FEBRUARY 2022

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

One morning, Janet and two of her friends had breakfast together at a Reno café. They discussed breaking into some cars that were often parked on a dark street at night. They agreed to meet later that evening to carry out their plan. That afternoon Janet learned that Sue, one of her friends, intended to bring a handgun, "just in case." Janet called her other friend, Mary, and said she was not coming. That evening, without Janet, Sue and Mary broke into several cars and took property. While doing so, Sue shot and killed a man who was exiting a parked car.

A week later, around 4:00 a.m., Reno Police Officer Smith was driving his regular patrol route when he saw Janet cross a residential street and start to enter her car. Officer Smith's interest was piqued because he knew of reported car burglaries in roughly the same area. Officer Smith immediately turned on his spotlight, flooding Janet in a bright light. Janet stopped and waited as Officer Smith approached. Officer Smith asked her for identification. He also asked her why she was on the street so early in the morning. Janet presented her driver's license and answered that she had been visiting a friend.

Officer Smith had a hunch that Janet was actually casing cars. He told her she was being detained. He then handcuffed her and had her stand next to his patrol car while he ran a warrant check. Because there was a warrant for Janet's failure to appear at a municipal court hearing, he placed her under arrest. Subsequent onsite searches of Janet and her car yielded several items of property that had been taken from nearby cars. Just before being placed into a patrol car, Janet attempted to discard a package with methamphetamine. Another officer, who had arrived to assist

Officer Smith, saw Janet drop the package. He picked it up and asked her if it belonged to her. Janet answered, “not mine.”

One month later, following her pretrial release from jail, Janet was arrested at her home for the offenses committed by her friends, Mary and Sue

Please fully discuss:

1. Janet’s potential criminal culpability based on these facts and any possible defenses that she should raise; and

2. Whether Janet has any constitutional defenses she can raise and how the trial court should rule.

FEBRUARY 2022

NEVADA BAR EXAM

QUESTION NO. 2: ANSWER IN RED BOOKLET

Alex, Ben, and Chris visited Oasis, a water park in Reno, Nevada, to cool off from the desert heat. They left their belongings on a few lounge chairs and headed toward the slides.

Danielle, a lifeguard at Oasis, watched Alex, Ben, and Chris go down one of the slides headfirst. Danielle explained to them that they were prohibited from going down any of the slides headfirst because of potential head injuries and, if she caught them again, they would have to leave immediately. Chris rolled his eyes at Danielle and walked off. Frustrated, Danielle called Chris an "ugly jerk" and threw her metal water bottle at him, hitting his feet.

Alex and Chris then went to the wave pool and noticed it was extremely crowded. Undeterred, they swam to the deep end and waited for the waves to begin. After the first wave, Alex was pushed from behind by a swimmer causing Alex to collide with another person in the pool. The collision gave Alex a cut on his forehead and several broken teeth. An Oasis nurse stitched up Alex's cut free of charge. Had Alex not suffered from gum disease, his teeth would not have broken. Reno Municipal Code prohibits more than 50 people in a pool at any given time and a violation carries a $2,500 fine.

Chris needed a rest and went back to the lounge chairs. When he sat down, he realized his backpack was missing. Video surveillance later showed that Danielle walked off with it and put it in the lost and found bin.

Meanwhile, Ben was enjoying his time on the slides and impressing the ladies by going down headfirst. During one turn, Ben waved to the ladies while he went down headfirst on his back. Distracted by all the attention, Ben did not notice that a rusty nail had come loose at the end of the slide and scraped his shoulder on it. An Oasis manager then grabbed Ben by the wrist,

dragged him off the property, and handcuffed him to the parking lot fence. Ben could not sleep for weeks after his visit to Oasis.

That night, the Oasis manager yelled at the maintenance crew demanding to know why the rusty nail had not been replaced after Danielle had told them about it a week ago.

Please fully discuss the claims Alex, Ben, and Chris have against Oasis and Danielle, and the defenses Oasis and Danielle should assert.

Whitney was working in her restaurant when she heard gunshots. She ran out of the kitchen, into the lobby, and found her husband lying dead on the floor. She immediately called 911.

Whitney was sobbing and screaming while on the phone with the 911 dispatcher. The dispatcher had to ask her several times to repeat herself. The dispatcher could understand only that Whitney saw someone wearing a blue shirt run out the front door.

The police arrived within minutes. Whitney told the police she saw a man run away from the restaurant and pointed in the direction he ran. She also told the police he was carrying a rifle and shouted, "one down, nine more to go."

The police immediately began a search for the suspect. They located Brandi, in the restaurant parking lot, who told the officers she saw a man wearing a blue shirt drop something into a trash bin and run off.

A few minutes later, the police located David approximately five blocks from the restaurant. He was wearing a blue shirt. The police did not locate a weapon on his person. Upon further search, they found a rifle in a nearby trash bin. David was arrested and charged with murder.

The prosecution disclosed its intent to offer a ballistics evidence expert who would testify the gun found in the trash bin was the murder weapon. The defense filed a Motion in Limine to preclude the expert testimony. In support of its motion, the defense offered a letter stating the expert had been fired from a prior job for falsifying reports. The prosecution objected. The judge

denied the motion to exclude the expert witness.

The prosecution filed a pre-trial motion to admit Brandi's statements to the police. The basis for the motion was that she moved out of state and refused to return to testify. In support of its motion, the prosecution attached a transcript of a jail call from David to Brandi in which he told Brandi, "You won't like what will happen to you if you come to court." The judge admitted the testimony over the defense's objection.

A jury trial was conducted. The prosecution offered Whitney's 911 call into evidence. The defense objected and the judge sustained the objection.

The prosecution offered testimony from a police officer about the statements made by Whitney at the scene. The judge admitted the testimony over the defense's objection.

During cross-examination of David, the prosecution offered evidence of his conviction for sexual assault. David was paroled on this charge in 2015. The defense objected and the judge denied the request to admit the prior conviction.

When the ballistics expert testified and was asked by the defense about falsifying the records, the prosecution objected. The judge overruled the objection, and the witness denied that he had been fired. The defense then offered a copy of the letter, and the prosecution objected. The objection was sustained.

Please fully discuss the following rulings made by the Court:

1. The denial of the Motion in Limine and admission of the expert testimony.

2. The admission of statements made by Brandi to the police.

3. The exclusion of statements made by Whitney during the 911 call.

4. The admission of statements made by Whitney to officers at the scene of the crime.

5. The exclusion of David's conviction for sexual assault.

6. The exclusion of the employment termination letter of the ballistics expert.

FEBRUARY 2022

NEVADA BAR EXAM

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

William owned a small farm near Ely, Nevada. He recorded a grant bargain sale deed for the property in favor of Adam and Bob, as joint tenants. Adam obtained a loan from Ely National Bank (ENB) to cover unrelated personal expenses. ENB's loan to Adam was secured with a recorded deed of trust encumbering Adam's interest in the property.

Five years later, Adam and Bob leased the property to Carol under a ten-year lease. The lease required the landlord to pay property taxes. Carol immediately recorded a Memorandum of Lease. Later, Adam and Bob conveyed their interest in the property to Ed and Frank under a quitclaim deed, without repaying Adam's ENB loan and without notice to Carol. The signed quitclaim deed stated: "…from Adam and Bob to Ed and Frank."

For three months after the quitclaim deed was recorded, Carol paid all of the rent due under the lease to Adam and Bob, who accepted the rent. Ed and Frank served an eviction notice on Carol. Learning that Ed and Frank now owned the property, Carol notified them that the property taxes were delinquent. Ed immediately paid all of the property taxes due.

Adam then defaulted on his ENB loan. ENB recorded a Notice of Default.

Discuss fully under Nevada law:

1. Adam and Bob's rights and obligations regarding the property.

2. Ed and Frank's rights and obligations regarding the property.

3. Carol's rights and obligations regarding the property and use of the property.

FEBRUARY 2021

NEVADA BAR EXAM

QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

Andrew called his gardener, Bart, to ask if it was time to remove the dates from Andrew's palm trees so they would not fall into the swimming pool. Bart said, "The dates should be removed from the palm trees right away. I can do all five trees this week so long as the temperature here in Las Vegas is below 110 degrees. Cost is $500 per tree, which includes clean-up." Andrew said, "I am going out of town so please proceed immediately and email me pictures to confirm when you finish the job." A week later, Andrew received an email from Bart saying, "Although the temperature was under 110 degrees, I could only finish four of the five trees because I saw a beehive on the last tree, and I was afraid of being stung."

