vegas Cay Club development and subsequent lawsuit against numerous defendants, including Cay Clubs and respondents, the Court rules that 1) due to genuine issues of material fact, the district court erred in granting summary judgment to respondents with regard to their liability under the partnership-by-estoppel doctrine codified in NRS 87.160(1); 2) partnership by estoppel may be found under NRS 87.160(1) where the subject of the actionable representation is a partnership or a joint venture; 3) the consent required for partnership by estoppel can be express or implied from one's conduct; 4) the statute's phrase "given credit" means giving credence to the representation by detrimentally relying on it; 5) the claimant who seeks to prevail on the partnership-by-estoppel claim must have reasonably relied on the representation of partnership or joint venture; and 6) NRS 87.160(1) may impose partnership liability with

respect to claims that implicate the reliance element that is required for partnership by estoppel—such claims are not limited to causes of action that sound in contract. The Court reverses in part the order granting summary judgment in favor of respondents with respect to their liability under NRS 87.160(1), reverses the award of costs that was predicated on the grant of summary judgment to respondents, and remands for further proceedings.

Harrah's v. State, Dep't of Taxation, 130 Nev. Adv. Op. No. 15 (March 20, 2014) – The Court affirms in part and reverses in part a district court order denying a petition for judicial review in a tax matter arising from the application of Nevada's use tax to aircraft purchased out of state and used to transport Harrah's executives and customers to and from its establishments worldwide. The Court rules that because two of Harrah's aircraft engaged the presumption of NRS 372.258 [goods purchased outside of Nevada are presumed not to be purchased for use in Nevada, and thus not taxable under Nevada's use tax statute, if 1) the first use of the goods occurs outside Nevada and 2) the goods are continuously used in interstate commerce for 12 months] and the record does not rebut the presumption, the Department of Taxation erred in its interpretation of the statute and those aircraft are not subject to Nevada's use tax.

Davis v. State, 130 Nev. Adv. Op. No. 16 (March 27, 2014) – The Court reverses a jury conviction of battery with the use of a deadly weapon resulting in substantial bodily harm and remands for new trial, ruling that NRS 200.275 unequivocally provides that battery is justifiable in self-defense under the same conditions that would justify homicide, and by refusing to provide an instruction to that effect, the district court committed reversible error.

Liu v. Christopher Homes, L.L.C., 130 Nev. Adv. Op. No. 17 (March 27, 2014) – The Court affirms in part, reverses in part, and remands a district court judgment in a real property action, ruling that the appellant may recover attorney fees incurred in defending against third-party litigation due to respondents' breach of contract [citing *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001)].

State v. Eighth Jud. Dist. Ct. (Zogheib), 130 Nev. Adv. Op. No. 18 (March 27, 2014) – The Court grants a writ petition challenging a district court order that granted the defendant's motion to disqualify the entire Clark County District Attorney's Office due to District Attorney Steve Wolfson's disqualification from prosecuting former clients of his criminal defense practice. The Court rules that the conflict of interest cannot be properly imputed to all of the lawyers in his office, thus overruling *Collier v. Legakes*, 98 Nev. 307, 646 P.2d 1219 (1982), to the extent that it relies on appearance of impropriety to determine when vicarious disqualification of a prosecutor's office is warranted. The Court further holds that, while an individual prosecutor's conflict of interest may be imputed to the prosecutor's entire office in extreme cases, rather than making that determination based on an appearance of impropriety, the appropriate inquiry is whether the conflict would render it unlikely that the defendant would receive a fair trial unless the entire prosecutor's office is disqualified. Finally, the Court rules that regardless of which standard is applied, under the circumstances and considering the screening procedures in place, the district court acted arbitrarily or capriciously in granting the motion to disqualify the entire Clark County District Attorney's Office.

Progressive Gulf Ins. Co. v. Faehnrich, 130 Nev. Adv. Op. No. 19 (March 27, 2014) – The Court answers a question certified under NRAP 5 concerning the enforceability of a household exclusion clause in an automobile liability insurance policy issued out of state but applied to Nevada residents injured in Nevada, ruling that Nevada's public policy does not preclude giving effect to a choice-of-law provision in an insurance contract that was negotiated, executed, and delivered while the parties resided outside of Nevada, even when that effect would deny any recovery under NRS 485.3091 to Nevada residents who were injured in Nevada.

Wingco v. Gov't Emps. Ins. Co., 130 Nev. Adv. Op. No. 20 (March 27, 2014) – The Court affirms a district court order dismissing an insurance action, ruling that NRS 687B.145(3), which provides that a motor vehicle insurer must offer its insured the option of purchasing medical payment coverage, does not require a written rejection of such coverage, and that all of the appellant's claims proceed from the mistaken premise that a written rejection is required.

The Power Co. v. Henry, 130 Nev. Adv. Op. No. 21 (March 27, 2014) – The Court affirms a district court judgment in a tort action, ruling that NRCP 41(e)'s provision requiring dismissal for want of prosecution does not apply to an action in which the parties entered into a written and signed settlement agreement before NRCP 41(e)'s five-year deadline expired, and the district court did not err in reducing the parties' settlement agreement to judgment.

Coleman v. State, 130 Nev. Adv. Op. No. 22 (March 27, 2014) – The Court affirms a district court order denying a post-conviction petition for a writ of habeas corpus, ruling that a person who is serving a special sentence of lifetime supervision may not file a post-conviction petition for a writ of habeas corpus to challenge his judgment of conviction or sentence: because lifetime supervision commences only after a person has expired a prison term or period of probation or parole, a person who is subject only to lifetime supervision is not subject to an unexpired prison term that could be imposed upon violation of the conditions of that supervision and therefore is no longer under "sentence of death or imprisonment" as required by NRS 34.724(1).

Huckabay Props. v. NC Auto Parts, 130 Nev. Adv. Op. No. 23 (March 27, 2014) – The Court denies a petition for en banc reconsideration of an order dismissing consolidated appeals for failure to file opening brief and appendix, ruling that 1) although Nevada appellate law and procedural rules demonstrate a policy preference for merits-based resolution of appeals, noncompliance with court rules and directives risks forfeiting appellate relief; 2) in these appeals, appellants failed to timely file the opening brief and appendix after having been warned that failure to do so could result in the appeals' dismissals; and 3) Hansen v. Universal Health Services of Nevada, Inc., 112 Nev. 1245, 924 P.2d 1345 (1996), is overruled to the extent that it holds against dismissing an appeal when the dilatory conduct is occasioned by counsel and not the client.

State v. Cantsee, 130 Nev. Adv. Op. No. 24 (April 3, 2014) – The Court reverses a district court order granting a motion to suppress evidence in a criminal case arising from respondent's being charged with a felony DUI after being pulled over for driving with a cracked windshield, ruling that a police officer's citation to an incorrect statute is

not a mistake of law that invalidates an investigatory traffic stop under the Fourth Amendment if another statute nonetheless prohibits the suspected conduct.

