

# YLS NEWSLETTER

JANUARY 2013



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## Upcoming YLS Events

January 25

- Southern Nevada YLS "Reconnect After the Holidays" Social  
Where: Artifice, 1025 First St., #3, Las Vegas  
When: 5:15 - 7:00

## WELCOME TO THE YLS NEWSLETTER

The Young Lawyers Section of the State Bar of Nevada is proud to present the inaugural issue of the YLS Newsletter. The YLS Newsletter is a bi-monthly publication by Nevada's young lawyers for Nevada's young lawyers. We hope to give you the opportunity to learn, spread your name, and get your ideas and articles published. The YLS encourages you to participate in this newsletter as much as possible, from contributing articles to suggesting topics and people you'd like to learn more about.

Contact Austin Sweet at [asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com) to learn more about how you can contribute. Enjoy!



*Austin K. Sweet*  
Newsletter Chair

## VIEWS FROM THE BENCH

*The "Views from the Bench" column will feature practice pointers for young lawyers from sitting judges throughout Nevada and will offer an opportunity for you to get to know the judges you will appear before.*

**Judge Elissa Cadish – Eighth Judicial District Court, Department 6**

by Elias P. George

Gordon Silver - Las Vegas



*Judge Elissa Cadish*

In 1989, a young graduate of the University of Virginia School of Law very passionately wanted to become a federal clerk. As an industrious student of the law and in pursuit of her passion, Elissa Cadish submitted applications throughout the United States, later interviewing with the Hon. Philip Pro, a Nevada federal court judge, over the telephone. She agreed to a two-year clerkship in Nevada even though she had never traveled further west than

Chicago: a risk worth taking.

Following her clerkship, Elissa practiced as a civil litigator for nearly 16 years in Las Vegas until being appointed to fill Judge Joseph Bonaventure's post in the Eighth Judicial District Court in Clark County in 2007. Throughout her years of private practice, as well as her time on the bench, Judge Cadish studied the lawyering skills of both young and experienced attorneys.

I was fortunate enough to speak with Judge Cadish in person to gain her perspective on young practitioners and any tips and insight for success she might impart.

**Q: WHAT ABOUT A PARTICULAR PLEADING AND/OR MOTION MAKES YOU SAY "WOW" IN A GOOD WAY?**

A: Great legal writing is that which adheres to the basics (IRAC) - it's that simple. A brief should always start with an intro, summarizing the arguments in a paragraph or two, followed by a short statement explaining why you can win. In other words, it's here where you frame your entire argument and give the judge a basis by which to grant your

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## FRESH PERSPECTIVE

As we all know, the legal profession has struggled to adjust to modern times. The history and antiquity of our profession becomes a staple for today's lawyers from the first day of law school; from the relentless use of the Socratic Method to the ongoing dispute over proper pronunciation of Latin terms. While some traditions must be respected and cultivated, others should be updated to bring our profession into the modern world.

"Experienced" (read: old) attorneys tend to become entrenched in the way things are. As young lawyers, it is our duty to question the institution and change those practices that are simply outdated. Otherwise, we too will become "experienced" attorneys, blindly carrying on the traditions of 17<sup>th</sup> Century England.

This column will regularly feature guest writers with new ideas on improving the practice of law. We encourage you to submit ideas and articles for this column. More importantly, if you like an idea you read here, implement it in your practice. Eventually, new ideas will become common practice, common practice will become custom, and if the stars align, custom might actually become law. By then it will surely be time for another update.

### **Provide Editable Electronic Versions of Written Discovery to Opposing Counsel**

by Austin K. Sweet

Gunderson Law Firm - Reno

NRCP 33(b)(1) requires that a party responding to written interrogatories "shall first set forth each interrogatory asked, followed by the answer or response of the party." Similar language exists for responses to requests for production of documents and requests for admission. NRCP 34(b); NRCP 36(a). This requirement makes referring to discovery responses significantly easier by eliminating the need to refer to one document for the question and a second document for the answer. Anyone who has practiced in a jurisdiction without this rule, such as California, knows how frustrating flipping back and forth can be.

The problem with this rule is in the implementation. Someone representing the responding party, generally a lawyer or staff member, is required to spend valuable time and resources re-typing the discovery requests. This was unavoidable in the days of typewriters. In

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## VIEWS FROM THE CORNER OFFICE

The "Views from the Corner Office" column will feature practice pointers for young lawyers from respected practitioners throughout Nevada.