Andrew emailed Caleb, who advertised bee removal services, and offered to pay him $500 plus expenses to remove the beehive. Caleb researched the height of the palm trees and type of bees at the house. He then purchased a new extension ladder and special bee suit to do the job. On the way to Andrew's house, Caleb received a text from Andrew saying, "Please do not proceed." Caleb did nothing more and returned to his shop. Before Andrew sent the text, he had hired someone else who agreed to remove the beehive for half the price.

As soon as the beehive was removed, Andrew emailed Bart demanding that Bart finish removing the dates. Andrew heard nothing further from Bart and did not receive any emailed pictures confirming the job was done. When Andrew returned home two weeks later, the beehive was gone, and the dates

had been removed from all the palm trees. However, a substantial number of dates had fallen into the swimming pool damaging the pool pump and filter.

Andrew refused to pay Caleb's invoice for $750, which included $250 for expenses. Andrew also refused to pay Bart's invoice for $3,000, which included an extra $500 for the "bee hazard."

Please fully discuss the following:

1. Is there a contract between Andrew and Bart? If so, what are its terms?

2. What claims do Andrew and Bart have against each other and what defenses can they raise?

3. Is there a contract between Andrew and Caleb? If so, what are its terms?

4. What claims do Andrew and Caleb have against each other and what defenses can they raise?

FEBRUARY 2022

NEVADA BAR EXAM

QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

Larry is a Nevada lawyer facing ethical dilemmas.

Over 75% of Larry's business comes from Bob, a successful businessman with whom Larry has been friends since college. Larry has assisted Bob by setting up partnerships, LLCs, and other business organizations, negotiating and drafting contracts, and handling litigation.

Bob told Larry that he is negotiating a business deal with Charlie. Larry also represents Charlie in connection with his on-going business issues. Bob stated that he and Charlie want Larry to finalize the details and prepare the written contract because they both trust him, and it will be less expensive than bringing in another lawyer.

Bob also told Larry the "good news" that he had recently become engaged to Debra and asked Larry to prepare a prenuptial agreement, even though Bob knew that is not the kind of work Larry usually does. Larry previously represented Debra in connection with her bankruptcy. While representing Debra, Larry learned that men she dated had accused her of defrauding them and he saw some evidence those accusations might be true. Bob, who was unaware of Debra's past, noticed the look on Larry's face when he told him about the engagement. Bob then asked, "Is there something I should know?"

Larry and Bob also discussed the breach of contract lawsuit filed by Frank, a business supplier, against Bob. Bob was furious and insisted that Frank is a liar and a cheat. Frank made a settlement proposal that Larry thought was very reasonable and encouraged Bob to accept, but

Bob told him to reject it. Bob told Larry that if the litigation went on long enough, Frank would be unable to pay his lawyer and Bob could then get a better deal. Bob insisted that Larry obtain an extension of the discovery cut-off date to allow Larry to file several motions, the merits of which Larry questioned. Bob further demanded that Larry take multiple depositions that Larry did not believe were necessary. Bob's demands about how Larry should handle the litigation would cause a delay in the trial date.

Frank is the spokesman for a politically active, conservative religious group. Bob told Larry that Frank uses cocaine and is secretly having an affair with the wife of the religious group's leader. Bob demanded that Larry take the depositions of the group leader's wife and other members of the congregation about Frank's alleged use of cocaine and affair, and then examine Frank about those issues at trial. Bob insisted that Frank's behavior proves his testimony cannot be believed. Larry said he would have to think about the way Bob wanted to handle the litigation with Frank.

After an awkward pause in the conversation, Larry asked Bob if he would lend him $400,000 to purchase an office building. Larry told Bob that he would draft the promissory note.

Please fully discuss all ethical issues raised by these facts and how Larry should handle each issue pursuant to the Nevada Rules of Professional Conduct.

FEBRUARY 2022

NEVADA BAR EXAM

QUESTION NO. 7: ANSWER IN DARK BLUE BOOKLET

The City Council of Utopia, Nevada passed ordinances intended to entice new citizens to move into the City, improve the safety and quality of life of its citizens, and reduce noise and traffic related complaints.

First, to encourage veterans to move into Utopia, it passed the Veterans Hiring Ordinance (VHO), which required that all employers with a workforce greater than 20 employees hire veterans for at least half of all vacant employee positions. This ordinance was passed after the City's review of U.S. Department of Veterans Affairs studies showed that veterans would greatly contribute to an experienced workforce in Utopia. When it passed the ordinance, the City was unaware that the year before, Congress passed a law prohibiting hiring quotas of any kind by any employer.

Second, it passed the Noise Abatement Ordinance (NAO), which limited the number of under 25-year-old male residents who could live in a dwelling space to a maximum of two. Studies by the City over a five-year period showed 80% of the noise complaints made by citizens involved dwelling spaces with more than two young male adults living together.

Third, it passed the Traffic Abatement Ordinance (TAO), which prohibited any vehicles registered out-of-state from being parked at any residence or dwelling at any time. Pursuant to the ordinance, the penalty for a vehicle registered in a different state being parked at a residence or dwelling within the city was a $500.00 fine against the residential property owner. Based upon the City's traffic study, this

ordinance would reduce traffic by half in the more densely populated areas and encourage use of public transportation readily available and free for all persons.

Fourth, it passed the Traffic Safety Ordinance (TSO), which prohibited all persons over 78 years old from acquiring or renewing a driver's license. The City passed this ordinance after it determined that there were five times the number of vehicle accidents at the intersection directly adjacent to the City's largest retirement home, than at any other intersection in the City. This was true even though there were fewer cars traveling through that intersection than many other intersections with fewer accidents during the same period.

In federal court, the following challenges to the ordinances were filed:

1. A local labor union challenged the Veterans Hiring Ordinance (VHO);

2. The national office of a local fraternity, whose membership dropped when it had to close the local fraternity house, challenged the Noise Abatement Ordinance (NAO);

3. An Arizona car rental company, which rents 25% of its fleet to drivers traveling to Utopia, challenged the Traffic Abatement Ordinance (TAO); and

4. A 75-year-old Utopia citizen challenged the Traffic Safety Ordinance (TSO).

1. **Please fully discuss the standing of each challenger.**
2. **Assuming each challenger has standing, please fully discuss the constitutionality of each ordinance.**

Memo

From: Senior Partner

To: Bar Applicant

Re: Our client, Dr. Jeffrey Joyce

Date: Feb. 23, 2022

Our firm has a new client, Dr. Jeffrey Joyce. Dr. Joyce hired our firm in frustration after he suffered a multimillion-dollar verdict last month as a defendant in a medical malpractice case handled by his prior lawyers. The verdict was based on a finding that Dr. Joyce's pioneering treatment for traumatic spine injuries was too risky to meet the medical standard of care. The jury award of such high damages garnered publicity and now a floodgate has opened. Our client is being threatened with more lawsuits regarding his same medical technique. Most of the lawyers threatening litigation represent patients of Dr. Joyce who had disappointing results from his innovative method of spinal treatment.

We have also received communications from two lawyers in more complicated situations. These lawyers represent tort defendants who settled personal injury cases based on incidents in which the plaintiffs suffered traumatic spinal injuries subsequently treated by Dr. Joyce with his signature technique.

Our client, Dr. Joyce, was not a defendant in those cases. But considering the recent malpractice verdict against Dr. Joyce, these lawyers want to use a contribution theory to obtain from Dr. Joyce as much as possible of what they paid the injured plaintiffs with whom they settled. I need you to do preliminary research about these two matters.

Using the materials in the File and the applicable statutes and cases in the Library please prepare a memo explaining the following:

(1) Do Nevada statutes and cases allow contribution from doctors who treated the injuries but had no role in causing the original injury?
(2) Does Nevada permit a defendant to bring a new contribution lawsuit against someone who was never named in the original lawsuit?
(3) If such actions as threatened here are generally permissible, are there any limitations in the statutes or cases that would prevent the two actions threatened here against Dr. Joyce?