Angel v. Cruse, 130 Nev. Adv. Op. No. 25 (April 3, 2014) – The Court reverses a district court summary judgment in a civil rights action filed by inmate Angel against respondent corrections officer Cruse, in his individual capacity only, alleging that Cruse violated Angel's civil rights by filing a disciplinary charge against him and having him placed in administrative segregation in retaliation for Angel attempting to file a grievance against Cruse. The Court rules that there are genuine issues of material fact remaining with regard to each of the disputed elements of the retaliation claim, including whether the action was taken because of Angel's protected conduct, whether the action advanced a legitimate correctional goal, and the possible chilling effect of Cruse's actions, and with regard to Cruse's entitlement to qualified immunity.

Coleman v. State, 130 Nev. Adv. Op. No. 26 (April 3, 2014) – The Court reverses a jury conviction of first-degree murder by child abuse following the death of an infant and remands, ruling that NRS 51.345 is constitutional but clarifying that the standard for admissibility of a statement against penal interest offered to exculpate an accused—"corroborating circumstances [that] clearly indicate the trustworthiness of the statement"—must not be so rigorously applied that it ignores the purpose for the rule and instead infringes on the defendant's constitutional right to a meaningful opportunity to present a complete defense. The Court further holds that the district court's application of this provision in deciding not to allow the testimony from two defense witnesses was an abuse of discretion and prejudiced the defendant.

Nassiri v. Chiropractic Physicians' Bd., 130 Nev. Adv. Op. No. 27 (April 3, 2014) – The Court affirms a district court order granting in part and denying in part a petition for judicial review in a professional licensing matter, ruling that 1) in the absence of a specific statutory mandate, agencies generally must utilize, at a minimum, the preponderance-of-the-evidence standard in their adjudicative hearings as it is the general civil standard of proof; 2) in this instance the Board found, by at least a preponderance of the evidence, that appellants committed professional misconduct based on the evidence presented; and 3) there was no equal protection violation.

Alcantara v. Wal-Mart Stores, Inc., 130 Nev. Adv. Op. No. 28 (April 3, 2014) – The Court affirms a district court order, certified as final under NRCP 54(b), dismissing Wal-Mart Stores, Inc., from a torts action on claim preclusion grounds, in an appeal concerning the application of claim and issue preclusion to actions brought under different subsections of Nevada's wrongful death statute, NRS 41.085. In the underlying action, an heir asserted a wrongful-death claim against respondent Wal-Mart under NRS 41.085(4), even though the decedent's estate had previously attempted, but failed, to succeed on a wrongful death claim against Wal-Mart under NRS 41.085(5). Wal-Mart moved to dismiss the heir's action on claim and issue preclusion grounds, and the district court granted the motion based on claim preclusion. On appeal, the Court affirms the dismissal on issue preclusion grounds, following *Evans v. Celotex Corp.*, 238 Cal. Rptr. 259, 260 (Ct. App. 1987), to conclude that the heir is barred from relitigating the issue of Wal-Mart's negligence because it has already been established, in the case brought by the estate on her behalf, that Wal-Mart was not negligent and, thus, not

liable. The Court also adopts the Restatement (Second) of Judgments' explanation of what constitutes adequate representation for privity purposes.

LaChance v. State, 130 Nev. Adv. Op. No. 29 (April 3, 2014) – The Court affirms in part and reverses in part a jury conviction of domestic battery by strangulation, domestic battery causing substantial bodily harm, possession of a controlled substance for the purpose of sale, possession of a controlled substance, false imprisonment, and unlawful taking of a motor vehicle. The Court rules that 1) the charge of possession of a controlled substance is a lesser-included offense of possession of a controlled substance for the purpose of sale and appellant may not be punished for both crimes; 2) to remedy the double-jeopardy violation, the conviction for simple possession is reversed as the less severely punishable offense; and 3) the remainder of the judgment of conviction, including the adjudication of appellant as a habitual criminal, is affirmed.

Meisler v. State, 130 Nev. Adv. Op. No. 30 (April 3, 2014) – The Court affirms a jury conviction of aggravated stalking arising from a case in which law enforcement, after procuring a valid arrest warrant, located appellant by retrieving his cell phone's GPS coordinates from his cell phone service provider. Once appellant was in custody, law enforcement procured a valid search warrant for the contents of the cell phone, and the search of the cell phone revealed numerous text messages, some of which were eventually used to support the conviction. The Court rules in pertinent part that “an arrest warrant that justifies the physical invasion of the home also justifies a digital invasion into a defendant's cell phone for the purpose of locating the defendant” and that, because appellant's Fourth Amendment rights were not violated, the text messages were not fruit of the poisonous tree.

Douglas v. State, 130 Nev. Adv. Op. No. 31 (May 1, 2014) – The Court affirms a judgment of conviction for sexual assault and incest, rejecting petitioner's argument that incest requires mutual consent while sexual assault is, by definition, nonconsensual, making the two crimes mutually exclusive, and holding that incest condemns sex between close relatives without regard to whether the intercourse was consensual. The Court further rejects petitioner's double jeopardy challenge, holding that 1) sexual assault and incest each contain an element not contained in the other since incest requires a familial relationship [NRS 201.180], while sexual assault does not [NRS 200.366]; and 2) sexual assault makes nonconsent of the other party a clear condition for conviction while incest does not [citing *Jackson v. State*, 128 Nev. , 291 P.3d 1274, 1278 (2012)].

Anderson v. State, Emp't Sec. Div., 130 Nev. Adv. Op. No. 32 (May 15, 2014) – The Court reverses a district court order denying a petition for judicial review in an unemployment benefits matter, ruling that, for a worker with a recurring or degenerative condition, the phrase "within 3 years after the initial period of disability begins" in NRS 612.344(2) refers to the first in the series of potentially available benefits enumerated in the statute—temporary total disability, temporary partial disability, and/or vocational rehabilitation—for each episode of compensated disability leave. Thus, the alternative-calculation option in NRS 612.344 renews when a temporarily disabled worker recovers and returns to work long enough to reestablish himself in the unemployment compensation system.

Dornbach v. Tenth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 33 (May 15, 2014) – The Court denies a writ petition challenging a district court order denying a motion to dismiss a complaint under NRCP 16.1(e), ruling that 1) a district court has discretion to deny an NRCP 16.1(e) motion to dismiss and to order the parties to meet and confer beyond the rule's deadlines; 2) the district court in this matter properly exercised its discretion by extending the deadlines of NRCP 16.1 after finding that compelling and extraordinary circumstances warranted the extension.

Afzali v. State, 130 Nev. Adv. Op. No. 34 (May 29, 2014) – On appeal from a jury conviction of 11 counts of lewdness with a child, 15 counts of sexual assault of a child under 14 years of age, 2 counts of first-degree kidnapping, 1 count of second-degree kidnapping, 3 counts of battery with intent to commit a crime, 3 counts of using a minor in the production of pornography, and 22 counts of possession of child pornography, the Court remands for further proceedings. Prior to trial, the district court denied Afzali's request for information identifying the racial composition of the three separate grand juries that indicted him, and the 100-person venires from which the grand jurors were selected. The Court rules that, without this information, Afzali was unable to determine whether he had a viable constitutional challenge to the racial composition of the three grand juries that indicted him.

