

JOE LOMBARDO
Governor

TERRY REYNOLDS
Director

STATE OF NEVADA



VICTORIA CARREÓN
Administrator

PERRY FAIGIN
Deputy Administrator

**DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS**

**NOTICE OF PUBLIC MEETING
of the
Occupational Safety and Health Review Board
March 8, 2023
10:00a.m.**

You are hereby given notice that the Occupational Safety and Health Review Board (Board) will conduct a public meeting on Wednesday, March 8, 2023, at 10:00a.m. This meeting will be held at the following location, on WebEx, and via phone:

**Division of Industrial Relations
Employee Training Room
3360 West Sahara Ave., Suite 175
Las Vegas, NV 89102**

WebEx Access:

<https://nvbusinessandindustry.webex.com/nvbusinessandindustry/j.php?MTID=m1d2f80b7b48b688c07425260a672df36>

To Join by Phone:

1-415-655-0001

Access Code: **2455 651 3977**

Meeting Password: **HUuPtpGJ348**

NOTICE

1. Items listed on the Agenda may be taken out of order;
2. Two or more items on the Agenda may be combined;
3. Items of the Agenda may be removed or delayed at any time; and
4. Public comment may be limited to two (2) minutes per speaker in the discretion of the chair. No action may be taken on any matter raised during public comment. Public comment will not be restricted based on viewpoint, but must be relevant to, and within, the authority of the Board.
5. Closed session may be held for Item 3 to consider professional competence pursuant to NRS 241.030.

AGENDA

1. Call to Order; Roll Call; and establishment of a quorum (Chair).
2. Public Comment. (*see* Notice 4) (Chair)

CARSON CITY
400 West King Street
Suite 400
Carson City, NV 89703
(775) 684-7270

LAS VEGAS
3360 West Sahara Avenue
Suite 250
Las Vegas, NV 89102
(702) 486-9080

3. **FOR POSSIBLE ACTION:** Review of solicited proposals submitted by Terry Johnson, Colleen Platt, and Charles Zeh to provide legal counsel to advise the Board concerning matters which come before it, and then selection of which candidate to recommend to the Division of Industrial Relations to serve as the Board's legal counsel pursuant to NRS 618.585(2). (*see* Notice 5) (Chair)
4. Public Comment. (*see* Notice 4) (Chair)
5. Adjournment. (Chair)

Any person with a disability as defined by the Americans with Disabilities Act who requires special assistance to participate in the meeting may contact, at least five (5) business days prior to the meeting, Marisa Santizo by emailing ADACoordinator@dir.nv.gov, or by calling (702) 486-9100 to arrange for reasonable accommodations.

Copies of the supporting material which is not privileged or confidential may be obtained upon request by emailing MSantizo@dir.nv.gov, calling Marisa Santizo at (702) 486-9100, or by mailing a request to the Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, NV 89102, Attention Marisa Santizo.

This Notice and Agenda has been posted at the following locations:

- Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102
- Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada 89703

This Notice and Agenda has also been posted at the following website addresses:

- Division of Industrial Relations Notice of Meeting at <http://dir.nv.gov/meetings/meetings>
- Nevada Public Notices at <https://notice.nv.gov>

Terry Johnson, Esq.
Law Office of Terry Johnson, Chtd.



February 15, 2023

Julie White, Management Analyst II
Nevada Division of Industrial Relations
3360 W. Sahara Avenue Suite 250
Las Vegas, NV 89102-6091
VIA EMAIL: jawwhite@dir.nv.gov

Dear Ms. White:

This correspondence is in response to the Professional Solicitation for Qualifications and Quote of Legal Services for the Occupational Safety and Health Review Board dated January 25, 2023. Based on the information below and the attached Resume of Qualifications, I meet the qualifications to assist the Board in this capacity.

First, I have extensive experience in Administrative Law, acquired over 20+ years in service to the State of Nevada. For example, I previously served as the Nevada Labor Commissioner, which entailed a significant amount of activity presiding over administrative hearings, issuing related subpoenas, ruling on motions and evidentiary matters, and then issuing written decisions and orders related to certain areas of law governing the workplace. During and after my time as Labor Commissioner, I also undertook extensive training in Administrative Law at the National Judicial College in Reno, culminating in a certification in Administrative Law Adjudication Skills.

Second, I have a very good working knowledge of and experience in OSHA matters and the related appeals processes set forth in chapter 618 of the Nevada Revised Statutes and the administrative regulations promulgated thereunder. I previously served as the Director of Business & Industry, working with DIR administration to provide it with regular administrative supervision, reviewing and approving bill draft requests, budgets and proposed regulations, and serving as a liaison between the Division and the Governor's Office and the Legislature on a multitude of issues affecting the Division and its responsibilities.