The applicable statutes and cases are in the library.

Library

Statutes

17.225. Right to contribution

1. Except as otherwise provided in this section and NRS 17.235 to 17.305, inclusive, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

2. The right of contribution exists only in favor of a tortfeasor who has paid more than his or her equitable share of the common liability, and the tortfeasor's total recovery is limited to the amount paid by the tortfeasor in excess of his or her equitable share. No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability.

3. A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

17.235. Effect of judgment against one tortfeasor

The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

NRS 17.245. Effect of release or covenant not to sue

1. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount

stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.

2. As used in this section, "equitable indemnity" means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

17.255. Intentional tort bars right to contribution

There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

N.R.S. 17.285

17.285. Enforcement of right of contribution

1. Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

2. Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

3. If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.

4. If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the tortfeasor's right of contribution is barred unless the tortfeasor has:

(a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him or her and has commenced an action for contribution within 1 year after payment; or

(b) Agreed while action is pending against him or her to discharge the common liability and has within 1 year after the agreement paid the liability and commenced an action for contribution.

5. The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

Cases

Supreme Court of Nevada.

REPUBLIC SILVER STATE DISPOSAL, INC. v. Andrew M. CASH, M.D

|

(2020)

When a tortfeasor settles with the plaintiff, may the tortfeasor then assert a claim for contribution against a doctor who allegedly caused new injuries in treating the original injury? We hold that the right of contribution exists when two parties are jointly or severally liable for the same injury. Whether the parties are joint or successive tortfeasors is not material, so long as both parties are liable for the injury for which contribution is sought. Because appellant Republic Silver State Disposal and respondent Dr. Andrew Cash were jointly or severally liable for the injuries Cash allegedly caused and Republic settled those claims, Republic may pursue an action for contribution against Cash. That Cash was not a defendant in the original suit that Republic settled does not impair Republic's right to seek contribution.

Marie Gonzales was injured in an accident involving a truck driven by Republic's employee. Dr. Cash treated her original injury and allegedly caused further injuries. Although Gonzales sued Republic and its employee, she did not sue Cash or any other medical providers, and Republic did not file a third-party complaint. Gonzales and Republic settled Gonzales's claims for $2 million. The settlement agreement expressly discharged Gonzales's claims against her medical providers and reserved Republic's rights under the Uniform Contribution Among Tortfeasors Act (UCATA) as enacted in Nevada. *See* NRS 17.225-.305.

Within one year of settling the claims, Republic sued Cash, his company, and Desert Institute of Spine Care, LLC, for contribution. Republic alleged that Cash committed malpractice and caused Gonzales new and different injuries from those sustained in the accident. Republic argued that it was entitled to seek contribution from Cash because the settlement discharged Gonzales's claims against him and imposed liabilities on Republic in excess of its equitable share. Cash argued that, pursuant to Republic's allegation of new and different injuries, he was a successive tortfeasor rather than a joint tortfeasor and that no right of contribution exists among successive tortfeasors.

"Contribution is a creature of statute" under Nevada law. *Doctors Co. v. Vincent*, 120 Nev. 644, 650, 98 P.3d 681, 686 (2004). "[W]here two or more persons become jointly or severally liable in tort for the same injury[,] ... there is a right of contribution among them." NRS 17.225(1). Contribution permits "a tortfeasor who has paid more than his or her equitable share of the common liability" to recover the excess from a second tortfeasor, up to the amount of the second tortfeasor's "equitable share of the entire liability." NRS 17.225(2). A tortfeasor who settles with a claimant may recover contribution from another tortfeasor only if the settlement extinguishes the second tortfeasor's liability. NRS 17.225(3). Finally, a settling "tortfeasor's right of contribution is barred unless the tortfeasor has ... [a]greed while action is pending against him or her to discharge the common liability and has within 1 year after the agreement paid the liability and commenced an action for contribution." NRS 17.285(4)(b).

A right of contribution is present where there is an injury for which two persons are jointly or severally liable, regardless of whether the tortious conduct may be characterized as successive. This court has repeatedly permitted contribution claims by original tortfeasors against doctors who subsequently negligently treat the original injury. Other states have likewise upheld a right of contribution among successive tortfeasors under similar circumstances. *See* *Lutz v. Boltz*, 100 A.2d 647, 648 (Del. Super. Ct. 1953) ("[I]t is joint or several *liability*, rather than joint or concurring *negligence*, which determines the right of contribution.") While a right of contribution would not be present if a successive tortfeasor produced a *completely* independent injury, such is not the case here.

Republic argues that Cash was subject to a claim for contribution as a joint tortfeasor. We agree. "[I]t is well-settled law that the original tortfeasor is liable for the malpractice of the attending physicians." *Hansen v. Collett*, 79 Nev. 159, 165, 380 P.2d 301, 304 (1963). Subsequent medical providers, however, are not relieved of liability thereby for their own actions. Instead, both the original tortfeasor and the physicians are liable for injuries caused by malpractice and are joint tortfeasors in this regard. Here, Republic, as the original tortfeasor, was liable for Cash's malpractice in treating Gonzales's original injury. Cash was liable to Republic to the extent of the common liability in excess of Republic's equitable share of the liability. *See* NRS 17.225(1), (2).

The disposition of Gonzales's claims by settlement between Republic and Gonzales does not impair the right of contribution in a subsequent suit by Republic against Cash. Nevada expressly recognizes that a right of contribution can arise from a settlement between the injured plaintiff and one tortfeasor, so long as the settlement extinguishes the other tortfeasor's liability for the original tort. *See* NRS 17.225(3). The settlement agreement here plainly stated that it discharged any claims Gonzales may have against a medical provider in this instance and thus extinguished Cash's liability to Gonzales. *See* NRS 17.225(3). Finally, Republic commenced its action for contribution within one year of the settlement. *See* NRS 17.285(4)(b). Viewing the evidence in the light most favorable to Republic, Republic was entitled to seek contribution, and the district court therefore erred in granting summary judgment to Cash on Republic's contribution claim.

133 Nev. 930

Supreme Court of Nevada.

MCCROSKY v.
CARSON TAHOE REGIONAL MEDICAL CENTER

Dec. 28, 2017

Tawni McCrosky’s child was delivered by Dr. Hayes at Carson Tahoe Medical Center (CTRMC) in 2013. The delivery did not go as planned and resulted in McCrosky's child suffering injuries. McCrosky sued Dr. Hayes and CTRMC, alleging that they provided negligent care which proximately caused her son's injuries. McCrosky settled with Dr. Hayes prior to trial. In their settlement, McCrosky and Dr. Hayes signed a release which explicitly reserved “[a]ll rights against the hospital predicated upon the actions or omissions of Dr. Hayes.”

The district court held that McCrosky's settlement with Dr. Hayes “removed the basis for any additional recovery from [CTRMC] for Dr. Hayes’ conduct. To hold otherwise would result in a double recovery for Plaintiffs....” We disagree.

Under the common law, “the release of one tortfeasor automatically released all other potential tortfeasors.” *Russ v. Gen. Motors Corp.*, 111 Nev. 1431, 1435, 906 P.2d 718, 720 (1995) (criticizing the common law rule as “harsh and without any rational basis”). Finding the common law rule unsatisfactory, the Nevada Legislature abrogated that rule with NRS 17.245, which establishes that one tortfeasor's settlement does not release others liable for the same tort unless the settlement so provides.

McCrosky's settlement with Dr. Hayes expressly reserved all claims against the employer. Thus, under NRS 17.245, her settlement does not extinguish CTRMC's vicarious liability, nor will this determination result in a double recovery for McCrosky. Should McCrosky recover damages from the hospital on a vicarious liability theory, those damages will be reduced by the amount McCrosky already received from Dr. Hayes. *See* NRS 17.245(1)(a).

Supreme Court of Nevada.

THE DOCTORS COMPANY (TDC) v. VINCENT
(2004)

In this appeal, we consider the procedures for perfecting, as part of a settlement, claims for contribution among joint tortfeasors. As discussed below, these remedies allow persons extinguishing their individual tort liabilities to seek reimbursement in part or in full from other responsible parties.

This appeal centers upon related statutory principles. *See* NRS 17.225 to 17.305. A joint tortfeasor seeking to perfect a contribution claim in the context of a settlement must first extinguish the liabilities of the other joint tortfeasors against whom contribution recovery is sought.