Brass v. State, 130 Nev. Adv. Op. No. 35 (May 29, 2014) – The Court reverses a jury conviction of conspiracy to commit kidnapping and murder, first-degree kidnapping, and first-degree murder with the use of a deadly weapon, arising from a case in which appellant Ronnie Brass and his brother, Jermaine Brass, were tried together as codefendants; Jermaine was found guilty on all counts and Ronnie found guilty on four counts, and the brothers filed separate appeals. In Jermaine's appeal, the Court reversed the conviction based upon the district court's mishandling of Jermaine and Ronnie's Batson challenge [Brass v. State, 128 Nev. __, 291 P.3d 145 (2012)]. On appeal, Ronnie raises the same Batson issue; however, Ronnie died while in prison and his mother substituted in as a party under NRAP 43 and filed a motion to abate Ronnie's judgment of conviction due to his death. The Court rules that 1) although a deceased appellant is not entitled to have his or her judgment of conviction vacated and the prosecution abated, a personal representative may be substituted as the appellant and continue the appeal when justice so requires [citing State v. Makaila, 897 P.2d 967, 969 (Haw. 1995)]; and 2) Ronnie suffered the same harm as Jermaine from the district court's error in denying the Batson challenge and is entitled to the same relief.

Schleining v. Cap One, Inc., 130 Nev. Adv. Op. No. 36 (May 29, 2014) – The Court affirms a district court judgment entered after a bench trial in a deficiency action, ruling that 1) in the context of a lender's claim for a deficiency judgment against a guarantor, NRS 40.453, which generally prohibits borrowers and guarantors from contractually "waiv[ing] any right secured to th[at] person by the laws of this state," invalidates a guarantor's waiver of the statutory right to be mailed a notice of default; 2) the statute guaranteeing the right to be mailed a notice of default, NRS 107.095, requires substantial rather than strict compliance on the part of a lender; and 3) in this instance the district court did not abuse its discretion in concluding that the lender substantially complied.

L.V. Dev. Assocs. v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 37 (May 29, 2014) – The Court denies a writ petition challenging a district court order compelling discovery of purportedly privileged documents, ruling that reviewing a document for the purpose of refreshing one's memory prior to or during testimony serves as a waiver to the attorney-client privilege and the work-product doctrine under NRS 50.125, allowing the adverse party to demand production of the document, inspect it, cross-examine the witness on the contents, and admit the document into evidence for the purpose of impeachment [citing Las Vegas Sands Corp. v. Eighth Judicial Dist. Court, 130 Nev. ___, 319 P.3d 618, 623 (2014)]. The Court further concludes that NRS 50.125 applies to deposition testimony as well as to in-court hearings, and that the district court properly compelled the production of documents on that basis in this instance.

Lavi v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 38 (May 29, 2014) – The Court denies a petition for rehearing of a May 24, 2013, order granting a writ petition and directing the district court to award summary judgment to petitioner in a breach of guaranty action, concluding that it did not overlook, misapprehend, or misapply the law.

Libby v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 39 (May 29, 2014) – The Court grants a writ petition challenging a district court order denying summary judgment in a medical malpractice action, ruling that 1) Nevada's medical malpractice statute of limitations, NRS 41A.097(2), provides that an action against a health care provider must be filed within one year of the injury's discovery and three years of the injury date; 2) based on the plain language of the statute, which establishes "date of injury" as the outer boundary for claim accrual, NRS 41A.097(2)'s three-year limitation period begins to run when a plaintiff suffers appreciable harm, regardless of whether the plaintiff is aware of the injury's cause; and 3) in this instance, because the plaintiff suffered appreciable harm to her knee more than three years before she filed her complaint, the district court was required to grant Dr. Libby's motion for summary judgment.

Viega GmbH v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 40 (May 29, 2014) – The Court grants a writ petition in which two foreign companies challenged the Nevada district court's assertion of personal jurisdiction over them, ruling that, although a Nevada plaintiff may establish personal jurisdiction over nonresident parent companies by showing that their subsidiaries acted in the forum as the parents' agents, so that the subsidiaries' local contacts can be imputed to the parents, no agency relationship was shown in this instance.

Sasser v. State, 130 Nev. Adv. Op. No. 41 (May 29, 2014) – The Court affirms a conviction pursuant to a guilty plea of one count of robbery, in which, after pleading guilty, Sasser requested that the district court amend his presentence investigation report (PSI) prior to sentencing to correct an error, and the district court amended Sasser's PSI in the judgment of conviction, rather than amending the PSI itself. The Court rules that 1) although a defendant's PSI is only one of many different considerations that the district court will evaluate when determining a defendant's sentence, a defendant has the right to object to factual errors in the PSI, so long as he or she objects before sentencing (citing Stockmeier v. State, Bd. of Parole Comm'rs, 127 Nev. ___, 255 P.3d 209 (2011)); 2) in this instance the district court properly declined to strike certain information from the PSI because the information was not based on impalpable or highly suspect evidence; and 3) when correcting an error in a PSI, the

district court has the discretion to amend the PSI itself, return it to the Division of Parole and Probation for amending, or amend it in the judgment of conviction.

Century Sur. Co. v. Casino W., Inc., 130 Nev. Adv. Op. No. 42 (May 29, 2014) – The Court answers questions certified in accordance with NRAP 5 regarding the interpretation of two exclusionary provisions in a motel's insurance policy issued by appellant (an absolute pollution exclusion and an indoor air quality exclusion) with regard to the coverage of claims arising from carbon monoxide exposure. The Court determines that, under the facts presented, both exclusions are ambiguous because they are subject to multiple reasonable interpretations, and therefore neither exclusion clearly excludes coverage of claims arising from carbon monoxide exposure.

Gomez v. State, 130 Nev. Adv. Op. No. 43 (May 29, 2014) – The Court affirms a conviction, pursuant to a guilty plea agreement, of murder, conspiracy to commit robbery, and conspiracy to commit first-degree kidnapping, ruling that 1) the district court did not abuse its discretion when it determined that the police department's incident reports provided a factual basis for the gang affiliation noted in Gomez's presentence investigation report (PSI); and 2) Stockmeier v. State, Bd. of Parole Comm'rs, 127 Nev. ___, 255 P.3d 209 (2011), does not require the district court to hold evidentiary hearings to address alleged factual errors in a defendant's PSI.

Jacobs v. Adelson, 130 Nev. Adv. Op. No. 44 (May 30, 2014) – The Court reverses a district court order, certified as final under NRCP 54(b), dismissing respondent from a defamation action, ruling that although statements made during the course of judicial proceedings are generally considered absolutely privileged and cannot form the basis of a defamation claim, statements made to the media regarding ongoing or contemplated litigation in an extrajudicial setting are not absolutely privileged, at least when the media holds no more significant interest in the litigation than the general public [adopting the majority view].