Third, I have substantial experience in other areas of law impacting the operations of the OSH Review Board. Having previously served as a member of various public boards in Nevada, (8 ½ years on the Gaming Control Board, 6 years chairing the PEBP Board, 3 years on the Governor's Workforce Investment Board), I am very familiar with the requirements of the Open Meeting Law (NRS 241), the Public Records Act (NRS 239), Ethics in Government Law (NRS 281A), and the Administrative Procedures Act (NRS 233B). This experience in the functioning of and regulatory compliance related to public boards would undoubtedly benefit the OSH Review Board.

In terms of other information requested in the solicitation:

- **Geographic Regions:** I am available to serve the Southern Nevada region in person, and statewide through virtual means.
- **Company Ownership/Length of Time in Business:** I am the owner and managing member of the Law Office of Terry Johnson, Chtd. The office has been in operation since January 2022.
- **Contact Person for Billing Inquiries:**
Terry Johnson, Esq.,
[REDACTED]
- **Cost Fee Schedule:** [REDACTED]

The below information is incorporated by attachment:

- Resume of Qualifications
- Nevada Bar Certification
- Current State Business License
- Current City Business License
- Current Certificate of Insurance¹
- Professional References

In closing, I trust this information is helpful in your evaluation of my experiences and abilities to meet the legal needs of the OSH Review Board. Please advise if there are any additional information needs.

Sincerely,

Terry Johnson

TERRY JOHNSON, ESQ.

Attachments

¹ If selected, any additional levels of insurance needed will be obtained prior to contract.



Terry Johnson

EXECUTIVE SUMMARY

Administrative law attorney with extensive experience in regulatory compliance, employment law, public policy and government affairs.

PROFESSIONAL EXPERIENCE:

2022 – Present **MANAGING ATTORNEY**

Terry Johnson, Chtd.

- Practicing primarily in administrative law, regulatory compliance, employment law/labor relations, government affairs and public policy

2021 – Present **ADJUNCT LAW PROFESSOR**

UNLV Law School

- Explain legal concepts and methodologies to upper division law students in classroom settings
- Participate in staff meetings and briefing sessions to discuss best practices for teaching students

2012 - 2021 **BOARD MEMBER**

State of Nevada – Gaming Control Board

- Licensed and monitored corporations and executives in the highly regulated gaming industry
- Drafted and advocated passage of legislation and regulations pertinent to areas of responsibility
- Oversaw and approved issuance of Hearing Examiners' decisions and orders per NRS 463.335(14)
- Co-supervised investigations and enforcement actions for gaming licensees, corporations and applicants
- Administered regulatory compliance programs and internal controls systems monitoring

• Key Impacts:

- Worked with Attorney General to draft and revise certain key administrative regulations
- Presided over administrative hearings and workshops to facilitate enactment of regulations
- Revised litigation and dispute resolution laws and process, reducing costs for businesses
- Revised gaming work card process, expediting appeals filed by employees
- Developed industry guidance on policies involving gaming regulation and cannabis
- Developed highly regarded student externship program for UNLV Boyd Law School students

2011 - 2012 **DIRECTOR**

State of Nevada - Department of Business & Industry

- Served as member of Governor's Cabinet, implementing administration strategic plans and policies
- Provided administrative supervision to 14 divisions regulating various industries such as transportation, insurance, financial institutions, industrial relations, housing, mortgages and others
- Provided administrative oversight to multiple divisions regarding coordinated legislative lobbying strategies and enactment of administrative regulations
- Administered combined budgets of \$119 million and 635 employees statewide

• **Key Impacts:**

- Founded the annual *Governor's Conference on Small Business*
- Created the *Governor's Home Means Nevada - Homeowner Assistance Initiative*
- Initiated pilot alternative Dispute Resolution Program for Homeowners and HOAs
- Identified 200+ unnecessary regulations for repeal under Governor's Regulatory Review
- Overhauled & centralized department's financial and administrative operations into one unit

2007 - 2011 **ASSISTANT DIRECTOR**

Clark County District Attorney's Office

- Served as member of the District Attorney's Executive Management Team, administered internal audits and reviews of department operations and policies, conducted internal affairs investigations, oversaw administration of human resources, IT, budget, facilities management, and criminal trial witness coordination; represented District Attorney in various municipal government workgroups

2005 - 2007 **DIRECTOR (DEPUTY DIRECTOR – 2004 to 2005)**

State of Nevada – Department of Employment, Training & Rehabilitation (DETR)