Samuel Woods, Jr., brought the action below against Robert Vincent and The Doctors Company (TDC). The suit concerned attempts by Vincent, an independent insurance agent, to place medical insurance coverage for Woods with TDC, TDC's acceptance of that coverage, and its ultimate rejection of a claim for benefits. Shortly before trial, Woods settled with the TDC defendants for $2.75 million and with Vincent for $20,000. Both settlements were approved by the district court as in good faith under NRS 17.245. In this appeal, TDC contends that the district court abused its discretion in approving Vincent's settlement, which effectively cut off TDC's claims against Vincent for contribution. Woods is not a party to this appeal.

In February 1998, Woods sought short-term medical coverage through Vincent, an independent insurance agent. Woods claimed that he paid the initial premium to TDC by delivering a check to Vincent on February 7, 1998. Vincent claimed that he or his assistant mailed the check with the TDC application form to TDC's insurance administrator, NMA, shortly before midnight on February 9, 1998. The forwarding envelope bore Vincent's private meter postage mark of that date. Either Vincent or Woods checked a box on the TDC application form indicating that the effective date of coverage was to be “the date after postmark.” Notwithstanding Vincent's representations concerning the date of mailing, the United States Postal Service (USPS) did not place its postmark on the envelope until February 12, 1998.

Woods was seriously injured in an accident at his home on February 11, 1998, between the two possible starting dates for coverage, February 10 and 13, 1998. Based upon the USPS postmark date of February 12, 1998, TDC ultimately denied Woods' claims for approximately $350,000 in medical expenses.

Woods filed his complaint in district court against Vincent and the TDC defendants seeking special, general and punitive damages. Shortly before trial, based upon the potentially negative evidence that surfaced during discovery, TDC settled with Woods for $2.75 million. The TDC settlement did not, by its terms, extinguish Vincent's liability.

At the hearing memorializing the TDC settlement, Vincent's counsel reported that he too had settled with Woods, but for the relatively nominal sum of $25,000. After TDC refused to agree to the good faith of Vincent's settlement, Vincent moved for its approval under NRS 17.245. Although noting the disparity between the two settlements, Vincent argued that he had done

nothing wrong, and that his liability was only tangential in relation to TDC's mishandling of the claim, *i.e.*, TDC's wrongful refusal to pay benefits in connection with Woods' accident. TDC argued that the Vincent/Woods' settlement was grossly disproportionate to the relative degree of his exposure to Woods.

Thereafter the district court determined that Vincent settled with Woods in good faith. Accordingly, the district court approved Vincent's settlement and entered a final judgment. On appeal, TDC challenges the order of approval because it effectively barred TDC's claims for contribution against Vincent.

Contribution is a creature of statute. Under the Nevada statutory formulation, the remedy of contribution allows one tortfeasor to extinguish joint liabilities through payment to the injured party, and then seek partial reimbursement from a joint tortfeasor for sums paid in excess of the settling or discharging tortfeasor's equitable share of the common liability.

TDC argues that the district court's erroneous good-faith ruling about the Vincent settlement improperly voided its contribution rights perfected in its own prior settlement. However, TDC's counsel conceded at the oral argument of this appeal that TDC's settlement on behalf of the TDC defendants, by its terms, did not extinguish Vincent's liability. According to counsel, the release documents concerning the TDC settlement did not mention Vincent or the preservation of any claims against him for contribution. This omission is fatal to TDC's potential contribution claim as a matter of law.

In this connection, NRS 17.225(3) provides:

> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement ....

Under NRS 17.225(3), once TDC settled without extinguishing Vincent's liability, Vincent became immune to TDC's contribution action. Accordingly, the ultimate approval of Vincent's settlement as in good faith did not, in any respect, cut off perfected contribution rights held by TDC. NRS 17.245(1)(a) and NRS 17.285(4) reinforce this conclusion. NRS 17.245(1)(a) provides that a release given in good faith to one of two or more persons liable in tort for the same injury "does not discharge any of the other tortfeasors from liability ... *unless its terms so provide.*" (Emphasis added.) NRS 17.285(4) bars contribution rights unless the party seeking contribution has agreed to discharge the common liability during the pendency of a filed action, has paid the liability and commenced the contribution action within one year thereafter.

This being the case, TDC's failure to perfect its contribution rights in the first instance renders moot any appellate assignments of error concerning the effect of the good-faith ruling on that claim.

Blue & Red Attorneys at Law

February 16, 2022

Smith & Day LLP
23567 Maryland Parkway
Las Vegas, Nevada

Re: Green Cab Company/Eve Wharton

Dear Senior Partner:

Green Cab Company has retained this firm to seek contribution in the amount of $800,000, from your client, Jeffrey Joyce, MD, for injuries suffered by Eve Wharton resulting from spinal surgery performed by your client on March 31, 2020. Ms. Wharton sued our client for damages suffered in an automobile accident. The case was settled during trial by our client for $1,000,000 on March 17, 2021.

It has since come to our attention that Dr. Joyce's treatment for traumatic spine injuries was the major cause of Ms. Wharton's injury. Indeed, there have been other judgments entered against Dr. Joyce based on jury verdicts finding that the treatment introduced by Dr. Joyce is too risky to meet the medical standard of care in Las Vegas.

Enclosed please find a file stamped copy of our Complaint dated February 15, 2022, naming Dr. Joyce and Does I-X. Our client would like to give you and your client the opportunity to settle this matter prior to service of the Complaint. Please let us know no later than Monday, March 7, 2022, if you are interested in settlement discussions, otherwise we will proceed with service of process and litigation.

/s/ Jill Green

Senior Partner

Blue & Red Attorneys at Law

Memorandum

From: Senior Partner, Smith & Day

To: Joyce file

Re: Telephone Call with Janice McKenzie, esq., attorney for Brutus Boss

Date: Feb. 20, 2022

Ms. McKenzie called me today and informed me that she has been retained by Brutus Boss. They are threatening to sue Dr. Joyce for contribution arising out of injuries suffered by a Jack Steinbeck from spinal surgery performed by Dr. Joyce on September 13, 2020. McKenzie said that Boss is a high-profile professional wrestler who settled a lawsuit for injuries to Jack Steinbeck caused when Boss shoved Steinbeck into a ditch in a road rage incident. Steinbeck's spinal injuries were treated surgically by Dr. Joyce, but Steinbeck now suffers tremors in both legs. Boss apparently settled the Steinbeck suit for $500,000 on March 12, 2021. McKenzie said her client instructed her to file suit against Joyce if the matter was not settled within the next 30 days.

Settlement Agreement

This Settlement Agreement dated this 17th day of March 2021 is entered into by and between Eve Wharton (Wharton) and Green Cab Company, a Nevada corporation (Green Cab).

RECITALS

A. On March 20, 2020, Wharton was a passenger riding in a Green Cab taxi driven by Terry Adams traveling down Maryland Parkway in Las Vegas, Nevada. Mr. Adams ran a red light while traveling north bound at the Maryland Parkway and Tropicana intersection. Mr. Smith was charged with reckless driving and was found to be operating the taxicab with a suspended commercial driver's license.
B. Wharton filed suit against Green Cab and Mr. Adams seeking damages in excess of $1,000,000 dollars due to the permanent damage to her spine resulting directly from Green Cab's and Smith's negligence. The claims against Green Cab are based on negligence, negligent supervision, negligent hire, and respondeat superior.
C. The case was set for a jury trial on March 15, 2021. This, the third day of the trial, the parties have agreed to resolve their claims and enter into this final and binding Settlement Agreement.

WHEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Green Cab agrees to pay Wharton the sum of $1,000,000, in the form of a structured settlement payable as follows:

a. $100,000 upon the execution of this Settlement Agreement;
b. $100,000 per year for a period of nine (9) years commencing June 1, 2021, and payable each June 1st thereafter through and including June 1, 2030.
c. Failure to make any single payment shall constitute a material breach of this agreement. upon failure to cure such a material breach within 10 days thereof the entire unpaid balance together with interest on the unpaid balance at the annual rate of twelve percent (12%) from the date of this Settlement Agreement until paid.