All Star Bail Bonds v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 45 (June 5, 2014) – The Court denies a writ petition challenging a district court order that denied a motion to exonerate a bail bond and entered judgment against the surety, ruling that 1) NRS 178.509(1)(b)(5) allows the district court to exonerate a surety's bail bond when the defendant has been deported; 2) in this instance, the defendant left the country voluntarily but was denied admission when he tried to return, and was not deported for purposes of NRS 178.509(1)(b)(5); and 3) the surety is not entitled to exoneration based on common law contract defenses because there is no statutory ground for exoneration.

FCH1, L.L.C. v. Rodriguez, 130 Nev. Adv. Op. No. 46 (June 5, 2014) – The Court reverses a district court judgment following a bench trial and remands a tort action arising from the alleged negligence of Palms Casino Resort in allowing promotional actors to toss souvenirs into a crowd of patrons watching a televised sporting event at the casino's sports bar. The Court declines to extend the limited-duty rule established in Turner v. Mandalay Sports Entertainment [124 Nev. 213, 220-21, 180 P.3d 1172, 1177 (2008)] to such circumstances and holds that there was no error in the district court's refusal to find, as a matter of law, that Palms owed no duty of care. However, the Court rules that a new trial is warranted due to evidentiary errors, specifically, the improper

admission of certain expert testimony and improper exclusion of other expert testimony, that affected the outcome of the proceeding below.

Harris v. State, 130 Nev. Adv. Op. No. 47 (June 12, 2014) – On a pro per appeal, the Court reverses a district court order denying a motion to withdraw a guilty plea, ruling that 1) pursuant to NRS 34.724(2)(a), a post-conviction petition for a writ of habeas corpus is the *exclusive remedy* for challenging the validity of a conviction or sentence aside from direct review of a judgment of conviction on appeal and "remedies which are incident to the proceedings in the trial court" (overruling Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000)); and 2) the district court's order denying the motion on the merits is reversed and the matter remanded for the district court to treat Harris' motion as a post-conviction petition for a writ of habeas corpus and to provide Harris with an opportunity to cure any pleading defects.

Doan v. Wilkerson, 130 Nev. Adv. Op. No. 48 (June 26, 2014) – The Court reverses a district court order modifying a divorce decree to partition marital property that was disclosed in the divorce pleadings but omitted from the written decree, ruling that 1) an ex-spouse who does not timely pursue a motion for relief from a divorce decree is not entitled to partition absent exceptional circumstances justifying equitable relief; 2) one such circumstance justifying equitable relief is when a community asset was not litigated and adjudicated in the divorce proceedings; and 3) in this instance, the contested marital asset was adjudicated in the divorce proceedings.

Conner v. State, 130 Nev. Adv. Op. No. 49 (June 26, 2014) – The Court reverses a jury conviction of first-degree murder and two counts of sexual assault, ruling that, because it is more likely than not that the State struck at least one prospective juror because of race [since the race-neutral explanation proffered by the State is belied by the record], the district court committed clear error in its ruling on Conner's Batson objection.

Druckman v. Ruscitti, 130 Nev. Adv. Op. No. 50 (June 26, 2014) – On consolidated appeals from district court orders establishing child custody, granting a motion to relocate with the minor child, and awarding attorney fees, the Court affirms in part, reverses in part, and remands, ruling that, while unmarried parents should be treated equally with married parents and have the same custody rights to their children [NRS 126.031(1)], the district court did not abuse its discretion in this instance in granting the mother's motion for primary physical custody and relocation, because the court considered all the relevant and necessary factors, including the reasons for the relocation and the child's best interest, before making the determination. The Court further rules that the district court abused its discretion in awarding respondent attorney fees as a sanction against appellant for filing a frivolous motion to stay the order pending appeal, since the motion was based on reasonable grounds in that appellant sought stability for his child.

Holdaway-Foster v. Brunell, 130 Nev. Adv. Op. No. 51 (June 26, 2014) – The Court reverses a post-divorce decree district court order declining to take jurisdiction in a child support matter, ruling that a 1989 Nevada child support order is controlling under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B (2012), and that Nevada has continuing, exclusive jurisdiction in this instance, where the mother and children continuously resided in Nevada and the parents did not consent to the

assumption of jurisdiction over and modification of the order by a court in Hawaii, the father's new state of residence.

Thomas v. Nev. Yellow Cab Corp., 130 Nev. Adv. Op. No. 52 (June 26, 2014) – The Court reverses a district court order dismissing a complaint in an action in which appellant taxicab drivers claimed damages for unpaid wages pursuant to Nev. Const. Art. 15, Sec. 16 (the Minimum Wage Amendment), ruling that the Minimum Wage Amendment, by clearly setting out certain exceptions to the minimum wage law and not others, supplants the exceptions listed in NRS 608.250(2) (remanded for further proceedings).

Jones v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 53 (July 3, 2014) – The Court grants a pro per writ petition challenging a district court order labeling petitioner a vexatious litigant and restricting his access to the courts. The Court begins its analysis by noting that the district court has authority to label indigent pro per civil litigants as vexatious litigants and to restrict their access to the courts, and rules that the district court may restrict a litigant from filing petitions and motions that challenge a judgment of conviction or the litigant's custody status pursuant to a judgment of conviction, subject to the guidelines set forth in Jordan v. State ex rel. Dep't of Motor Vehicles & Public Safety, 121 Nev. 44, 59, 110 P.3d 30, 41-42 (2005). A court imposing access restrictions on a vexatious litigant with respect to filings that involve post-conviction challenges to a judgment of conviction or computation of time served pursuant to a judgment of conviction must: 1) provide notice of and an opportunity to oppose the proposed restrictions; 2) create an adequate record that includes a list of the filings or other reasons that led it to conclude that a restrictive order is needed, including consideration of other less onerous sanctions to curb the repetitive or abusive activities; 3) make substantive findings as to the frivolous or harassing nature of the litigant's actions; and 4) narrowly tailor the restrictions to address the specific problem and set an appropriate standard by which to measure future filings. The Court concludes that the district court in this instance acted arbitrarily and capriciously when it determined that Jones was a vexatious litigant and entered an order restricting his access to the court.

Leavitt v. Siems, 130 Nev. Adv. Op. No. 54 (July 10, 2014) – The Court affirms a district court judgment on a jury verdict and post-judgment orders in a medical malpractice action, ruling that 1) the district court correctly applied Williams v. Eighth Judicial District Court, 127 Nev. ___, 262 P.3d 360 (2011), in holding that a defense expert's alternative causation testimony need not be stated to a reasonable degree of medical probability when being used to challenge an element of the plaintiffs claim; 2) improper ex parte communication with the opposing party's expert witness occurred, but a new trial is not warranted because appellant has not demonstrated prejudice; and 3) an employee's default may be not used against an employer co-defendant who is contesting liability.