### **Kent Robison: The Difficult Client**

by Kristin L. Martini

Robison, Belaustegui, Sharp & Low - Reno

Kent R. Robison has had the pleasure of practicing law in Northern Nevada for nearly 40 years. For over 30 of those years, Mr. Robison has occupied the position of managing partner in his law firm and having hired approximately 50 associates during that time span. When asked about the difficulties that he has encountered with associates and the subject of advice which he deems most critical to impress upon associates, Mr. Robison opined, "The difficult client."

It is common knowledge that successful associates are those who can adjust to the stresses of practicing law with not only quantity and quality in mind, but also practicing with the highest level of civility and adhering to the rules of ethics as a must. Inherent in the complexities of associate grooming and growing is the subtle yet essential requirement that the associate learn, understand, and master the intricacies of the attorney-client relationship. It is essential that this relationship be considered and balanced with the business realities of the legal profession. Without clients there is no business. And without business there is no legal profession. Consequently, clients are the heart of the legal profession. But despite their necessity to the associate's



**Kent R. Robison**

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*"The less experienced associate handling difficult clients must be a virtuoso in patience and compassion, and business judgment."*

## Views From the Bench (cont.) - Judge Cadish

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request.

Also, focus on the legal standard and apply the facts. Remember, it's your job to make it easy to follow and comprehensible for the Judge and law clerk. Too often young attorneys forget the basics and their writing becomes overly complicated and too confusing.

Here's a helpful strategy. When filing a motion for summary judgment, be aware that there usually exists a genuine issue in testimony. So, make sure to attach the entire deposition and discuss that no such issue exists. In opposing a motion for summary judgment, you need to present evidence to demonstrate a genuine issue of material fact. You can do this by presenting an affidavit or deposition testimony. If you present deposition testimony, identify what page and line you're referring to in order to help the court find the pertinent sections. I once had a case where an attorney, in opposing a motion for summary judgment, didn't provide an affidavit or deposition testimony from his client regarding his client's lost income. While his client could easily have signed an affidavit detailing his loss, the attorney instead attached nothing. I asked the attorney why he didn't provide an affidavit in his opposition, to which the attorney replied: "Your Honor, I don't want to give my case up before trial." Indeed, a very effective form of lawyering.

I want to say one last thing about boilerplate forms: always review them, always. Most errors occur when young attorneys do not think through their work but simply plug away.

### **Q: COMMON MISTAKES MADE BY YOUNG ATTORNEYS IN YOUR COURTROOM**

A: Once attorneys become more interested in criticizing each other, that's when they begin to lose focus and credibility before the court. Young lawyers (and experienced ones too) must focus on the law and merits of the case, and they must address remarks to the court, never to each other.

Sometimes, I find that young lawyers are not that familiar with the facts of the case or even the legal standard. The attorney must discuss the legal standard to assist the Judge in making a determination.

Here's another helpful strategy. If you're ever opposing a motion to dismiss and you believe the judge is on the fence about whether the grant or deny it, even though you think you may have fully and properly pled, advise the court that, if the court is so inclined, you would be happy to clarify and/or amend the complaint.

Ultimately, be careful how you use your **credibility** since that is your key asset as an attorney.

### **Q: CAN YOU DISCUSS PROPER & IMPROPER COURTROOM DECORUM ?**

A: Like I said before, attorneys are professionals and should never attack one another. I like formality: stand when you speak to the judge and dress appropriately. Also, all matters should be done on the record, barring exceptional circumstances. Sometimes, I see young lawyers using the ELMO

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## Fresh Perspectives (cont.) - Discovery

(Continued from page 2)

today's world, that time and effort can be saved with a simple email from the propounding party attaching the Word (or other editable document) version of the written discovery.

California has an analogous rule for motions for summary judgment. In California, a moving party must file a "Separate Statement of Undisputed Material Facts" along with its motion. The separate statement lists each material fact which the moving party asserts is uncontested and cites to the evidence supporting that fact. The opposing party is required to provide an in-line response to each alleged fact. These separate statements can wind up being dozens of pages long. To alleviate the tedium on the responding party, California Rules of Court Rule 3.1350(i) requires that, on request, a party must within three days provide to any other party an electronic version of the separate statement.

