

The WRIT

OFFICIAL PUBLICATION OF THE WASHOE COUNTY BAR ASSOCIATION

WCBA NOMINATES SLATE OF OFFICERS FOR 2020-21

The executive board of Washoe County Bar, acting as the nominating committee, proposed the following slate of officers for 2020-21. The Bar's bylaws call for notice of the nominations and election of officers at the June annual meeting, but due to COVID-19, the election was held online using Electionrunner.



WCBA would like to thank outgoing President Holly Parker who has served on the board since 2014. Holly's focus on attorney wellness during her year as president, was much appreciated during these difficult times.

Vice-President, Chandeni Sendall, who has served on the board since 2015, automatically succeeds as President. Chandeni is with the Reno City Attorney's Office in the Civil Division.



NOMINATIONS



Secretary, Jacey Prupas, for vice president. Jacey has served on the board since 2016, and is a partner with Snell & Wilmer in Reno.

Sergeant-at-arms, Ryan Leary for Secretary. Ryan has served on the board since 2017, and is a partner with Laxalt & Nomura in Reno.



Social Chair, Therese Shanks, for Treasurer. Therese joined the board in 2019, and is an associate with Robison, Sharp, Sullivan & Brust in Reno.

Jenna Garcia for Sergeant-at-Arms. Jenna is with the Alternate Public Defender's Office in Reno.



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APPELLATE BRIEFS

By Adam Hosmer-Henner, McDonald Carano

THE USEFULNESS OF THE AGING SUBMITTED CASE REPORT

The Nevada Supreme Court publishes an online list of all cases, the *Aging Submitted Case Report* (“Report”), that have been submitted for more than ninety days and that remain undecided as of the date of the list’s publication. Aging Submitted Case Report, available at: https://nvcourts.gov/Supreme/Aging_Submitted_Case_Report/. This Report is still identified in places on the Court’s website as issued pursuant to NRS 2.260, despite the repeal of this statute in 2015. Speaking in support of Assembly Bill 69, Chief Justice Hardesty advocated for the repeal of NRS 2.260, which required the publication of the Report in a statewide newspaper, as compliance with this requirement would have required the expenditure of \$200,000 per year. Assembly Committee on Judiciary, Minutes Feb. 12, 2015, 10. A humorous exchange followed in the Senate Judiciary Committee: “*Chair Brower*: Have you been posting cases in the newspaper? *Chief Justice Hardesty*: No. *Chair Brower*: I have never seen this information posted in the newspaper. *Chief Justice Hardesty*: The courts have never been allocated the funds to meet this requirement nor have we requested the funds to do so. It is a waste of funds when anyone in the State can access all the court dockets online, including the publicly filed information on our docket sheet.” Senate Committee on Judiciary, Minutes April 22, 2015, 3. Fortunately, the Court continues to publish and maintain the Report online because it provides a useful resource for appellate practitioners.

Currently the Report contains ninety cases, which have been submitted for decision between April 11, 2018 and February 25, 2020. Most cases on the Report are criminal appeals and the oldest cases involve the death penalty, habitual criminal sentencing, or other

matters of import. While the creation of the Court of Appeals has greatly facilitated the faster resolution of civil appeals in Nevada, there are civil cases that still show up on the Report for a variety of reasons. First, the appeal may involve an issue of first impression or other complexities that require careful analysis. The civil appeal that has been pending the longest is *Clark County School District v. Bryan*, Case No. 73856, and involves the significant question of whether courts can impose liability under 42 U.S.C. § 1983 for student-on-student bullying. The Court requests oral argument for many cases in this category, indicating the depth of treatment the Court assigns to these appeals. Reviewing these cases can provide appellate practitioners with a sense of unresolved and topical issues that the Court has under consideration at any given time. Second, appeals may show up on the Report when they involve issues common to other appeals. This situation was most visible recently with respect to HOA superpriority lien litigation, when a large number of similar appeals were on hold pending the resolution of lead cases. Recognizing this pattern is important when advising clients as to what they can expect in terms of timing and procedure from appealing such an issue to the Supreme Court.

As a case study, *Rock Springs Mesquite 2 Owners’ Association v. Raridan*, Case No. 77085, has been submitted for decision since January 24, 2020. However, the Court’s chronology does not really tell the full story, as briefing was completed in this appeal on August 15, 2019 and thus it has been on the Court’s desk, so to speak, far longer than the January 24, 2020 submit date would otherwise indicate. *Raridan*, which is well briefed and argued by the parties,

falls into the first category of cases above as it raises the thorny question of how the doctrine of claim preclusion interacts with Nevada’s declaratory relief statutes.

In 2011, a homeowners’ association (“Rock Springs”) sued the owners of a neighboring property after a retaining wall began to fail. This first lawsuit involved claims of trespass, nuisance, and negligence based on the allegation that the neighboring owners’ activities caused the retaining wall to fail. After the neighboring property was sold to Respondents (“Raridan”), Rock Springs sued Raridan for a declaratory relief determination as to whether Rock Springs owed a legal duty to support the adjacent homeowner’s property. The district court dismissed the declaratory relief complaint on claim preclusion grounds and the appeal followed in *Rock Springs Mesquite 2 Owners’ Association v. Raridan*, Case No. 77085.

One reason why *Raridan* may be warranting detailed review is that it presents the inverse issue as a recent published opinion by the Court. In *Boca Park Marketplace Syndications Group v. Higco*, 133 Nev. Adv. Op. 114, 407 P.3d 761 (2017), the Court concluded that there was an exception to the claim-preclusion doctrine when the first suit seeks only declaratory relief. In that circumstance, a second suit could assert claims for damages or other relief even if it was possible for the plaintiff to have included those claims within the first suit. *Raridan*, however, asks the Court to determine whether there is a similar claim-preclusion exception when the first suit sought damages and the second suit is limited to declaratory relief. Without the additional context from the Report and without reviewing the recent *Boca Park* decision, an attorney reviewing the *Raridan* appeal may not have given it much attention.

The length of time that the appeal has been pending may provide some optimism for the Appellant in *Raridan* as it suggests a lower likelihood of a quick, summary affirmance. While a full analysis of the briefing in *Raridan* is beyond the scope here, after reviewing the briefing and authorities, it does appear likely that the Court in *Raridan* will affirm in part. This prediction is based on the holding of *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) that claim preclusion bars subsequent actions based on claims that were or could have been brought in the initial action. While the declaratory relief exception would apply to the sequence in *Boca Park* as it would promote judicial efficiency to have an initial declaratory relief determination prior to full-blown litigation, the same reasoning would not support extending the exception in the reverse order.

Adam Hosmer-Henner is a partner at McDonald Carano and practices primarily in the areas of commercial litigation and appellate law. He regularly handles appeals and writ proceedings at the Nevada Supreme Court and the United States Court of Appeals for the Ninth Circuit.



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