



# 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/).

***Fed. Nat'l Mortg. v. Westland Liberty Vill.*, 138 Nev., Adv. Op. 57 (Aug. 11, 2022) (en banc) – Real property loan agreements; appointment of receiver upon default.**

If the requirements of NRS 32.260(2)(b) and NRS 107A.260(1)(a)(1) are otherwise met, a lender and/or its assignee are entitled to the appointment of a receiver as a matter of law after a borrower defaults on a real property loan agreement.

***Ceballos v. NP Palace, LLC*, 138 Nev., Adv. Op. 58 (Aug. 11, 2022) (en banc) – Employment law; recreational marijuana use; tortious discharge and wrongful termination.**

Because possession of marijuana is still prohibited by federal law, NRS 613.333, which creates a private right of action for an employee discharged from employment for engaging in the "lawful use in this state of any product outside the premises of the employer during the employee's nonworking hours," does not support a private right of action for a casino employee discharged from employment based on recreational marijuana use. Further, because NRS 678D.510(1)(a) authorizes employers to prohibit or restrict recreational marijuana use by employees, an employee discharged after testing positive at work does not have a common-law tortious discharge claim.

***Las Vegas Police Protective Ass'n v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 59 (Aug. 18, 2022) – NRCPC 24 motions to intervene; joinder under NRCPC 19; Peace Officer Bill of Rights.**  
A motion to intervene under NRCPC 24 is untimely when it is filed after final judgment is entered resolving the

underlying proceedings. Because the Peace Officer Bill of Rights does not give a recognized bargaining agent the right or duty to represent a peace officer during an internal investigation, LVPPA was not a necessary party for purposes of joinder under NRCPC 19 in an injunctive relief action brought by a peace officer to utilize a representative of his choosing.

***Elk Point Country Club Homeowners Ass'n, Inc. v. K.J. Brown, LLC*, 138 Nev., Adv. Op. 60 (Aug. 18, 2022) – Transient commercial use of units within common-interest communities.**  
Under NRS 116.340(1)(a), members of a common-interest community may use their units for transient commercial use, such as a short-term vacation rental, even when the association's governing documents contain a "residential use" restriction, so long as the governing documents do not prohibit transient commercial use.

***Matkulak v. Davis*, 138 Nev., Adv. Op. 61 (Sept. 1, 2022) – Adjustments to child support under NAC 425.150(1).**  
NAC 425.150(1) permits the court to adjust a child support obligation "in accordance with the specific needs of the child and the economic circumstances of the parties" based upon eight separate factors and specific findings of fact. Although an adjustment must conform with any specific needs the child may have, an adjustment is not contingent on the child having a specific need for that adjustment. When a court orders an upward adjustment based on the relative income of the households under NAC 425.150(1)(f), it may not order an upward adjustment in excess of the other party's total obligation.

***Locker v. State*, 138 Nev., Adv. Op. 62 (Sept. 1, 2022) – Judgment deferral for guilty pleas under NRS 453.336(2)(a) and NRS 176.211(3)(1)(a).**

When a defendant enters a guilty plea to a first- or second-time offense of possession of less than 14 grams of a schedule I or II controlled substance in violation of NRS 453.336(2)(a), NRS 176.211(3)(a)(1) requires the court to defer judgment on the consent of the defendant. Even where the guilty plea agreement did not contain a deferral provision, under the plain language of NRS 176.211(3)(a)(1), the court did not have discretion to decline to defer judgment when sentencing.

***Eby v. Johnston Law Office, P.C.*, 138 Nev., Adv. Op. 63 (Ct. App. Sept. 8, 2022) – Power of attorney; unauthorized practice of law.**

A nonlawyer agent operating under a power of attorney concerning claims and litigation may not litigate an action in prose in place of the principal or otherwise engage in the practice of law on the principal's behalf.

***State v. McCall*, 138 Nev., Adv. Op. 64 (Sept. 22, 2022) – Fourth Amendment; unreasonable searches and seizures; protective sweep exception.**

A warrantless protective sweep of the premises is permissible when there exist articulable facts that would cause a reasonably prudent police officer to believe that the area to be swept harbors an individual who poses a danger to those at the scene. A protective sweep does not require a prior arrest to be valid.