- As Department Director, served as member of Governor's Cabinet, executing strategic objectives and legislative agenda while administering \$150 million budget and overseeing 822 employees statewide
- As Department Deputy Director, served as coordinator for legislative affairs, testified and advocated passage of legislation, directed division heads on legislative presentations, monitoring legislation for agency impacts, and interacting with Administration officials and Legislators; responsible for daily supervision of Public Information Office, Research & Analysis Bureau, and Internal Audit Office

1999 - 2004 **STATE LABOR COMMISSIONER**

State of Nevada – Office of the Labor Commissioner

- Enforced state labor laws and regulations and investigated violations
- Presided over administrative hearings and issued written decisions under NRS 607.205
- Proposed, drafted and advocated passage of employment legislation before the Nevada Legislature
- Drafted and adopted multiple regulations into the NAC, including agency Rules of Practice (NAC 607)
- Authored advisory opinions concerning agency interpretations of state employment law

• **Key Impacts:**

- Reduced agency backlog of complaints by 77%
- Increased annual collections of back wages and penalties by 84%
- Achieved 80% rate of appealed administrative decisions/orders affirmed by Nevada Supreme Court
- Received the Nevada Taxpayer's Association "Good Government Award"

EDUCATION

B.A., Political Science, UNLV (1993)

J. D., UNLV Boyd Law School – Administrative Law concentration (2011)

Certificate in Judicial Development:

- Administrative Law Adjudication Skills, National Judicial College, Reno, NV (2005)
- Dispute Resolution Skills, National Judicial College, Reno, NV (2007)

AWARDS & RECOGNITION

"*Good Government Award*" – Nevada Taxpayers Association

"*Rising Stars*" Award – In Business Las Vegas Magazine

"*Pro Bono Attorney of the Year*" – Nevada Legal Services

Young Alumni Award – Inaugural Recipient – UNLV Boyd School of Law

Attorney of the Year – National Bar Association, Las Vegas Chapter

COLLEEN LEILANI PLATT
Platt Law Group



January 26, 2023

Nevada Division of Industrial Relations
c/o Julie A. White
jawhite@dir.nv.gov

Dear Ms. White,

I am writing to you to express my interest in applying for the independent contractor position to provide legal services to the Nevada Occupational Safety and Health Review Board (OSH). I believe my experience makes me uniquely qualified to provide the legal services OSH is seeking.

In 2007, my family and I moved to Nevada when I was offered and accepted the position as Deputy Legislative Counsel. As a Deputy Legislative Counsel, I drafted legislative measures, administrative regulations, and researched and drafted legal memoranda. I was promoted to Senior Deputy Legislative Counsel and in addition to the prior duties I had as a Deputy Legislative Counsel, I staffed both Legislative and Interim Committees. As Committee counsel I worked closely with the Legislators and other staff to provide guidance and counsel on the matters before the Committee.

In 2013, I accepted a position with the Nevada Attorney General's Office as a Deputy Attorney General. At the Attorney General's Office, I represented state agencies, including the Department of Business and Industry and the Housing Division, as well as state professional licensing boards, including, the Nevada State Board of Massage Therapy, Nevada State Board of Examiners for Alcohol, Drug and Gambling Counselors. I counseled my clients on the Open Meeting Law, drafted legal memoranda and administrative regulations, conducted administrative hearings, and reviewed and drafted bond documents for the issuance of bonds by the Department of Business and Industry and the Housing Division. I also provided legal guidance to the Director of the Department of Business and Industry as it related to the various Divisions within the Department, including the Division of Industrial Relations. In addition, I represented my clients in district court and before the Nevada Supreme Court in petitions for judicial review and other lawsuits.

In 2015, I made the ambitious decision to open my own law practice. As a solo practitioner I had to develop a budget, maintain the budget, and run the office. At my practice I represented state agencies and state professional licensing boards. I also worked with Richard Perkins and the Perkins Company for the 2017 Legislative Session. Collaborating with the Perkins Company allowed me to gain priceless knowledge of the inner workings of lobbying and advocating for the client.