Morrison v. Health Plan of Nev., 130 Nev. Adv. Op. No. 55 (July 10, 2014) – The Court affirms a district court order dismissing a tort action, ruling that that state common law negligence claims regarding the retention and investigation of contracted Medicare providers are expressly preempted by the federal Medicare Act.

State v. White, 130 Nev. Adv. Op. No. 56 (July 10, 2014) – The Court affirms a district court order granting defendant's pretrial petition for a writ of habeas corpus and

dismissing a burglary charge arising from a case in which White shot and killed his wife while they were separated and was charged with burglary while in possession of a firearm, in addition to murder, attempted murder and other charges. The Court analyzes the Legislature's expansion of common law burglary and concludes that a person cannot commit burglary of a home when he or she has an absolute right to enter the home, and in this instance White and his wife had agreed to alternate weekdays and weekends residing in the home with their children.

Simmons Self-Storage v. Rib Roof, Inc., 130 Nev. Adv. Op. No. 57 (August 7, 2014) – The Court affirms in part and reverses in part a final judgment in a mechanic's lien action arising from a dispute regarding the validity of materialmen's liens under NRS Chapter 108 against six properties, and the effect of surety bonds posted to release the liens on four of those properties. The Court rules that 1) under NRS 108.222 a materialman has a lien upon a property and improvements for which he supplied materials, in the amount of the unpaid balance due for those materials; 2) the district court's finding by substantial evidence that respondent supplied the steel at issue for the six properties established a materialman's lien on each property for the unpaid balance due on the steel delivered; 3) since a mechanic's lien is directed at a specific property, the district court must determine the total appropriate charge attributable to that property before ordering its sale and, the district court erred by ordering the sale of all six properties; and 4) because a surety bond replaces a property as security for the lien, the property cannot be sold where a surety bond was posted; instead, the lien judgment should be satisfied from the surety bond (remanded for further proceedings).

Wood v. Germann, 130 Nev. Adv. Op. No. 58 (August 7, 2014) – The Court answers a certified question under NRAP 5 in the affirmative, concluding that the statute of limitations in NRS 11.207, as revised in 1997, is tolled against an action for attorney malpractice, pending the outcome of the underlying suit in which the malpractice allegedly occurred.

Imperial Credit v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 59 (August 7, 2014) – The Court grants a writ petition challenging a district court order denying a motion to associate out-of-state counsel that met all of SCR 42's requirements for admission to practice, ruling that the district court's denial in such circumstances was an arbitrary and capricious exercise of discretion.

Brown v. McDaniel, 130 Nev. Adv. Op. No. 60 (August 7, 2014) – The Court affirms a district court order dismissing a post-conviction petition for a writ of habeas corpus, ruling that *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), does not alter the Court's prior decisions establishing that a petitioner has no constitutional right to post-conviction counsel and that post-conviction counsel's performance does not constitute good cause to excuse the procedural bars under NRS 34.726(1) or NRS 34.810 unless the appointment of that counsel was mandated by statute.

Las Vegas Sands v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 61 (August 7, 2014) – The Court denies a writ petition challenging a district court order finding that petitioners violated a discovery order and scheduling an evidentiary hearing to determine appropriate sanctions, ruling that 1) the mere existence of an applicable foreign international privacy statute does not preclude Nevada district courts from ordering

foreign parties to comply with Nevada discovery rules, but is relevant to a district court's sanctions analysis if the court's discovery order is disobeyed; 2) the district court in this instance properly employed this framework when it found that the existence of a foreign international privacy statute did not excuse petitioners from complying with the district court's discovery order; and 3) because the district court has not yet held the hearing to determine if, and the extent to which, sanctions may be warranted, intervention at this time would inappropriately preempt the hearing.

Byrd Underground, L.L.C. v. Angaur, L.L.C., 130 Nev. Adv. Op. No. 62 (August 7, 2014) – The Court answers in part certified questions under NRAP 5, concerning the priority of mechanics' liens based on visible commencement of construction, ruling that 1) visibility alone determines priority; 2) grading work may constitute visible commencement of construction of a work of improvement in some circumstances, as long as it is visible from a reasonable inspection of the site in a manner sufficient to provide notice of lienable work that may be entitled to priority; and 3) contract dates and permit issuance dates are irrelevant to the visible-commencement-of construction test set forth by NRS 108.22112, but may assist the trier of fact in determining the scope of the work of improvement. The Court declines to decide whether the circumstances presented in this instance constitute visible commencement of construction under NRS 108.22112 of a comprehensive work of improvement under NRS 108.22188 because it would require the Court to resolve the factual dispute between the parties.

In re Irrevocable Trust Agreement of 1979, 130 Nev. Adv. Op. No. 63 (August 7, 2014) – The Court grants a writ petition challenging a district court order granting partial summary judgment in a case arising from the real party in interest's execution of a deed gifting a condominium that she owned to an irrevocable trust for the benefit of her daughter, the petitioner. The transfer was later rescinded based on alleged unilateral mistakes in the execution of the deed conveying the property to the trust. The Court rules that 1) a donor may obtain relief from an erroneous gift if he or she proves by clear and convincing evidence that the donor's intent was mistaken and was not in accord with the donative transfer; and 2) the remedies available to correct such mistakes, which include rescission or reformation of the deed transferring the property, depend on the nature of the unilateral mistake in question.

Campos-Garcia v. Johnson, 130 Nev. Adv. Op. No. 64 (August 7, 2014) – In a jurisdictional prescreening of an appeal from a district court judgment and amended judgment on the jury verdict in a tort action, the Court dismisses in part and reiterates what constitutes an appealable order: “an appeal must be taken from an appealable order when first entered; superfluous or duplicative orders and judgments—those filed after an appealable order has been entered that do nothing more than repeat the contents of that order—are not appealable and, generally, should not be rendered.”

Barrett v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 65 (August 7, 2014) – The Court grants a writ petition challenging a district court order requiring a subcontractor to provide NRS Chapter 40 prelitigation notice to another subcontractor prior to filing a fourth-party complaint against it, ruling that nothing in the chapter requires such notice.

City of N. Las Vegas v. 5th & Centennial, 130 Nev. Adv. Op. No. 66 (August 7, 2014) – The Court denies a petition for rehearing of its March 21, 2014, order affirming in part,

reversing in part, and remanding to determine prejudgment interest in an eminent domain action, ruling that 1) the order properly concluded that prejudgment interest should be calculated from the date of taking, which in this case is the first date of compensable injury; 2) the City cannot raise its statute of limitations argument for the first time on rehearing; and 3) rehearing is not warranted to clarify whether the City can assert a standing defense on remand.

Greenberg Traurig v. Frias Holding Co., 130 Nev. Adv. Op. No. 67 (August 7, 2014) – The Court answers a certified question under NRAP 5 in the affirmative, concluding that Nevada law recognizes an exception to the common law litigation privilege for legal malpractice and professional negligence actions and, generally, an attorney cannot assert the litigation privilege as a defense to legal malpractice and professional negligence claims.