A similar rule can, and should, be adopted as part of Nevada's discovery rules. Such a rule would promote economy and cooperation during the discovery phase and eliminate unnecessary, redundant busy work. Meanwhile, I encourage you to suggest an informal agreement with opposing counsel to share electronic versions of propounded discovery. Better yet, formalize this agreement in your Joint Case Conference Report. Fellow young lawyer Courtney Miller O'Mara of Lionel Sawyer & Collins in Reno has already begun incorporating this into her practice with great success. •

## Views from the Corner Office (cont.) - Kent Robison

*(Continued from page 2)*

work, clients do not always respect less-experienced lawyers, or are not always knowledgeable about the legal system, easy to work with, or reasonable.

On occasion, the necessity of a client to the lawyer's profession appears to conflict with the associate's emotional well-being. While a client may be reluctant to criticize senior partners or more experienced lawyers in a firm, a client's having to work with an associate appears to communicate a subliminal message to the client that the client is less important than the clients being represented by more seasoned lawyers. As a result, an automatic or inherent prejudice is felt by the client towards the less experienced associate. Added to the inherent prejudice that comes with being an associate is that clients are oftentimes high maintenance but desire to pay low-maintenance fees. It is for these reasons that managing difficult clients is the area that causes the most anxiety and stress for associates. And, it is for these reasons that the less experienced associate handling difficult clients must be a virtuoso in patience, compassion, and business judgment.

The associate must recognize that the case that has been assigned to him or her is incredibly important to the client and the client is likely not well-versed in the law or legal process. It is not uncommon that the legal proceedings consume the client's everyday thoughts and are the most important occurrences in the client's life. The associate must be compassionate and understand how important the case is to the client. Hence, it is vital that the associate quickly learn that being a person with integrity, character, and competence will bring more respect from the client any plaque in his or her office.

While exercising compassion, integrity, and competence, the associate must simultaneously exercise caution and reasonable business judgment when allocating time to over-demanding clients so as to not create an unreasonable bill, which will aggravate a problematic client even more. A mindful and tentative

supervising lawyer will oversee the public relations aspects of the associate-client relationship, expressing respect and accolades for the associate to the client (while acknowledging the difficulties that the associate faces with difficult clients), and assisting the associate with time management.

But still, despite the associate's compassion, competence, and business judgment, unfortunately, some clients are unreasonable per se. That is, some clients will be ungrateful regardless of the quality or quantity of the legal services provided. Often, these types of clients possess these characteristics outside of the legal arena. It is a simple fact of law that there will be clients who will always be dissatisfied, disruptive, and impatient. Under no circumstances should the associate permit the client cause the associate anxiety, stress, or disappointment.

No client should ever be allowed to negatively affect the emotional well-being of the associate. That is not to say that an adversarial relationship should develop between lawyer and client; rather, the associate should take the higher role and not allow any undue criticisms to cause a negative emotional effect. Usually, that is easier said than done. Even extremely experienced lawyers can be offended and affected by client criticism. Yet, during the practice of law, it would behoove the associate to realize that the quality of life is more important than accommodating problematic clients' self-serving criticisms.

The art of dealing with difficult clients is to stay above any negativity and not permit that stress, anxiety, and concern to infiltrate the associate's non-professional life. To do so requires the associate's adoption of a simple psychology that blends courtesy with the ability to deflect criticism without being adversely or negatively affected. Part of this is the senior, supervising lawyer's responsibility to help protect the associate from unnecessary criticism and undue complaints. Working these issues out regularly requires teamwork, and communication between the associate and senior lawyer in this regard is essential. •

## INTERESTED IN CONTRIBUTING CONTENT?

YLS always needs volunteer writers to contribute to our newsletter to keep it fresh and interesting. Contact Austin Sweet at [asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com) today to discuss how your content can be included.

## ATTEND UPCOMING YLS CLE

A PRACTICAL AND ETHICAL PERSPECTIVE INTO THE NEVADA RULES OF EVIDENCE

Presented by the Young Lawyers Section

Friday, March 15, 2013

Thomas and Mack Moot Court Bldg, William S. Boyd School of Law, UNLV, Las Vegas, NV

1:30 p.m. - 3:30 p.m. - 2 CLE hours (including .5 Ethics hours)

Learn more at <http://www.nvbar.org/content/young-lawyers-section>

### Views From the Bench (cont.) - Judge Cadish

*(Continued from page 3)*

when referring to an exhibit even though the exhibit hasn't been admitted.

Regarding oral argument, I encourage it; try not to submit on the briefs alone. I find it compelling to engage the judge, summarizing your strongest points.