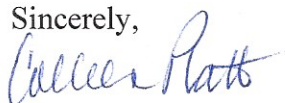
In 2018, after the death of my mother, I took a hard introspective look at where I was in my career and realized I could do more. I accepted the job of General Counsel with Northern Nevada HOPES, a federally qualified health center in Reno, Nevada. In the role of General Counsel, I wore many hats. I developed and drafted policies and procedures, developed a risk management plan and a compliance program, reviewed and

revised internal employment documents, including the code of conduct. When the COVID-19 pandemic struck, I was charged with ensuring that Northern Nevada HOPES was compliant with all requirements to ensure the public remained safe as well as the employees. I had to be flexible and understanding as guidance changed daily. Northern Nevada HOPES has almost 200 employees and as General Counsel I also ensured that the organization was compliant not only with state law, but federal law involving health and safety of employees and clients, employment matters, including, Family and Medical Leave Act, wage and compensation, Equal Opportunities Commission, and Drug Free Work Place.

In the summer of 2021, I left Northern Nevada HOPES to focus on my private practice again. In my practice I again represent many of the same clients.

To say I have been lucky in my career is an understatement. I have been privileged to work for amazing entities and continue to do so in my private practice. I believe that my experience, knowledge and commitment make me the ideal candidate. This proposal is submitted to represent the OSH in the entire state. Thank you for your consideration and I look forward to discussing my qualifications further.

Sincerely,



Colleen Platt

COLLEEN LEILANI PLATT



Comprehensive Knowledge and Experience in Regulatory, Legislative and Healthcare Legal Matters

Results driven attorney who is compassionate and motivated to help those in need. Over twelve years of legal experience, backed by 3.5 years of medical research and a Master of Biology. Experience in legislative drafting, government affairs, regulatory requirements at both state and federal levels and comprehensive understanding of state licensing laws. Licensed by the Nevada Bar. Recipient of the Nevada Legal Elite 2016, 2017.

PROFESSIONAL EXPERIENCE

Platt Law Group, Reno, Nevada

Owner, August 2015-present

- Provide legal counsel to various clients, including, Nevada Housing Division, Nevada Department of Business and Industry and various State of Nevada Licensing Boards
- Provide government affairs services, including lobbying before the Nevada Legislature
- Provide HIPAA training to professional licensees
- Develop policies and procedures governing the internal workings of State Agencies and Licensing Boards
- Develop programs and guidelines for State Agencies
- Assist the Nevada Department of Business and Industry in the issuance of private activity bonds for economic opportunities in Nevada
- Assist the Nevada Housing Division in the issuance of tax credit bonds for the development of housing for low-income families
- Represented Northern Nevada HOPES before the Washoe Board of Equalization on a property tax matter
- Represent licensees in administrative hearings before professional licensing boards
- Draft legislation and regulation for clients

Northern Nevada HOPES

General Counsel

October 2018-August 2021

- Oversee compliance and risk management for a federally qualified health center
- Provide HIPAA training to employees and providers
- Create policies and procedures
- Draft legal memoranda
- Research legal issues involving health clinics, employee matters, workers compensation, and issues unique to its clients
- Negotiate contracts

The Perkins Company

Of Counsel, January 2017-August 2019

- Government affairs work during the 2017 Legislative Session
- Research, analyze and draft memoranda on client specific questions
- Advocate for clients and build and maintain relationships for those clients
- Represented the Nevada State Medical Association, Nevada Health Care Association and other clients in the 2017 Legislative Session

Nevada Attorney General, Carson City, Nevada

Deputy Attorney General, March 2013-July 2015

- Represented State of Nevada Housing Division
- Represented State of Nevada Department of Business and Industry, including providing overall legal guidance for its Divisions, including, the Nevada Housing Division, Division of Insurance, and the Division of Industrial Relations
- Provided legal counsel to various State of Nevada Licensing Boards
- Conducted administrative hearings before various Licensing Boards
- Drafted legislation for the Attorney General's Office, presented legislation to Assembly and Senate Committees
- Received the "Rookie of the Year Award 2013" from Attorney General Catherine Cortez Masto

Legislative Counsel Bureau, Carson City, Nevada

Senior Deputy Legislative Counsel, November 2007-March 2013

- Research, analyze and draft legislation for the Nevada Legislature
- Research, analyze and draft regulations for regulatory agencies of the State of Nevada, including, the Department of Education, State Board of Education, the Commission on Professional Standards in Education, the State Board of Health
- Research and draft memoranda and opinion letters for the State of Nevada
- Prepare and draft contracts
- Provide staff support for Legislative Committee on Education, the Nevada Youth Legislature and the Senate Committee on Education

Illinois Department of Commerce and Economic Opportunity, Chicago, Illinois

Contract Attorney, May 2005-October 2007

- Investigated misuses of grant funds by grantees
- Drafted settlement agreements, contracts, and discovery motions, negotiated contracts
- Drafted and conducted depositions
- Assisted in trademark applications with USPTO
- Conducted administrative hearings, including opening statement, direct and cross examinations and closing arguments