Brady Vorwerck v. New Albertson's, 130 Nev. Adv. Op. No. 68 (August 7, 2014) – The Court answers a certified question under NRAP 5 in the affirmative, concluding that the statute of limitations in NRS 11.207, as revised in 1997, is tolled against an action for attorney malpractice, pending the outcome of the underlying suit in which the malpractice allegedly occurred.

Las Vegas Sands v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 69 (August 7, 2014) – The Court grants in part a writ petition challenging a district court order authorizing the use of purportedly privileged documents, ruling that a former chief executive officer of a corporation, who is now suing his former employer, is not entitled to access the corporation's privileged documents for use in the litigation. A corporation's current management is the sole holder of its attorney-client privilege, and this precludes a finding that there is a class of persons outside the corporation's current officers and directors who are entitled to access the client's confidential or privileged information over the client's objection for use in litigation.

Major v. State, 130 Nev. Adv. Op. No. 70 (August 28, 2014) – The Court affirms a conviction, pursuant to a guilty plea, of child abuse, ruling that a district court has jurisdiction to impose restitution to the State for the cost of child care in a child abuse case where a family court has already imposed an obligation on the defendant for the costs of supporting the child, but that the district court must offset the restitution amount by the amount of the support obligation imposed by the family court.

Franchise Tax Bd. of Cal. v. Hyatt, 130 Nev. Adv. Op. No. 71 (September 18, 2014) – On an appeal and cross-appeal from a district court judgment on a jury verdict in a tort action alleging intentional torts and bad-faith conduct committed by California Franchise Tax Board (FTB) auditors during tax audits of Hyatt's 1991 and 1992 state tax returns, and from a post-judgment order awarding cost, the Court affirms in part, reverses in part, and remands. The Court first rules that the exception to sovereign immunity for intentional torts and bad-faith conduct survives adoption of the federal discretionary-function immunity test, which shields a government entity or its employees from suit for discretionary acts that involve an element of individual judgment or choice and that are grounded in public policy considerations, because intentional torts and bad-faith conduct are not based on public policy. The Court further holds that all of Hyatt's causes of action, except for his fraud and intentional infliction of emotion distress

claims, fail as a matter of law, and sufficient evidence exists to support the jury's findings that FTB made false representations to Hyatt regarding the audits' processes and that Hyatt relied on those representations to his detriment and damages resulted. In regard to Hyatt's claim for intentional infliction of emotional distress, the Court rules that medical records are not mandatory in order to establish a claim if the acts of the defendant are sufficiently severe; in this instance substantial evidence supports the jury's findings as to liability, but evidentiary and jury instruction errors committed by the district court require reversal of the damages awarded for emotional distress and a remand for a new trial as to the amount of damages on this claim only. The Court also holds that Nevada's policy interest in providing adequate redress to its citizens outweighs providing FTB a statutory cap on damages under comity, affirms the special damages awarded to Hyatt on his fraud cause of action, and concludes that there is no statutory cap on the amount of damages that may be awarded on remand on the intentional infliction of emotional distress claim. Finally, the Court reverses that portion of the district court's judgment awarding Hyatt punitive damages and rules that, because punitive damages would not be available against a Nevada government entity, under comity principles FTB is immune from punitive damages.

Deja Vu Showgirls v. State, Dep't of Tax., 130 Nev. Adv. Op. No. 72 (September 18, 2014) – The Court affirms a district court order dismissing a tax action for failure to properly follow administrative procedures by filing a petition for judicial review in the district court, ruling that the district court properly ruled that 1) after exhausting their administrative remedies for seeking a refund under Nevada's Live Entertainment Tax (NLET), appellants were limited to a petition for judicial review, rather than a *de novo* action; and 2) the district court properly refused to invoke judicial estoppel in lieu of granting respondents' motion to dismiss the underlying *de novo* action for lack of subject matter jurisdiction.

Deja Vu Showgirls v. State, Dep't of Tax., 130 Nev. Adv. Op. No. 73 (September 18, 2014) – The Court affirms a district court summary judgment rejecting a facial challenge to the constitutionality of Nevada's Live Entertainment Tax (NLET) and denying injunctive relief as to the enforcement of that tax, ruling that 1) NLET does not violate the First Amendment as related to speech (*i.e.*, dance); and 2) the district court properly dismissed appellants' as-applied challenge to NLET since they were required to exhaust their administrative remedies on this issue before seeking relief in the district court.

Zohar v. Zbiegien, 130 Nev. Adv. Op. No. 74 (September 18, 2014) – The Court reverses a district court order, certified as final under NRCP 54(b), dismissing respondents from a medical malpractice action. The issue is whether an expert affidavit attached to a medical malpractice complaint, which otherwise properly supports the allegations of medical malpractice contained in the complaint but does not identify all the defendants by name and refers to them only as staff of the medical facility, complies with the requirements of NRS 41A.071. The Court rules that 1) in order to achieve NRS 41A.071's purpose of deterring frivolous claims and providing defendants with notice of the claims against them, while also complying with the notice-pleading standards for complaints, the district court should read a medical malpractice complaint and affidavit of merit together when determining whether the affidavit meets the statutory requirements; and 2) in this case, the expert affidavit, while omitting several names,

adequately supported the allegations of medical malpractice against respondents contained in the complaint and provided adequate notice to respondents of the claims against them [remanded for further proceedings].

SFR Invs. Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. No. 75 (September 18, 2014) – The Court reverses a district court order dismissing a complaint and denying injunctive relief, ruling that 1) NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an individual homeowner's property for up to nine months of unpaid HOA dues; 2) with limited exceptions, this lien is "prior to all other liens and encumbrances" on the homeowner's property, even a first deed of trust recorded before the dues became delinquent; and 3) this is a true priority lien that can be foreclosed nonjudicially, such that its foreclosure extinguishes a first deed of trust on the property [remanded for further proceedings].

Watson v. State, 130 Nev. Adv. Op. No. 76 (October 2, 2014) – The Court affirms a jury conviction of first-degree kidnapping and first-degree murder in a death penalty case, ruling that 1) the district court did not clearly err in concluding that the State's use of six of its nine peremptory challenges to remove female venire members did not constitute a Batson violation where the percentage of the State's peremptory strikes used against female venire members was not so disproportionate to the percentage of females in the venire as to give rise to an inference of purposeful discrimination and the defense offered no other circumstances supporting such an inference; and 2) although mitigating circumstances are not limited to those that reduce a defendant's moral culpability, the district court did not err in instructing the jury that mitigating circumstances include those circumstances which reduce a defendant's moral culpability, since there is no evidence that the jury understood the instruction in this case to limit the scope of mitigating circumstances.