**Q: DESCRIBE YOUR PROCESS REGARDING THE SUBMISSION OF ORDERS GRANTING/DENYING MOTIONS FOR SUMMARY JUDGMENT**

A: First, I always ask the prevailing party to run a draft by opposing party before submitting it to me. If any disputes arise, I normally examine the correspondence already shared between the parties to determine which language is appropriate. Second, if granted, the order must (1) contain those factual findings where there are no genuine issues, and (2) state the basis for the court's ruling, specifying which particular issue the court has ruled in favor of summary judgment.

**Q: ANY PREFERENCE WHEN ATTORNEYS SUBMIT AN ORDER SHORTENING TIME?**

A: It's a pretty straightforward process, but not often properly executed: first, call ahead of time and notify the Judicial Executive Assistant that an OST is in process; second, explain in the affidavit why an OST is necessary; third, provide an approximate date(s) as when you need the matter set; and last, attach the appropriate pleading to the order.

**Q: HOW DO YOU FEEL ABOUT REQUESTING/GRANTING SANCTIONS?**

A: Sparingly, and only in the most severe cases.

**Q: DO YOU GENERALLY PREFER IN-TEXT CITATIONS OR FOOTNOTES?**

A: I don't have any particular preference, but in-text citations are easier to read.

**Q: FINALLY, WHAT PIECE OF ADVICE WOULD YOU LIKE TO PASS ALONG TO ALL YLS MEMBERS?**

A: Always remember why you became a lawyer and why you chose to become a lawyer. ***Credibility is our currency, so guard it fiercely.*** •

*“Credibility is our  
currency, so guard it  
fiercely”*

State Bar of Nevada Young  
Lawyers Section

Learn more about YLS and find archived newsletters online at: <http://www.nvbar.org/content/young-lawyers-section>

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## WHY YLS?

The Young Lawyers Section strives to provide opportunities for the assimilation of young lawyers into the profession as well as a training ground for future leaders of our bar. YLS membership is open to all attorneys who have been admitted in Nevada for less than five years, or are 36 years old or younger. From mentor programs, to organizing charity events, to networking, to fighting to improve the image of attorneys in general, YLS has a wide array of activities.

## RECENT YLS EVENTS

**Goldilocks** is in full swing with a new video and continued success. Through the Goldilocks program, young lawyers volunteer to go to fourth grade classrooms throughout Nevada and teach our youth about the legal process and answer questions about being a lawyer. It is an amazing learning experience and wonderful fun for the kids. YLS thanks everyone involved for their contributions, including Chandeni Gill and Jessica A. Green for chairing this event and the following volunteer attorneys:

*Adriana Fralick*                      *Kristen Geddes*  
*Sarah Carrasco*

**Law Suits Clothing Drive** donated professional clothing those in need. Clothing collected in Southern Nevada was donated to Shade Tree, a women and children's shelter in Las Vegas, and the clothing collected in Northern Nevada was donated to ProNet Reno, a non-profit organization that prepares unemployed professionals to re-enter the workforce. Thanks to Justin Carley and Justin Bustos for chairing this event and to all those who donated clothing to make this event a success!

The **Toy Drive** brought joy and toys to less-fortunate children in Southern Nevada. YLS thanks everyone involved for their generosity, including Elias George for chairing this event and the following volunteer firms:

*Gordon Silver*                      *Holland & Hart*  
*City of N. Las Vegas*              *Rainey Devine*  
*Lewis Brisbois Bisgaard & Smith*  
*Brownstein Hyatt Farber Schreck*  
*Koeller, Nebeker, Carlson, Haluck*



YLS Toy Drive



"Thank you" note for the Law Suits Clothing Drive

**Project Salute** was an enormous success. YLS teamed up with Nevada Legal Services to help veterans throughout Nevada with various legal issues, including obtaining disability benefits, discharge upgrades and obtaining lost records. YLS hopes to continue to expand on the success of this project, so stay tuned for more ways to get involved in the future. YLS thanks everyone involved for their contributions, including Jordan Davis and Kevin Kam for chairing this event and the following volunteer attorneys:

*Charity Felts*                      *Edmund J. Gorman*  
*Carli Kinne*                      *Scott Katherman*  
*Millie Barfield*                      *Lorrie J. Haug*  
*Dylan Ciciliano*                      *Rebecca Blood*  
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*Carol A. Kingman*                      *David Ortiz*  
*Heather Anderson-Fintak*  
*Krissta Kirschenheiter*

Take pictures at your next YLS event and submit them for inclusion in the next newsletter!