Law Offices of Chicago-Kent, Chicago, Illinois

Legal Intern, May 2004-August 2004

- Drafted office memoranda regarding health law issues and social security disability cases
- Interviewed potential clients and reviewed and analyzed client information

University of Illinois at Chicago, Chicago, Illinois

Researcher, June 2001-June 2003

- Conducted research on viruses to determine whether certain aspects of the virus could kill cancer cells

Rush Presbyterian St. Luke's Medical Center, Chicago, Illinois

Researcher, February 2000-June 2001

- Conducted HIV research for various governmental and pharmaceutical protocols

EDUCATION

Chicago-Kent College of Law, Chicago, Illinois

Juris Doctor, May 2006

- Recipient of Legal Marketing Association Scholarship

Illinois Institute of Technology, Chicago, Illinois

Master of Biology, December 2006

Elmhurst College, Elmhurst, Illinois
Bachelor of Science in Biology, May 1999

- Beta Beta Beta Biology Honor Society; Omicron Delta Kappa Honor Society

Certified in Healthcare Compliance, Healthcare Compliance Association

The Law Offices of Charles R. Zeh, Esq.
Attorneys and Counselors at Law

Charles R. Zeh, Esq.
Pete Cladianos III, Esq.

Sender's e-mail address

February 13, 2023

Via e-mail only: ContractsOSHA@dir.nv.gov

Julie White, Management Analyst II
Nevada Division of Industrial Relations
3360 W Sahara Ave., Ste. 250
Las Vegas, NV 89102-6091

Re: *Legal Services for OSH Review Board*

Dear Ms. White:

Our firm is pleased to submit the following to continue as general legal counsel to the State of Nevada OSH Review Board (the Board). We have been general legal counsel to the Board since August 8-9, 2018, when we were recruited to fill this position upon the retirement of Fred Scarpello, Esq., after his 20 years as Board legal counsel. We look forward to continuing our relationship as general legal counsel to the Board. As before, we propose to provide our services statewide in Nevada.

Our firm has substantial experience in the field of administrative law. Before they went in-house for legal counsel, we were general legal counsel for the Board for the Administration of Subsequent Injury Account for Self-Insured Employers (the Employers' Board) and the Board for the Administration of the Subsequent Injury Account for Associations of Self-Insured Public or Private Employers (the Associations' Board). We were general legal counsel with the Employers' Board for 20 years. We represented the Associations' Board for 18 years. For both Boards, we attended their hearings which were conducted according to the Nevada Administrative Procedures Act. Before the hearing, we proofed Agendas according to the Nevada Open Meeting Law and managed their posting consistent with the Nevada Open Meeting Law. During the course of the hearings, we gave advice to the Board on evidentiary questions that might arise and also gave advice framing the legal issues in the cases presented. Typically, attorneys represented the Employers and Associations in matters before the Boards. A relaxed version of the Nevada Rules of Evidence was employed during the course of the hearings.

Following the hearings, after receiving a transcript of the proceedings, we drafted the decisions explaining the Board's findings and legal rationale for its disposition of the matter. The draft decision was then presented to the Board during an open meeting for review and approval of the draft decision as to whether it accurately stated the action of the Board. Not once

during our tenure as legal counsel to the Board was our draft decision rejected by either Board.

For these Boards, there were actually two hearings on each matter, with the first being a preliminary hearing. If the Employer or Associations Board disagreed with the Board's preliminary disposition, the Employer or Association could ask for a *de novo* hearing on the merits. Post this hearing, an appeal of the Board's disposition could be taken to the State District Court by the aggrieved Employer or Association. Our office would then defend the disposition of the Board which was memorialized in the decision we had written. Sometimes the appeals at the District Court required oral argument and sometimes the District Court decided the appeals on the pleadings. These proceedings took place in Carson City, Reno, and Las Vegas, where we appeared before the District Court in all three jurisdictions.

Reflecting the quality of the members of these two Boards and their devotion to Board business, we enjoyed considerable success defending their decisions when challenged on appeal to the District Courts and the Nevada Supreme Court. For the Employers' Board, 16 Board decisions were appealed by employers to the District Court. From there, four cases were appealed to the Nevada Supreme Court. Of the Nevada Supreme Court cases, one was resolved by settlement and three were decided in favor of the Employer's Board, meaning that the Employers' Board was also successful on 15 of the 16 cases appealed to the District Court.

For the Associations' Board, 10 cases were appealed by the Associations to the District Court. Of those cases, one was appealed to the Nevada Supreme Court. For that case, the Nevada Supreme Court did not outright reverse the Board. Instead, it reversed and remanded the case for further proceedings. As for the 10 District Court decisions, the Associations' Board was successful on all 10 of the appeals to the District Courts.