Artiga-Morales v. State, 130 Nev. Adv. Op. No. 77 (October 2, 2014) – The Court in a 4-3 decision affirms a jury conviction of battery with a deadly weapon causing substantial bodily harm; the issue on appeal is whether the district court erred in denying the defendant's pretrial motion for an order "mandating the prosecutor to provide a summary of any jury panel information gathered by means unavailable to the defense" - specifically, the criminal histories the prosecution admitted having run on the venire. The Court notes that other courts have declined to find reversible error in a trial court denying the defense access to juror background information developed by the prosecution, that there is neither a constitutional nor statutory basis for a reversal of the district court's denial of defendant's motion, and that the district court did not abuse its discretion in denying defendant's motion.

Guilfoyle v. Olde Monmouth Stock Transfer, 130 Nev. Adv. Op. No. 78 (October 2, 2014) – The Court affirms a district court order granting summary judgment in favor of a stock transfer agent in a case involving the liability of the agent to a stockholder for giving an allegedly incomplete and misleading answer to a question about its requirements for removing a restrictive legend on his stock. The Court rules that, while under NRS 104.8401 and NRS 104.8407 a transfer agent must, on proper request, register a transfer of securities without unreasonable delay, the statutes do not support liability here because the stockholder did not ask the transfer agent to remove the

legend and reissue him clean shares and, without a request to act, the agent's statutory duty to register a requested transfer does not arise.

Henson v. Henson, 130 Nev. Adv. Op. No. 79 (October 2, 2014) – The Court affirms a district court order modifying a qualified domestic relations order and denying appellant's motion for a judgment on pension payment arrearages, ruling that 1) unless specifically set forth in the divorce decree, an allocation of a community property interest in the employee spouse's PERS pension plan does not also entitle the nonemployee spouse to survivor benefits; and 2) because there are varying times at which a nonemployee spouse may elect to begin receiving his or her portion of the community property interest in the employee spouse's pension benefits, the nonemployee spouse must first file a motion in the district court requesting immediate receipt of those benefits.

Renown Reg'l Med. v. Second Jud. Dist. Ct., 130 Nev. Adv. Op. No. 80 (October 2, 2014) – The Court grants in part and denies in part a writ petition challenging a district court order granting partial summary judgment in an action regarding a hospital lien, ruling that, while a district court may grant summary judgment sua sponte if it gives the defending party notice and an opportunity to defend, in this case, the district court erred by granting summary judgment to the plaintiff on two claims for relief that were not argued in the summary judgment briefing or in oral argument, and without notice to the defendant that it intended to do so.

Copper Sands Homeowners v. Flamingo 94, 130 Nev. Adv. Op. No. 81 (October 2, 2014) – On consolidated appeals from a district court summary judgment in a construction defect action, certified as final under NRCP 54(b), and from post-judgment orders awarding attorney fees and costs, the Court affirms in part, reverses in part, and remands, ruling that when a third-party defendant prevails in an action and moves for costs pursuant to NRS 18.020, the district court must determine which party (plaintiff or defendant) is adverse to the third-party defendant and allocate the costs award accordingly [citing *Bonaparte v. Neff*, 773 P.2d 1147 (Idaho Ct. App. 1989)].

Buchanan v. State, 130 Nev. Adv. Op. No. 82 (October 2, 2014) – The Court reverses a jury conviction for burglary and robbery, ruling that when a defendant moves the court to strike a jury venire, and the district court determines that an evidentiary hearing is warranted, it is structural error for the district court to deny the defendant's challenge before holding that hearing to determine the merits of the motion.

Mason-McDuffie Real Estate v. Villa Fiore, 130 Nev. Adv. Op. No. 83 (October 2, 2014) – The Court affirms a district court judgment in a contract action, ruling that constructive eviction of a commercial tenant requires that the landlord be given notice of and a reasonable opportunity to cure the defect, and substantial evidence supports the district court's finding that the landlord in this case did not receive notice that the defect continued after repairs were attempted.

D.R. Horton, Inc. v. Betsinger, 130 Nev. Adv. Op. No. 84 (October 16, 2014) – On an appeal and cross-appeal from a final district court judgment entered on remand in a torts action, the Court affirms in part, reverses in part, and remands. The appeal arises from punitive damages proceedings on remand after issuance of the Court's decision in *Betsinger v. D.R. Horton, Inc. (Betsinger I)*, 126 Nev. 162, 232 P.3d 433 (2010), a case

that involved fraud and deceptive trade practices in the context of a real estate purchase and loan arrangement. The Court rules that NRS 42.005(3), which requires any trier of fact who determines that punitive damages are warranted [due to clear and convincing evidence of a defendant's oppression, fraud, or malice] to also determine the amount of damages to award, is unambiguous in imposing this requirement in a remand situation, so as to require the second jury on remand to reassess whether punitive damages are warranted before that jury may determine the amount of punitive damages to be awarded.

Byars v. State, 130 Nev. Adv. Op. No. 85 (October 16, 2014) – The Court affirms in part, reverses in part, and remands a jury conviction of prohibited possession of a firearm by an unlawful user of a controlled substance, addict, or felon; using or being under the influence of a controlled substance; and two counts of battery by a prisoner in lawful custody or confinement, in a case arising from Byars' arrest and subsequent refusal to submit to blood test. The Court first rules that, given the U.S. Supreme Court's decision in *Missouri v. McNeely* [569 U.S. __, __, 133 S. Ct. 1552, 1568 (2013)], the natural dissipation of marijuana in the blood stream does not alone constitute a *per se* exigent circumstance justifying a warrantless blood draw. The Court further concludes that NRS 484C.160(7) is unconstitutional because it permits the use of force to take a suspect's blood without a warrant, valid consent, or another exception to the warrant requirement. However, the Court rules that the blood draw was taken in good faith; thus, the exclusionary rule does not apply and the Fourth Amendment violation does not warrant reversal of the Byars' conviction. Finally, the Court rules that the district court erred by merging the sentence for being an unlawful user in possession of a firearm with the sentence for felon in possession of a firearm but not merging the underlying convictions, and reverses the portion of the judgment of conviction finding Byars guilty of being an unlawful user in possession of a firearm.

Oxbow Constr. v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 86 (October 16, 2014) – The Court denies consolidated writ petitions seeking relief from two district court orders in a construction-defect matter, ruling that the district court do not act arbitrarily or capriciously by not performing an NRCP 23 class-action analysis, determining that previously occupied units in a common-interest community do not qualify for NRS Chapter 40 remedies, and allowing claims seeking NRS Chapter 40 remedies to proceed for alleged construction defects in limited common elements assigned to multiple units in a building containing at least one "new residence."

Terry v. Sapphire Gentlemen's Club, 130 Nev. Adv. Op. No. 87 (October 30, 2014) – The Court reverses a district court summary judgment holding that appellants were independent contractors and not employees within the meaning of NRS Chapter 608, adopting the Fair Labor Standards Act's "economic realities" test for employment in the minimum wage context [29 U.S.C. §§ 201-219 (2012)] and concluding that appellants, performers at Sapphire Gentlemen's Club, are Sapphire employees within the meaning of NRS 608.010.

