



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/.

***Cervantes-Guevara v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 10 (March 3, 2022) (en banc) – Executive orders; statutory interpretation.**

Emergency Directive 009 (Revised) tolled any specific time limits set by statute or regulation for commencement of legal actions until 30 days from the date that the COVID-19 state of emergency was terminated. Applying principles of statutory interpretation to executive orders, the court held that this emergency directive did not apply to deadlines established by court rules because court rules were neither statutes nor regulations pertaining to commencement of a legal action.

***Anselmo v. State*, 138 Nev., Adv. Op. 11 (March 10, 2022) – Postconviction petitions for genetic marker analysis.**

Under NRS 176.01983(1), when determining a postconviction petition for genetic marker analysis, the district court must assume that a genetic marker analysis will produce exculpatory DNA evidence and order the analysis if a reasonable possibility exists that the petitioner would not have faced prosecution or conviction had the exculpatory results been obtained before trial. A custodian's inventory of evidence must describe the evidence itself, and not merely the packaging in which it is contained, to qualify as a sufficient inventory of evidence.

***Canarelli v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 12 (March 24, 2022) – Judicial disqualification standards.**

Where a judge's alleged bias does not arise from an extrajudicial source, the court does not apply NCJC Rule 2.11(A). Instead, the disqualification standard in

Kirksey v. State controls, and the party seeking disqualification must show that the judge formed an opinion based on the facts formed during the proceedings that displays a deep-seated favoritism or antagonism that would make fair judgment impossible.

***Helix Elec. of Nev., LLC v. APCO Const., Inc.*, 138 Nev., Adv. Op. 13 (March 24, 2022) – Pay-if-paid provisions; assignment of subcontracts.**

Clarifying its prior holding in *APCO Const., Inc. v. Zitting Bros. Const., Inc.* that pay-if-paid provisions are generally unenforceable if they run contrary to the rights and requirements under NRS 624.624-.630, the court held that an invalid pay-if-paid provision did not also invalidate the remaining conditions precedent for obtaining a retention payment. The court further held that the assignment of a subcontract precluded the subcontractor from obtaining the unpaid retention from the original contractor, and it also precluded the general contractor from seeking attorney fees pursuant to the subcontract's attorney fees provision.

***Hargrove v. Ward*, 138 Nev., Adv. Op. 14 (March 24, 2022) – Awards of post-emancipation child support; enforceability of child support promises.**

The court considered, as a matter of first impression, whether a district court may award retroactive child support in a paternity action after the child's emancipation. The court also considered whether a parent's promise to support a child is enforceable under NRS 126.900(1). The court determined that the three-year statute of limitations in NRS 126.081(1) to bring a paternity action

after the child reaches the age of majority applies to a parent's request for retroactive child support under NRS 125B.030. The court also held that a parent's promise to support a child is enforceable, provided the promise is made in writing and the writing sets forth a clear commitment to provide support in specific terms.

***The Nevada Indep. v. Whitley*, 138 Nev., Adv. Op. 15 (March 24, 2022) – Public records requests for trade secrets under DTSA.**

S.B. 539 requires pharmaceutical manufacturers and pharmacy benefit managers (PBMs) to submit reports to the Department of Health and Human Services (DHHS) regarding the cost structure of insulin medication in Nevada. Because the federal Defend Trade Secrets Act (DTSA) classifies information in these reports as confidential trade secrets, such information is shielded from disclosure under the Nevada Public Records Act (NPR). DHHS's related regulations, codified at NAC 493.730-.740, were authorized by the Nevada Legislature, and did not conflict with S.B. 539.

***In re: Application of Smith*, 138 Nev., Adv. Op. 16 (March 24, 2022) – Continuance of parole revocation proceedings.**

When a parolee is detained for a parole violation and returned to the custody of the Nevada Department of Corrections (NDOC), NRS 213.1517(3) requires the parole board to hold a hearing on the matter within 60 days. The exception to the 60-day rule in NRS 213.1517(4) will not apply where the parole board executes a warrant and returns the parolee to NDOC custody *before* adjudication on the new charges.