During our tenure as Board legal counsel, we gave advice to assist with and wrote the revised regulations for both Boards, consistent with the Boards' direction and after holding hearings for public input on the amended regulations. Drafting regulations is a tedious process that also must follow the Nevada Open Meeting law. We successfully helped both Boards negotiate the regulatory amendment process.

For the Board of Review, our work is of a similar nature, though the hearing process to rule on complaints filed by Nevada's Chief Administrator of Nevada State OSHA is far more rigorous before the Board of Review. Here, we draft agendas, and monitor the posting of agendas for Board meetings. We also prepare notices of hearings to advise parties of the date and place where their matter will be heard. Between hearings, we liaison with the Board Chairman to help decide the numerous motions that are made including, but not limited to, motions to continue cases, conduct discovery and to dismiss cases. We draft the pleadings such as orders to vacate, once a decision by the Board Chairman on the pending motions is made. Our office is also the Clerk for the Board where complaints and answers are filed along with the

various motions that might be filed pending a hearing on the merits.

During the pandemic, we conceived of procedures for handling proposed evidentiary exhibits as a work around due to the virtual hearing process that the Board employed during the pandemic. We draft legal memos to the Board when cases present novel or complicated legal issues. During the course of the hearing on the merits of the cases, we are present to give advice on the frequent evidentiary objections that always arise during the course of the hearing and also give advice on the legal issues that the cases raise, during the hearing or in response to Board inquiries during Board deliberations. Of course, we also give advice and monitor proceedings according to the Nevada Open Meeting law which applies to this quasi-judicial Board.

Once a case is heard and decided, armed with the transcript of the case, we draft the Board's decision based upon the law and evidence adduced at the hearing. This decision with findings is reviewed by the Board. And, if it meets with Board approval, the decision becomes a final decision of the Board from which the aggrieved party may directly appeal to the State District Courts. The Board's role is limited on appeal. Its major function for appeals is to decide the case correctly and have a decision written that is defensible on appeal.

The defense of a Board's decision on appeal is handled by the party that prevailed before the Board. The appeal is taken by the aggrieved party to the State District Court. If a party is dissatisfied with the District Court decision, the appeal, then, is to the Nevada Supreme Court. Briefing, there, is by the parties to the case. The Board does not defend itself, there, where the outcome of an appeal could be to uphold the Board, reverse the Board, or reverse and remand in light of the correct legal standard.

Board cases also have a Federal law aspect to them. For example, in *Savage Services Corp.*, Docket No. RNO 18-1937, a case involving employees working atop free-standing railroad cars without fall protection at heights of 15-17 feet, the employer moved to dismiss the case on Federal preemption grounds, claiming the Board of review lacked jurisdiction over this matter. The source of the Federal preemption claim was the Federal Railroad Safety Act (FRSA). The employer argued the FRSA occupied the field, it was broad enough to cover employees working under these conditions and because the FRSA did not require employees to wear personal protective equipment under these conditions, because of Federal preemption, the employer and employees fell under the FRSA. Therefore, because the Federal government had occupied the field, the Board lacked jurisdiction and the case had to be dismissed as the FRSA was not a bar to working without the prerequisite PPE.

After oral argument and considerable briefing, in a written decision of the Board, which we drafted, the Board held for Savage. The complaint was then dismissed with prejudice on Federal preemption grounds due to the FRSA.

The State appealed the case to the State District Court. Savage moved to remove the case to Federal Court because of the Federal preemption issues (that is Federal law). *See, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry v. Savage, U.S.D.C. Nev., Case No. 3:19-cv-000147-LRH-WGC, 12/02/19.* The State opposed the removal, seeking a remand to the State District Court.

The Federal District Court denied the State's motion to remand to the State District Court, stating that Federal preemption, the basis of the Review Board's decision, raised a clear question of Federal law which must be decided in a Federal forum. The Federal District Court then addressed the merits of the motion, concluding with the Board that the Federal government had occupied the field in such a way as to preclude requiring Savage to provide PPE to its employees working atop free-standing railroad cars, holding "... the Board of Review was correct in finding that it did not have jurisdiction to hear NOSHA's [the State's] citation of Savage." Order, p. 10.