FDIC v. Rhodes, 130 Nev. Adv. Op. No. 88 (October 30, 2014) – The Court affirms in part and reverses in part a district court order dismissing a deficiency judgment action as time barred, ruling that 1 the FDIC extender statute [12 U.S.C. §1821(d)(14)(A) (2012)] preempts NRS 40.455(1)'s six-month time limitation; and because the FDIC filed

its deficiency judgment action within the FDIC extender statute's six-year time limitation, the district court erred in dismissing the FDIC's deficiency-judgment action as untimely.

Valdez v. Cox Commc'ns Las Vegas, 130 Nev. Adv. Op. No. 89 (November 6, 2014) – The Court grants a motion to dismiss in part, for lack of jurisdiction, an appeal from a district court order in an unpaid wage action, clarifying that under NRCP 21 one must take an appeal from an order finally resolving severed claims, even if the unsevered claims remain pending.

State, Dep't of Bus. & Indus. v. Check City, 130 Nev. Adv. Op. No. 90 (November 13, 2014) – The Court reverses a district court order in a declaratory relief action, ruling that NRS 604A.425's 25-percent cap on deferred deposit loans includes both the principal amount loaned and any interest or fees charged.

In re Parental Rights as to A.L., 130 Nev. Adv. Op. No. 91 (November 13, 2014) – The Court reverses a district court order terminating appellant's parental rights as to the minor children, ruling that the district court's findings of parental fault were all premised on appellant's failure to comply with a portion of her case plan requiring her to admit to intentionally abusing her child, and since the finding of intentional abuse was based on a concededly improper failure to admit evidence rebutting a statutory presumption, a new trial is required to determine appellant's parental rights.

In re Cay Clubs, 130 Nev. Adv. Op. No. 92 (December 4, 2014) – The Court grants a petition for en banc reconsideration of a panel opinion in consolidated appeals from a district court summary judgment certified as final under NRCP 54(b) and an order awarding costs, affirming in part, reversing in part, and remanding the matter. The litigation arose after the appellants purchased condominiums at the Las Vegas Cay Club and subsequently filed suit against numerous defendants including Cay Clubs and respondents JDI Loans and JDI Realty. The Court rules that 1) the district court erred in granting summary judgment to the JDI entities with regard to their liability under the partnership-by-estoppel doctrine that NRS 87.160(1) codifies; 2) partnership by estoppel may be found under NRS 87.160(1) where the subject of the actionable representation is a partnership or a joint venture; 3) the consent required for partnership by estoppel can be express or implied from one's conduct; 4) the statute's phrase "given credit" means giving credence to the representation by detrimentally relying on it to engage in a transaction with the purported partnership; 5) the claimant who seeks to prevail on the partnership-by-estoppel claim must have reasonably relied on the representation of partnership or joint venture; and 6) NRS 87.160(1) may impose partnership liability with respect to claims that implicate the reliance element that is required for partnership by estoppel —such claims are not limited to causes of action that sound in contract.

Sierra Pac. Power v. State, Dep't of Tax., 130 Nev. Adv. Op. No. 93 (December 4, 2014) – The Court affirms a district court order granting in part and denying in part a petition for judicial review of an administrative order that denied a use tax refund, ruling that NRS 372.270's tax exemption for locally mined minerals violates the dormant Commerce Clause of the United States Constitution, the offending language in NRS 372.270 is not severable, and NV Energy is not entitled to a refund.

Nev. Ass'n Servs. v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. No. 94 (December 4, 2014) – The Court grants in part and denies in part a writ petition challenging a district court order denying a motion to dismiss and a district court order denying a motion for summary judgment in a real property action, ruling that the voluntary payment doctrine applies in Nevada to bar a property owner from recovering fees that it paid to a community association and, the property owner did not demonstrate an exception to the doctrine which would preclude its application in the present case.

Fed. Ins. Co. v. Coast Converters, 130 Nev. Adv. Op. No. 95 (December 24, 2014) – On an appeal and cross-appeal from a judgment on a jury finding an insurance company liable for breach of contract and violation of the Nevada Unfair Claims Practices Act, the Court vacates the judgment in part, reverses and remands. The litigation arises from a dispute between an insured manufacturer and its insurer over whether certain losses should be covered under the insurance policy's property damage provision or its business interruption/extra expense provision, and whether a policy limit of \$2 million or \$5 million should apply to the manufacturer's property loss. The Court rules that categorizing the insured's loss under the policy is a question of law and determining which policy limit applies also presents a question of law, and therefore the district court erred in sending these questions to the jury.

First Fin. Bank v. Lane, 130 Nev. Adv. Op. No. 96 (December 24, 2014) – The Court reverses a district court judgment in a deficiency judgment action and remands, ruling that the definition of "indebtedness" found in NRS 40.451 simply ensures that a lender cannot recover in deficiency judgment for future advances secured but not paid at the time of default, and the section therefore places no consideration-based limitation on this lender's recovery against the instant borrowers and guarantor.

Brant v. State, 130 Nev. Adv. Op. No. 97 (December 24, 2014) – The Court affirms, with instructions as to restitution, a jury conviction of first-degree murder, directing the district court to correct the restitution amount in the judgment of conviction, since the parties had stipulated that the district court should reduce the restitution ordered to \$2,128.59.

Sadler v. PacifiCare of Nev., 130 Nev. Adv. Op. No. 98 (December 31, 2014) – The Court reverses a district court order granting judgment on the pleadings in a negligence action arising from an outbreak of hepatitis C linked to unsafe injection practices at certain health-care facilities in southern Nevada, ruling that, in the absence of a present physical injury, those patients who have so far tested negative, or who have not yet been tested, may state a claim for negligence based on the need to undergo ongoing medical monitoring as a result of the unsafe injection practices.

Stockmeier v. Green, 130 Nev. Adv. Op. No. 99 (December 31, 2014) – The Court reverses and remands a district court order denying a petition for a writ of mandamus and request for injunction, which sought to compel respondent to comply with the duties imposed by NRS 209.382(1)(b). The Court rules that the respondent, Nevada's Chief Medical Officer, has failed to comply with the statutory mandate to periodically examine and semiannually report to the Board of State Prison Commissioners regarding the nutritional adequacy of the diet of incarcerated offenders.

City of Reno v. IAFF, Local 731, 130 Nev. Adv. Op. No. 100 (December 31, 2014) – The Court reverses a district court order granting a preliminary injunction in a labor dispute

arising from the appellant's attempt to layoff firefighters due to a fiscal emergency. The district court enjoined appellant from implementing its decision while respondents pursued arbitration of their grievance disputing that appellant lacked the money to support the positions. The Court rules that respondents' grievance is not arbitrable under the parties' collective bargaining agreement [where the parties expressly recited appellant's statutory right under NRS 288.150(3)(b) to lay off any employee due to a lack of funds] and thus, there is no authority under NRS 38.222 for the district court's injunctive relief.