



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/.

***Sr. Constr., Inc. v. Peek Bros. Constr., Inc.*, 138 Nev., Adv. Op. 41 (June 2, 2022) – Appeal from order denying motion to compel arbitration.**

Where the arbitration provision in the parties’ master subcontract agreement incorporated the prime contract, which included a broad arbitration provision, the presumption of arbitrability applied and was not rebutted. The parties’ dispute was therefore arbitrable, and the district court erred in denying a motion to compel arbitration.

***Evans-Waiiau v. Tate*, 138 Nev., Adv. Op. 42 (June 16, 2022) (en banc) – Preserving attorney misconduct issues for appeal; closing arguments.**

Reviewing an appeal of a jury verdict in a personal injury case, the court held: (1) a party need not move for a new trial as a prerequisite for preserving a claim of attorney misconduct when the party objects to the conduct at trial; and (2) defendant’s counsel did not make improper arguments in closing by discussing how many years it would take defendant to save enough money to cover the requested damages.

***Diamond Nat. Res. Prot. And Conservation Ass’n vs. Diamond Valley Ranch, LLC*, 138 Nev., Adv. Op. 43 (June 16, 2022) (en banc) – Water law matters.** The state engineer has statutory authority to approve of a Groundwater Management Plan that departs from the doctrine of prior appropriation and other statutes in Nevada’s statutory water scheme.

***Brown v. State*, 138 Nev., Adv. Op. 44 (June 23, 2022) – Admissibility of footwear impression evidence; limiting cross-examination to protect**

trade secrets in criminal trials.

Evidence of footwear impressions may be presented absent expert testimony if the jury is being asked to make personal observations and draw general inferences regarding the similarities between footwear impressions and footwear. In considering whether to limit cross-examination regarding trade secrets in criminal trials, courts should consider whether, given the importance of the private interest at state, the cross-examination is designed to harass, annoy, or humiliate the witness; whether it would cause prejudice or place the witness in danger; and whether it would confuse the issues, be repetitive of other testimony, be speculative or vague, or be only marginally relevant.

***Helton v. Nev. Voters First PAC*, 138 Nev., Adv. Op. 45 (June 28, 2022) (en banc) – Single-subject requirement for initiative petitions.**

An initiative petition proposing more than one change to Nevada law may still meet the single-subject requirement if the proposed changes are functionally related and germane to each other and to a single subject. An initiative petition that proposed two changes (open primaries and a ranked-choice general election) complied with the single-subject requirement because those changes were functionally related and germane to each other and to the following subject: the framework by which specified officeholders are presented to voters and elected.

***Cegavske v. Hollowood*, 138 Nev., Adv. Op. 46 (June 28, 2022) (en banc) – Withdrawn ballot initiative petitions; extraordinary writ relief.** NRS 295.026, which provides a

procedure to withdraw a ballot initiative petition and directs that “no further action may be taken on [a withdrawn] petition,” is a permissible exercise of the Legislature’s power to enact statutes to facilitate the people’s initiative power and not unconstitutional. Mandamus relief is available to compel the Secretary of State to honor the withdrawal of a ballot petition, but prohibition relief is unavailable to order the secretary not to place a petition on the ballot because the act of placing matters on a ballot is ministerial.

***Ed. Freedom PAC v. Reid*, 138 Nev., Adv. Op. 47 (June 28, 2022) (en banc) – Appeal from order enjoining initiative petition’s circulation and placement on ballot.**

An initiative petition (1) must provide funding for any appropriations or expenditures it requires; (2) must adequately inform potential signatories about its goal; and (3) must not invade the Legislature’s primary role of proposing and enacting laws. The district court did not err in enjoining the circulation or ballot placement of an initiative petition that fell short in all three requirements.

***Leigh-Pink v. Rio Properties, LLC*, 138 Nev., Adv. Op. 48 (June 30, 2022) (en banc) – Fraudulent concealment claims; consumer fraud.**

A plaintiff is not damaged for the purposes of either a common law fraudulent concealment claim or a claim for consumer fraud under NRS 41.600 when they receive the true value of the good or service purchased.