2. Wharton shall provide Green Cab with a release of all claims against Green Cab.
3. This Settlement Agreement contains the parties' entire agreement with regard to the accident and Wharton's injuries and contains the entire agreement and supersedes and replaces any prior or contemporaneous agreements as to this matter, whether oral or written.
4. This agreement is the final and binding agreement of the parties, and any prior or contemporaneous agreements shall be integrated herein.
5. Wharton specifically reserves her right to seek compensation for her damages suffered from any other person or entity who may have caused or contributed to the accident and her damages.
6. Green Cab shall execute a deed of trust encumbering Green Cab's office building and parking garage securing payment of this obligation.
7. This Settlement Agreement shall be governed by Nevada Law.

/ss/ Edith Wharton

/ss/ Green Cab Company

By:

Its:

TO: Deputy Attorney General

FROM: Attorney General

SUBJECT: Open Meeting Law Complaint

DATE: February 21, 2022

A complaint was filed on February 15, 2022, with the Office of the Attorney General alleging violations of the Nevada Open Meeting Law by the City Council of Silver City at its February 8, 2022, meeting. The Complaint alleges that the City Council, which is comprised of five members, violated the Open Meeting Law in various manners.

Attached are:

1. The Complaint;
2. The agenda and minutes for the February 8, 2022, meeting; and
3. An affidavit responding to the Complaint.

The Office of the Attorney General has statutory enforcement powers under the Open Meeting Law and the authority to investigate and prosecute violations of the Open Meeting Law. Using the attached Library, please provide me with a memo that addresses any potential issues under the Open Meeting Law raised in connection with the conduct of the meeting, including those raised in the Complaint. Your memo should include your analysis of each of the issues and your conclusion regarding how the court will rule on each of these issues.

February 10, 2022

Dear Attorney General,

This letter constitutes a complaint under Nevada's Open Meeting Law (chapter 241 of NRS) with respect to the conduct of the City Council of Silver City at its February 8, 2022, meeting.

I attended this meeting because I am very interested in the fiscal matters of the City, specifically the appointment of the new Director of Finance. The City Council violated the Open Meeting Law by deciding the appointment of the Director of Finance outside of a public meeting. While I was at City Hall the morning of the meeting, I overheard Council Members Dodger and Doe, who were sitting in the cafe there, discussing the candidates with Mayor Brown who was on speaker mode on Dodger's cellphone.

While attending the February 8, 2022, meeting, I was surprised to witness the City Council acting on the application for the special use permit for the location of the slaughterhouse. Had I not been attendance, I would not have known that the issue was up for a vote or been able to make public comment. This issue has been the subject of substantial opposition and had received a lot of coverage in the press. I live close to the proposed location for the slaughterhouse and am adamantly opposed. I was also cut off during my public comment, which is a violation of the Open Meeting Law.

Please take a close look at this meeting because I believe that the City Council has run afoul of the Open Meeting Law in many areas.

Sincerely,

Al Rabblerouser

MEETING NOTICE AND AGENDA

Name of Organization: City Council of Silver City

Date and Time of Meeting: Tuesday, February 8, 2022

5 p.m.

Place of Meeting: City Hall, 123 Main Street, Silver City, NV

I. Call to order, roll call

II. Public Comment (This item is for either public comment on any action item or for any general public comment.)

III. Approval of the Minutes of the January 12, 2022, City Council Meeting [For possible action.]

IV. Closed Session - Appointment of Director of Finance [For possible action.]

V. Open Session - Selection of Director of Finance [For possible action.]

VI. Closed Session with City Attorney

VII. Request for Approval of Application for Special Use Permit - Joe Smith, ABC, LLC [For possible action.]

VIII. Public Comment (This item is for either public comment on any action item or for any general public comment.)

IX. Adjournment

NOTE 1: Items on this agenda may be taken in a different order than listed. Items may be combined for consideration by the Council. Items may be pulled or removed from the agenda at any time.

NOTE 2: We are pleased to make accommodations for members of the public who are disabled.

NOTE 3: Notice of this meeting was posted in the following locations: City Hall, 123 Main Street, Silver City, NV; City Library, 101 A Street, Silver City, NV; City Courthouse, 500 First Street, Silver City, NV; City Administrative Building, 200 Main Street, Silver City, NV. Notice of this meeting was posted on the City's Internet website and through the State's official website at https://notice.nv.gov

NOTE 4: Supporting public material provided to Council Members for this meeting may be requested from Tom Wilson, City Hall, 123 Main Street, Silver City, NV, (775) 555-1000 and is/will be available at the following locations: Meeting locations and Silver City's website at www.silvercity,org

MINUTES

of the meeting of the

CITY COUNCIL OF SILVER CITY

February 8, 2022

The City Council of Silver City held a public meeting on February 8, 2022, beginning at 5 p.m. at the City Hall, 123 Main Street, Silver City, NV 89000.

1. Call to order, roll call

The meeting was called to order by Chairperson Mayor Charlie Brown. Present were the other Council Members Harry Smith, Peter Knowitall, Roger Dodger, and Sue Doe. Also present were City Manager Sue Hall and various staff members of the City. Members of the public were asked to sign in, and the sign in sheet is attached to the original minutes as Exhibit A.

2. Public comment (1st period)

No members of the public made public comment.

3. Approval of minutes of previous meeting,

The minutes of the January 12, 2022, meeting were approved with changes.

4. Closed session to discuss the appointment of the Director of Finance.

On motion by Council Member Dodger, seconded by Council Member Brown, and approved with a unanimous vote, a closed session was conducted to discuss the appointment of a new Director of Finance because the previous Director retired effective December 31, 2021. The City Council interviewed the three applicants for the position.

5. Open Session - Selection of Director of Finance.

Following the closed session, the City Council went back into open session to take action. Council Member Dodger made a motion, seconded by Council Member Doe, to appoint Ms. Banks to the position of Director of Finance. The motion was approved by a vote of 3-2.

6. Closed Session with City Attorney.

The City Attorney reported that the City's Public Works Department recently learned that a portion of a Silver City Road was misplaced as a result of an error by a Silver City surveying crew and that the road now encroaches 10 feet onto an adjacent parcel owned by Mr. Farmer. The City Attorney proposed approaching Mr. Farmer to offer $50,000 to purchase the 10-foot portion. Council Member Dodger recommended a $10,000 purchase price. Council Member Doe recommended keeping the issue quiet unless Mr. Farmer approached the City for compensation. Chairperson Brown recommended tabling the issue. Council Member Smith mentioned that traffic in the vicinity near the encroachment was becoming much busier since a new subdivision had been built nearby and that maybe a streetlight needed to be installed in the area. Council

Member Brown made a motion, seconded by Council Member Doe, to direct the Department of Public Works to initiate a traffic study at that location, which passed by a vote of 5-0.

7. Request for Approval of Application for Special Use Permit - Joe Smith, ABC, LLC.

Joe Smith provided a presentation on the benefits of the approval of the special use permit for the operation of a slaughterhouse in the City's limits, including additional jobs and the availability of farm-to-table food sources. Staff recommended approval of the special use permit subject to conditions restricting the facility's drainage. On motion by Council Member Knowitall, seconded by Council Member Smith, the application was approved upon a vote of 3-2.

8. Public Comment (2nd period).

Citing the late hour, Chairperson Brown stated that public comment would be limited to 3 minutes per person.

Mr. Jones complained about the potholes on Main Street.

Mr. P.E. Mann urged the City Council to restore funding in the budget for the after-school recreation program at the Community Center. He stated that a matching grant was available if the City provided $5,000.00 by the end of the week. Citing the importance of the program, Council Member Smith made a motion, seconded by Council Member Dodger, to allocate $5,000.00 as matching money for the grant to meet the deadline. The motion was approved by a vote of 5-0.

Mr. Rabblerouser voiced his opposition to the approval of the special use permit for the location of the slaughterhouse facility. As the owner of a home close to the proposed facility, he cited the noise and smell that such a facility would generate. Mr. Rabblerouser also voiced his disagreement with the new policy of the Bureau of Land Management on the management of wild horses in Nevada. Chairperson Brown interjected, stating that the wild horse policy is outside the City Council's jurisdiction and that his time for public comment had ended.

