



# Summaries of Published Opinions: The Nevada Supreme Court and Nevada Court of Appeals

The following summaries include, in bold, a case citation along with the primary areas of practice and/or subject matter addressed in the decisions. In addition, each summary identifies significant new rules of law or issues of first impression decided by Nevada's appellate courts.

These summaries are prepared by the state bar's Appellate Litigation Section as an informational service only and should not be relied upon as an official record of action. While not all aspects of a decision can be included in these brief summaries, we hope that readers will find this information useful, and we encourage you to review full copies of the Advance Opinions, which are located on the Nevada Supreme Court's website at: [https://nvcourts.gov/Supreme/Decisions/Advance\\_Opinions/](https://nvcourts.gov/Supreme/Decisions/Advance_Opinions/).

***Rives v. Farris*, 138 Nev., Adv. Op. 17 (March 31, 2022) (en banc) – Appellate remedy of reversal and remand for new trial; propensity evidence in medical malpractice cases.**

An appellant who objected to evidentiary rulings at trial is not required to file a motion for new trial to preserve the right to request a new trial as an appellate remedy. Evidence of a physician's prior medical malpractice suit is generally not relevant to whether the physician met the standard of care and must be offered for a proper non-propensity purpose under NRS 48.045(2) to be admissible.

***Cohen v. Padda*, 138 Nev., Adv. Op. 18 (March 31, 2022) (en banc) – Appeal from order denying attorney fees.**

Where an attorney enters into a fee-sharing agreement with a member of her law firm, departs from the firm, and is later suspended from the practice of law, she may receive legal fees recovered by the firm during her suspension, so long as she completed her work on those cases prior to the suspension and the suspension was unrelated to her conduct in those cases.

***Willick v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 19 (March 31, 2022) (en banc) – Advanced stage exception to voluntary dismissal under NRCP 41(a).**

The district court had jurisdiction to vacate plaintiff's NRCP 41(a) notice of voluntary dismissal of a defamation action after four years of litigation, full adjudication of an anti-SLAPP motion to dismiss, a prior de novo appeal, and a failed mediation. Defendant's anti-SLAPP motion did not trigger the summary judgment exception to voluntary dismissal under NRCP 41(a)(1); however, the proceeding had reached such an advanced stage that voluntary dismissal was no longer permissible.

***Nevada Gaming Comm'n v. Wynn*, 138 Nev., Adv. Op. 20 (March 31, 2022) (en banc) – Judicial review of disciplinary proceedings by Nevada Gaming Commission.**

NRS 463.318(2) precludes a petition for writ of prohibition challenging the jurisdiction of the Nevada Gaming Commission and Nevada Gaming Control Board over a party in disciplinary proceedings before the Commission enters a final decision. An order by the Commission denying a motion to dismiss for lack of jurisdiction is not a final order permitting judicial review under NRS 463.315(1).

***TRP Fund VI, LLC v. PHH Mortg. Corp.*, 138 Nev., Adv. Op. 21 (March 31, 2022) (per curiam) – Motions for stay pending appeal.**

A party who seeks a stay and injunctive relief for the first time in the Supreme Court must demonstrate, by motion, that it was "impracticable" to have done so in the district court. To make this showing, the movant must demonstrate that it was not capable of first seeking relief in the district court or that such an act could not be done.

***SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 138 Nev., Adv. Op. 22 (April 7, 2022) – Effect of notice of rescission on NRS 106.240.**

NRS 106.240 provides that 10 years after a debt secured by a lien has become "wholly due" and remains unpaid, "it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." In circumstances where a party accelerates a loan balance by filing a notice of default, then rescinds the notice of default, the notice cancels the acceleration and resets NRS 106.240's 10-year period.

***Brass v. State*, 138 Nev., Adv. Op. 23 (April 7, 2022) – Sixth Amendment right**

**to counsel of choice; motions to substitute retained counsel.**

When a defendant moves to substitute retained counsel, the district court must analyze whether the motion is timely and whether defendant's Sixth Amendment right to counsel of choice outweighs countervailing interests in the efficient and orderly administration of justice. Here, the district court erred in denying defendant's substitution motion filed on the eve of trial because the motion was timely made at the first opportunity after defendant discovered his attorney was unprepared for trial, and the resulting disruption did not outweigh defendant's right to counsel of choice under the totality of the circumstances.

***Moretto v. Elk Point Country Club HOA, Inc.*, 138 Nev., Adv. Op. 24 (April 7, 2022) – Common-interest-community HOA's power to adopt rules.**

A homeowner's association does not have the implied power to impose or use design restrictions on individually owned properties, and the association's governing documents must expressly authorize the imposition of such restrictions (which still must be reasonable) to do so.

***Barlow v. State*, 138 Nev., Adv. Op. 25 (April 14, 2022) (en banc) – Arguments and verdict form during penalty phase of capital murder trial.**

During the penalty phase of a capital murder trial, a defendant must be allowed to argue that if a single juror determines that there are mitigating circumstances sufficient to outweigh the aggravating circumstances, the jury cannot impose a death sentence but must consider the other sentences that may be imposed. A jury is hung in the penalty phase of a capital trial only when it cannot unanimously agree on the sentence to be imposed. The court also mandated a new verdict form for the penalty phase of capital trials.