The Board's legal and physical jurisdiction is statewide. Our representation follows the Board. The Board hears cases over employers who have a physical presence in Nevada where the alleged objectionable conduct occurred. More specifically, jurisdiction is defined in NRS 618.315 where it states:

1. The Division has authority over working conditions in all places of employment except as limited by subsection 2.
2. The authority of the Division does not extend to working conditions which:
 - (a) Exist in household domestic service;
 - (b) Exist in motor vehicles operating on public highways of this State;
or
 - (c) Are regulated pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801, *et seq.*, the Federal Safety Appliance Act, 49 U.S.C. §§ 20301, *et seq.*, or the Federal Railroad Safety Act of 1970, 49 U.S.C. §§ 20101, *et seq.*, and any amendments thereto.

It should be noted that the term employer is defined to include a "person." NRS 618.095(3).

The Savage case is an example of the carve out of the Federal Railroad Safety Act. The Board holds hearings in Reno, when there are enough Reno claims to justify hearings, there.

Julie White, Management Analyst II
Nevada Division of Industrial Relations
February 13, 2023
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Otherwise, the hearings on complaints are conducted in Las Vegas.

The scope of the Board is also set out in NAC 618.680(1) and (2), which provide that the Nevada Rules of Civil Procedure apply to the proceedings before the Board unless expressly preempted by the Board's regulations prescribing practice before the Board. The Board also falls under the Nevada Administrative Procedures Act. While the Board levies fines, the proceedings are not criminal but civil in nature.

If you have any questions, please do not hesitate to contact me. Please see the attached resume for further discussion of our experience.

Sincerely,

The Law Offices of Charles R. Zeh, Esq



Charles R. Zeh, Esq.

CRZ/kdk

Enclosures

cc: Julie White *via e-mail*
S:\Clients\OSHA\Attorney Contract\2023 Application R2.wpd

RÉSUMÉ OF CHARLES R. ZEH, ESQ.

Charles R. Zeh practices primarily in the areas of Administrative Law, Tribal Law, Business, Civil Litigation, Employment, Government, Tribes and their Housing Authorities, Land Use and Economic Development. He has also represented clients before the Nevada Gaming Control Board and the Nevada Gaming Commission. His work on behalf of State administrative bodies includes appearances before the Courts in Clark County, Washoe County, Carson City and the Nevada Supreme Court, when defending the Board decisions.

Before commencing the practice of law, Mr. Zeh graduated from Dartmouth College in 1965 and received his Juris Doctorate from Cornell University in 1969. After law school, Mr. Zeh came to Nevada as a VISTA, Volunteers in Service of America or the Domestic Peace Corp. As a VISTA, he was assigned to the Washoe County Legal Aid Society. Upon completing an extended term as a VISTA volunteer attorney, Mr. Zeh became Executive Director of the Washoe Legal Services program. During his tenure as Executive Director, he litigated extensively, class actions in state and federal courts including, *Craig v. Hocker*, 405 F.Supp. 656 (D. Nev., 1975). That case restructured operation of the Nevada Maximum Security Prison and moved it into the 20th Century. Then, in *Willie Washington v. City of Reno*, Case No. CV-N-78-0051, U.S. District Court, District of Nevada, this case integrated the City of Reno Fire Department. Prior to this case, no Black or woman had been employed by the Fire Department of the City of Reno as a firefighter.

After leaving Washoe Legal Services, Mr. Zeh formed the small and successful law firm of Leeder, Sferrazza & Zeh. Pete Sferrazza was the Mayor of Reno, Nevada, at the time. Mr. Zeh left Leeder, Sferrazza & Zeh, when the workload out paced the size of the firm, and joined Beckley, Singleton, Delanoy, Jemison & List, as a Senior Associate of the firm. He handled a broad array of matters there, including insurance defense and employment related matters. Mr. Zeh left Beckley, Singleton, Delanoy, Jemison & List to again form his own law firm which is currently, the Law Offices of Charles R. Zeh, Esq.

Mr. Zeh was the Chairperson of the Reno Planning Commission for four consecutive terms and was a member of the Reno Planning Commission for eight years. He served as Chairperson of the Regional Planning Commission for three terms, also a record at the time. As Chairperson of the Regional Planning Commission, during his third term he was responsible for completing the ten-year update of the Regional Plan for Washoe County, the seminal land use and environment document for the Region. He conceived of and chaired the Regional Plan Update Sub-Committee, the group which forged, through a major series of public meetings, the basic document which became the revised Regional Plan. While Regional Planning Commissioner, he served as a member of the Joint Annexation Committee of the Regional Governing Board, a committee charged with resolving fiscal equity issues in the annexation and development process for the area. For his efforts in community planning, Mr. Zeh was recognized as a Silver Star recipient, awarded by Truckee Meadows Tomorrow to members of the community who have shown leadership on quality of life issues.