9. Adjournment was unanimously approved at nine p.m.

AFFIDAVIT OF COUNCIL MEMBER DODGER

On the morning of February 8, 2022, I ran into Council Member Doe at the cafe in City Hall. We grabbed some coffee and were lamenting the recent retirement of the Director of Finance, who had been in that position for 20 years. We realized that we didn't know a lot about the candidates for the position beyond their resumes. Council Member Doe then called Mayor Brown and put him on speakerphone to see if he knew anything about them. Mayor Brown said that he knew that Candidate Banks was well-qualified and had held a comparable position in the private sector but didn't know anything about the other two candidates.

Sworn this 7th day of February 2022

___signed_____

Roger Dodger

LIBRARY

CONSTITUTIONAL PROVISION

Constitution of the State of Nevada, Article 1

Sec: 9. Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.

NEVADA REVISED STATUTES

NRS 241.010 Legislative declaration and intent. In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

NRS 241.015 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Action" means:

(a) A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;

(c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present, whether in person or by means of electronic communication, during a meeting of the public body; or

(d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Deliberate" means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.

3. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present, whether in person or by means of electronic communication, at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present, whether in person or by means of electronic communication:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

4. Except as otherwise provided in NRS 241.016, "public body" means any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which

advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue if the administrative, advisory, executive or legislative body is created by:

(a) The Constitution of this State;

(b) Any statute of this State;

(c) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;

(d) The Nevada Administrative Code;

(e) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;

(f) An executive order issued by the Governor; or

(g) A resolution or an action by the governing body of a political subdivision of this State;

5. "Quorum" means a simple majority of the membership of a public body or another proportion established by law.

NRS 241.016 Application of chapter; exempt meetings and proceedings; specific exceptions; circumvention of chapter.

1. The meetings of a public body that are quasi-judicial in nature are subject to the provisions of this chapter.

2. The following are exempt from the requirements of this chapter:

(a) The Legislature of the State of Nevada.

(b) Judicial proceedings, including, without limitation, proceedings before the Commission on Judicial Selection and, except as otherwise provided in NRS 1.4687, the Commission on Judicial Discipline.

(c) Meetings of the State Board of Parole Commissioners when acting to grant, deny, continue or revoke the parole of a prisoner or to establish or modify the terms of the parole of a prisoner.

3. The exceptions provided to this chapter, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies at a physical location or by means of a remote technology system. A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute.

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

(a) The time, place and location of the meeting.

(b) A list of the locations where the notice has been posted.

(c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term "for possible action" next to the appropriate item.

(3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

➥ The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action regarding a person, the name of that person.

(6) Notification that:

(I) Items on the agenda may be taken out of order;

(II) The public body may combine two or more agenda items for consideration; and

(III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

(7) Any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.

NRS 241.030 Holding closed meeting to consider character, misconduct, competence or health of person or to prepare, revise, administer or grade examinations.

1. Except as otherwise provided in this section, a public body may hold a closed meeting to:

(a) Consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

(b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.

2. A public body may close a meeting pursuant to subsection 1 upon a motion which specifies:

(a) The nature of the business to be considered; and

(b) The statutory authority pursuant to which the public body is authorized to close the meeting.

3. This chapter does not:

(a) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(b) Prevent the exclusion of witnesses from a public or closed meeting during the examination of another witness.

(c) Require that any meeting be closed to the public.

(d) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

NRS 281.005 "Public officer" defined. As used in this chapter, "public officer" means a person elected or appointed to a position which:

1. Is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and

2. Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.

CITY CHARTER OF SILVER CITY

Sec. 1.080 Executive officers.

1. The following positions are executive officers within the City:

(a) City Manager.

(b) City Attorney.

(c) Assistant City Manager or Deputy City Manager.

(d) City Clerk.

(e) Director of Finance.

(f) Chief of Police.

(g) Fire Chief.

2. The City Council may combine any positions for executive officers by ordinance.

3. The appointments of the City Manager and City Attorney must be made by the Mayor, subject to the advice and consent of the City Council.

4. The appointments and termination of all other executive officers must be made by the City Manager and are subject to ratification by the City Council.

Sec. 2.010 City Council: Qualifications; election; term of office; salary.

1. The legislative power of the City is vested in a City Council consisting of five Council Members, including the Mayor.

2. The Mayor and each Council Member must be:

(a) Bona fide residents of the City for at least 2 years immediately prior to their election.

(b) Qualified electors within the City.

3. All Council Members, including the Mayor, must be voted upon by the registered voters of the City at large and shall serve for terms of 4 years except as otherwise provided in sections 5.010 and 5.120.

University and Community College System v. DR Partners,
Supreme Court of Nevada, 117 Nev. 195 (2001)

Appeal by Newspaper from a district court order granting an injunction, enjoining a Presidential Search Committee, consisting of five members of the Board of Regents of the University of Nevada (Board), from interviewing applicants for the position of president of the Community College of Southern Nevada (CCSN) in a closed session.

DISCUSSION

The state's Open Meeting Law requires all meetings of public bodies to be open and public, except as otherwise provided by specific statute. NRS 241.030, which contains exceptions to the general open meeting requirement, provides in pertinent part that "[t]his chapter does not . . . [p]ermit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body."

In this case, the parties used the NRS 281.005 statutory definition of public officer to resolve the issue because NRS chapter 241 does not define "public office" or "public officer." The first question before us, therefore, is whether NRS 281.005 defines who is a "public officer" within the context of the Open Meeting Law. We conclude that it does.

Applicability of NRS 281.005 to NRS chapter 241

The Legislature enacted the general Open Meeting Law, codified as NRS chapter 241, in 1960. A provision of the original law, codified as NRS 241.030, specified that nothing in it was to be construed to prevent closed executive sessions "to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee," unless the officer or employee requested a public hearing. The Act did not define "public officer."

This court had by then, however, considered the nature of a public office and the criteria that distinguished a public officer from an employee. "A public office is distinguishable from other forms of employment in that its holder has by the sovereign been invested with some portion of the sovereign functions of government." We then held that the director of the Public Service Commission Drivers License Division was not a public officer because the position was created by the agency administrator and not by law, and his duties also were specified by the administrator and not by law.

In addition to these judicial definitions of "public office" and "public officer," which were controlling when the Open Meeting Law was adopted, the Legislature enacted NRS 281.005 in 1967, defining "public officer" as the term is used in NRS chapter 281, which contains general provisions applicable to public officers and employees. This new statutory definition of a "public officer" incorporated the fundamental criteria we applied in those judicial definitions. NRS 281.005(1), which specifies that the position must be established by state constitution or statute, or by a charter or ordinance of a political subdivision of the state, encompasses the fundamental principle that a public office is created by law. NRS 281.005(2), which specifies that the position must involve the continuous exercise of a public power, trust or

duty, and that this exercise of public responsibility must be part of regular and permanent government administration, encompasses the fundamental principle that a public officer's duties are fixed by law and involve an exercise of the state's sovereign power.

Thus, because NRS 281.005 is in harmony with the judicial definitions used in contexts broader than NRS chapter 281, we conclude that it may generally be used to determine who is a "public officer," absent a stated legislative preference for the use of some other definition in a particular context. Having concluded that NRS 281.005 applies, we next must decide whether the community college president is a "public officer" within this definition.

NRS 281.005(1)

The University contends that the community college president is not a public officer under NRS 281.005(1) because the position was not created by state constitution or statute, or by a charter or ordinance of a political subdivision of the state, but rather by the bylaws of the Board of Regents. The Newspaper argued to the district court that the presidents are public officers because: (1) a state statute, NRS 396.230, provides that "[t]he board of regents shall prescribe the duties of the chancellor and such other officers of the system as the board deems appropriate[,]" (2) UCCSN is a political subdivision of the state, and (3) its governing documents (UCCSN Code, Bylaws of the Board of Regents and College Bylaws) are tantamount to a charter.

The Newspaper's arguments are not persuasive. First, the Newspaper does not explain how NRS 396.230 establishes any public office. The statute does not do so explicitly. Instead, the statute is but one of several enacted by the Legislature in compliance with its constitutional mandate to prescribe and define the Board's duties. While the position of chancellor was created by a statute, the position of community college president was created not by any statute, but administratively by the Board, which can easily abolish or replace the position.

Second, the Newspaper does not explain how UCCSN qualifies as a political subdivision of the state with the authority to establish a public office by charter or ordinance. A public office is created by law, and laws are created by governments. NRS 281.005(1) incorporates this concept by specifying that a public officer holds a position established by state constitution or statute, or by a political subdivision's charter or ordinance. The statute simply identifies different kinds of laws, which are enacted by different governmental bodies. It seems plain that political subdivisions within the meaning of NRS 281.005(1) are local government entities such as counties or cities or towns. This interpretation of the phrase fits best with the statute's use of the terms "constitution," "statute," "charter" and "ordinance," which are the laws enacted by state and local government entities for their own government.

The Newspaper has not established that the position of community college president meets NRS 281.005(1), namely that the position was created by state constitution or statute, or by a charter or ordinance of a political subdivision of the state (in other words, by law).

NRS 281.005(2)

The University contends that the community college president is not a public officer under NRS 281.005(2) because the president is wholly subordinate to the Board of Regents and

the chancellor, does not formulate policies but must implement the Board's policies, and can spend public money only according to a budget set by the Board. In addition, the president's duties are established by the Board, and not by law. In other words, the president has not been entrusted by law with any of the sovereign functions of the government. The Newspaper asserts that the mere fact that a position is subordinate does not mean it cannot be a public office and cites as an obvious example the chancellor, who is subordinate to the Board and who the University concedes is a public officer. The Newspaper contends that the community college president does satisfy this section because the president, as chief administrative officer of CCSN, oversees a $65 million budget, can hire and fire personnel, and is responsible for 35,000 students and faculty members.

Again, the Newspaper's arguments are not persuasive. The community college president holds an important position, but the sovereign functions of higher education repose in the Board of Regents, and to a lesser degree in the chancellor, and not at all in the community college president. The Board has been entrusted by the constitution with the control and management of the University, and the Board's duties, including the duties of appointing a chancellor, setting the chancellor's salary and prescribing the chancellor's duties, have been established by the Legislature. The Board was not required by either the constitution or the Legislature to establish the position of community college president; the Board was free to adopt whatever structure it deemed appropriate to carry out its duties in managing and controlling the University, and it remains free to change that structure. In other words, the Board remains responsible to the public for duties established by law, and the community college president is only responsible to the Board for duties established by the Board.

Because the president is wholly subordinate and responsible to the Board, and can only implement policies established by the Board, we conclude that the community college president does not meet the statutory requisites of a public officer set forth in NRS 281.005(2).

CONCLUSION

We conclude that NRS 281.005 is properly used to determine who is a public officer for purposes of the Open Meeting Law. Adherence to this definition should provide reasonable certainty in deciding which provisions of the Open Meeting Law apply in a particular situation.

We further conclude that the office of community college president is not a “public office.” The position was not created by law, and it has not been charged by law with duties involving an exercise of the state's sovereign power. Therefore, the Committee is not prohibited from interviewing applicants for the position in a closed session.

ATTORNEY GENERAL OPEN MEETING LAW OPINION NO. 2001-13

QUESTION

Is it a violation of Nevada's Open Meeting Law for the mayor of Fernley to meet with two of the five city council members outside of a public meeting and thereafter cast a tie-breaking vote on a matter before the city council?

ANALYSIS

The Open Meeting Law requires a public body to provide the public with notice of its meetings. NRS 241.020(2). NRS 241.015(3) defines a meeting as "the gathering of members of a public body at which a quorum is present . . . to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." "The constraints of the Open Meeting Law apply only where a quorum of a public body, in its official capacity as a body, deliberates toward a decision or makes a decision." Del Papa v. Board of Regents, 114 Nev. 388, 400 (1998). A quorum is defined as "a simple majority of the membership of a public body or another proportion established by law." NRS 241.015(5).

NRS 266.235 defines a quorum of the city council as "[a] majority of all members of the council." Fernley has a five member city council and thus three members constitute a quorum. Therefore, the critical question is whether the mayor may be considered a member of the city council for purposes of determining a quorum if the mayor may be required to cast a vote.

NRS 266.200 sets forth the duties and responsibilities of the mayor as the presiding officer of the city council. The mayor is required to preside over the city council when it is in session and is required to preserve order and decorum among the members. NRS 266.200(1)(a). The mayor is not entitled to a vote except in the case of a tie or as otherwise expressly provided in NRS chapter 266. NRS 266.200(1)(b). The mayor may exercise the right of veto upon all matters passed by the city council. NRS 266.200(2). In the case of a five member city council, a four-fifths vote of the whole city council will override the mayor's veto. Id.

Although the mayor of a city incorporated pursuant to NRS chapter 266 is entitled to vote on matters before the city council in certain instances, the mayor is not a member of the city council and thus cannot be counted to determine the presence of a quorum of the city council. The general powers and duties of a mayor, as set forth in NRS chapter 266, are separate from the powers and duties of members of the city council; thus the mayor cannot be considered a member of the city council. Whether the mayor of a city created by special law pursuant to Article 8, Section 1 of the Nevada Constitution is a member of the city council may depend on the language of the city charter.

The presence of the mayor at a meeting with two city council members cannot establish a quorum of the city council. Therefore, the mayor may meet with two city council members without triggering the requirements of the Open Meeting Law. This result does not change simply because the mayor may be called upon to cast the tie-breaking vote on a matter before the

city council because a quorum of the city council still must be present in order for that vote to be taken.

Although it is our opinion that the mayor may meet with two city council members outside of an open meeting because no quorum is present, we must caution you that if a quorum is gathered by the use of serial communications, a violation of the Open Meeting Law may occur. Del Papa v. Board of Regents, 114 Nev. at 400. If the mayor meets with two city council members and then meets with one or more of the remaining members, a quorum of the city council may be deliberating or taking action on matters within the supervision, control, jurisdiction, or advisory power of the city council outside of a public meeting and thus may be violating the Open Meeting Law. Id.

ATTORNEY GENERAL OPEN MEETING LAW OPINION NO. 2012-003

QUESTION

Did notice given by the Fernley City Council on the refinance issue violate the Open Meeting Law's clear and complete requirement?

ANALYSIS

In preparation for its annual budget building cycle, the Fernley City Council held a public meeting/workshop on January 25, 2012. This Open Meeting Law complaint arose out of that meeting.

The only item on the agenda for discussion during the workshop was item 4. Item 4 is set out in full below

4. PRESENTATION AND DISCUSSION REGARDING FISCAL YEAR 2012/2013 BUDGET INCLUDING BUT NOT LIMITED TO: BUDGET PROCESS, TIMELINES, EXISTING BUDGET, ASSESSMENT AND GOALS FOR THE NEXT YEAR.

The January 25, 2012 workshop agenda did not provide clear and complete notice and information to the public about the topics for discussion. NRS 241.020(2)(c)(1). The workshop agenda only stated, "budget process." Although some members of the public understand how budgets are built, refinance of the City's water indebtedness is not one of those topics which are routinely discussed. Refinancing the City's water indebtedness is a topic of significance to Fernley city residents and should have been explicitly stated on the agenda.

The Nevada Supreme Court in Sandoval v. Board of Regents, 119 Nev.148 (2003) interpreted the "clear and complete" requirement in NRS 241.020(2)(c)(1) to require a "higher degree of specificity" on the agenda so as to give clear notice to the public when the subject to be discussed or debated is of special or significant interest to the public. Refinancing public indebtedness would be such a subject in the context of the City of Fernley's economic situation.

Refinancing water bond debt was discussed in conjunction with City Manager Turnier's Powerpoint presentation. The Powerpoint slide show provided the only notice to the public of topics to be discussed. It is clear from review of the audio that the meeting was following a list of topics; however the list was not from the published agenda.

ATTORNEY GENERAL OPEN MEETING LAW OPINION NO. 2021-01

The Office of the Attorney General is in receipt of your complaint alleging violations of the Open Meeting Law by the Clark County School District Board of Trustees (Board) regarding private gatherings with the Board's counsel leading up to its May 13, 2021 meeting.

FACTS

The Board is created by NRS Chapter 386 and is comprised of elected officials. It is a "public body" as defined in NRS 241.015(4) and subject to the Open Meeting Law.

In early 2021, a dispute arose between the Board and its Superintendent regarding the interpretation of his employment contract. Multiple gatherings occurred between a quorum of Board Trustees and the Board's attorney between January and May 2021, regarding threatened litigation and settlement efforts in the contract dispute. These gatherings were not open to the public.

In April 2021, the Board's attorney held an attorney-client session with a quorum of the Board wherein she discussed the status of settlement efforts and inquired of the Board Trustees their preferences with respect to the direction of her representation. There are allegations that Board Trustees were polled during this meeting. Subsequent to the April attorney-client session, the Superintendent made statements to third parties regarding an agreed contract extension that had not yet gone before the Board.

On May 13, 2021, the Board held a public meeting. An extension to the Superintendent's contract was listed on the agenda. The Board received 45 minutes of public comment specific to the contract extension and then deliberated on the matter for about 30 minutes prior to voting on the extension. The Board ultimately approved the extension by a 4-3 vote.

DISCUSSION AND LEGAL ANALYSIS

The legislative intent of the Open Meeting Law is that actions of public bodies "be taken openly, and that their deliberations be conducted openly." NRS 241.010. All exceptions to the Open Meeting Law must be construed narrowly and in favor of openness. Chanos v. Nevada Tax Comm'n, 124 Nev. 232, 239 (2008). "[T]he narrow construction of exceptions to the Open Meeting Law stems from the Legislature's use of the term 'specific' in NRS 241.020(1) and that such exceptions must be explicit and definite." Id. The Open Meeting Law "mandates open meetings unless 'otherwise specified by statute . . . .'" McKay v. Board of Cty. Comm'rs, 102 Nev. 644, 651 (1986).

The issue here is whether polling public body members during an attorney-client session constitutes a violation of the Open Meeting Law. The Office of the Attorney General finds that where a consensus occurs as part of deliberation that is a precursor to an action taken during a public meeting, it does not violate the Open Meeting Law.

The Nevada Legislature has excepted from the Open Meeting Law gatherings of a public body at which a quorum is present "[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over

which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both." NRS 241.015(3)(b)(2). "'Deliberate' means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision." NRS 241.015(2). However, to make a decision or take action, a public body must do so during a public meeting. NRS 241.015(1) ("'Action' means: (a) A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body").

The Nevada Legislature chose to specifically allow deliberation when adding the attorney-client exception to the Open Meeting Law in 2001. In fact, a prior draft of the bill specifically excluded deliberation from the exception and an amendment added it into the final bill. "[A] public body may deliberate with its attorney over strategy decisions regarding potential or existing litigation." In re Board of Mineral County Commissioners, Nevada Open Meeting Law Opinion (OMLO) 04-069 at 4 (Mar. 2005). The purpose of the attorney-client privilege "is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. Finn v. City of Boulder City, 2016 WL 4529950 at 1 (D. Nev. 2016). Deliberation "may include members of the public body providing guidance to its attorney on how each expects the public body to be represented. For example, each member of the public body may express his or her opinion on the amount he or she would be willing to settle a case." OMLO 04-069 at 4. While the attorney-client exception extends to deliberations, it cannot be extended to include a final decision to take an action, such as settle existing or threatened litigation. The Comm'n on Ethics of the State of Nevada v. Hansen, 134 Nev. 304, 307 (2018).

Here, Board Trustees attended several sessions with their counsel where they received advice regarding threatened litigation. The Board's attorney advised Trustees that any opinions they expressed during the meeting were not binding and in order for any action to be taken on the matter, it would have to occur during a public meeting. The Office of Attorney General finds from the evidence that Trustees indicated to the Board's attorney what type of settlement they might be willing to accept to give guidance to her in settlement negotiations. Upon reaching an agreement with the Superintendent's counsel, the Board's attorney then had the Board place on an agenda the contract extension, which was a settlement in this matter for all intents and purposes. The Board subsequently took action by vote during a public meeting. The Office of Attorney General finds that where a consensus may be reached by a public body while deliberating on potential or existing litigation during an attorney-client session, it does not violate the Open Meeting Law, so long as the deliberations are not treated as action by the public body. Here, the Board made clear that any consensus reached during the closed meeting was not action and a majority vote of the Board during a public meeting was required for action. Thus, the Office of the Attorney General finds that the Board did not violate the Open Meeting Law in this respect.

ATTORNEY GENERAL OPEN MEETING LAW OPINION NO. 2021-01

Dan Smith filed a complaint alleging various violations of the Open Meeting Law by the Las Vegas City Council relating to public comment.

The Open Meeting Law does not mandate that members of the public be allowed to speak during meetings except during those periods statutorily required. However, once the right to speak has been granted by the Legislature, e.g., NRS 241.020(2)(c)(3), the protections of free speech by the U.S. Constitution and Nevada Constitution attach. Indeed, freedom of expression upon public questions is secured by the First Amendment. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 269 (1964). Generally, "the right to criticize public officials" is protected by the First Amendment. Article 1, Section 9 of the Nevada Constitution also expressly protects a citizen's freedom of speech. Such constitutional safeguards were "fashioned to assure unfettered interchange of ideas for bringing about political and social changes desired by the people."

Despite these constitutional safeguards, an individual's right to speak is not unfettered. Rather, the Open Meeting Law allows public bodies to place restrictions on comments made by the general public, but any such restriction must be reasonable and may only restrict the time, place, and manner of the comments. NRS 241.020(2)(c)(7). Restrictions based upon an individual's viewpoint are strictly prohibited. Id. Courts have found that restrictions on public comment must not be applied unreasonably or arbitrarily. If a public body wishes to place restrictions on public comment, the Open Meeting Law further instructs that the agenda of the public body clearly express all restrictions on public comment. NRS 241.020(2)(c)(7).

In the instant case, the Council provided notice of the restrictions on public comment it could invoke during its meetings. With regard to the first session of public comments at both the Council's meetings, the agendas stated: (1) that public comments be limited to matters on the Agenda for action; and (2) the amount of discussion and time of any single speaker is allowed, may be limited. On its face, the Agenda cautions that an individual's time to address the Council may be limited. Further, at the meetings and prior to accepting any public comment, the Council apprised any individuals wishing to make public comment of the specific time limitations. There was no appearance that the Council selectively enforced the time limitations, as the same time limitation warnings were provided to all speakers prior to the Council accepting public comments. However, while the Office of the Attorney General finds no violation of the Open Meeting Law as alleged, the Office suggests that, if the Council wishes to place any time limitations on individual speakers wishing to make public comment, that a specific amount of time be placed on the agenda so that individuals wishing to make public comment are aware of the possible time limitations on their comment and may plan their comment accordingly.

The Complaint also alleges that the Council violated its restriction prohibiting councilmembers from commenting during public comment sections of the agenda. The Council, through its attorney, states that its agendas do not contain such a prohibition. The Open Meeting Law does not prohibit members of public bodies from discussing public comment; however, no deliberation or action may be taken on matters introduced in public comment. NRS 241.020(c)(3).

§ 4.08 Serial communications, or "walking quorums"

The Open Meeting Law forbids "walking quorums" or constructive quorums. Serial communication invites abuse if it is used to accumulate a secret consensus or vote of the members of a public body. Any method of meeting where a quorum of a public body discusses public business, whether gathered physically or electronically, is a violation of the Open Meeting Law.

Nevada is a "quorum state," which means that the gathering of less than a quorum of the members of a public body is not within the definition of a meeting under NRS 241.015(3). Where less than a quorum of a public body participates in a private briefing with counsel or staff prior to a public meeting, it may do so without violating the Open Meeting Law. Dewey v. Redevelopment Agency, 119 Nev. 87 (2003). In another case, the Nevada Supreme Court observed that the Open Meeting Law did not forbid all discussion among public body members even when discussing public business, stating that: "[A] quorum of a public body using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law. That is not to say that in the absence of a quorum, members of a public body cannot privately discuss public issues or even lobby for votes." Del Papa v. Board of Regents, 114 Nev. 388, 400 (1998).

Serial communication invites abuse of the Open Meeting Law if it is used to accumulate a secret consensus or vote of the members of a public body. In McKay v. Board of County Commissioners, 103 Nev. 490 (1987), the Court stated that sensitive information may be discussed in serial meetings where no quorum is present in any gathering. But there can be no deliberation, action, commitment, or promise made regarding a public matter in such a serial meeting."