Mr. Zeh has represented casinos with gaming, employment and development issues. As

outside legal counsel to the Sand Regency Hotel and Casino, he was instrumental in reorganizing the corporate structure and then taking the company public.

Until the State of Nevada went in-house for legal counsel, Mr. Zeh was legal counsel to the Board for the Administration of the Subsequent Injury Account for Self-insured Employers and the Board for the Administration of the Subsequent Injury Account for the Associations of Public and Private Employers. These State Boards are quasi-judicial administrative bodies. Mr. Zeh successfully defended the Boards' decisions before the District Courts of Nevada and also successfully defended the Boards in two cases before the Nevada Supreme Court. *See, The Board for Administration of the Subsequent Injury Account for Self-insured Employers v. Las Vegas Metropolitan Police Department*, Unpublished Disposition, 2013 WL 324151 (Nev.); *The Board of Administration of the Subsequent Injury Account for Self-insured Employers; and State of Nevada Department of Business and Industry, Division of Industrial Relations vs. Harrah's Laughlin; and Cannon Cochran Management Services, Inc.*, Nevada Supreme Court Case No. 57841, February 28, 2013. Mr. Zeh also advised these Boards for compliance with the Nevada Open Meeting Law.

Mr. Zeh has also represented the State of Nevada Occupational, Safety and Health Review Board. This is a quasi-judicial administrative body that reviews NVOSHA citations for violations of work place safety regulations under State and Federal law.

For 20 years Mr. Zeh also acted as outside general counsel for the Housing Authority of the City of Reno (RHA). In that capacity, he gave counsel and advice to the RHA in all civil matters. Mr. Zeh successfully defended the RHA in Federal Court, where five plaintiff's sued the RHA under the Fair Labor Standards Act for back pay and overtime in excess of \$3 million dollars. Mr. Zeh and his co-counsel got the case dismissed upon a motion for summary judgment. *See, Rocas, et al v. Reno Housing Authority*, In the United States District Court for the District of Nevada, Lead Case No.: 3:15-cv-00408-RCJ-WGC, Order dated, March 27, 2018. The plaintiffs filed a Notice of Appeal to the Ninth Circuit Court of Appeals, after which the case was settled.

Mr. Zeh's practice ranges from appearances on Tribal Reservations in Courtrooms barely heated, to the District Courts of the State, to the Federal District Court, and the Ninth Circuit Court of Appeals, enjoying success at each level for his clients.

Mr. Zeh has a long-standing association with Tribes in Nevada. He defended the Pyramid Lake Paiute Tribe, in Federal Court in the case of *High Desert Recreation, Inc., a Nevada Corporation v. Pyramid Lake Paiute Tribe, Does I through Does 100*, United States District Court for the District of Nevada, Case No. 3:06-CV-0588. The Federal District Court granted his motion to dismiss the case. Then, he successfully defended the Tribe when the plaintiff took the case up on appeal, to the Ninth Circuit Court of Appeals. The Ninth Circuit dismissed the appeal, based upon the brief filed in that case. *See, High Desert Recreation, Inc. v. Pyramid Lake Paiute Tribe*, United States Court of Appeals, Ninth Circuit, Case No. 07-16254.

Mr. Zeh also successfully defended Tribes in Tribal Court, the Tribal Court of Appeals, and also, again, in the Federal District Court in *Boney v. Valline*, 597 F.Supp.2d. 1167 (D.Nev, 2009). This case was significant for the successful defense of Tribal sovereign immunity. Had

the Tribe not prevailed in this case, the mere fact that a Tribe received Federal funds should operate to waive a Tribe's sovereign immunity the plaintiff argued. As most Tribes receive Federal funds, this would have been a catastrophe for Tribes had the plaintiff prevailed.

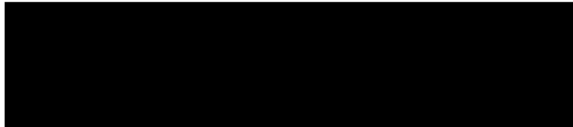
In addition, Mr. Zeh defended the Tribal defendants (the Walker River Paiute Tribe Tribal Chairman, Tribal Police Chief, and Tribal Police Officers) in *Lantry v. Walker River Paiute Tribal Police*, 2011 WL 769974 (D. Nev. 2/25/2011). This was another police brutality case, amongst other issues, he defended on sovereign immunity grounds upon a motion to dismiss that was granted by the Court.

Finally, Mr. Zeh sued the City of Fallon in Federal Court on behalf of the Fallon Paiute Shoshone Tribe, when the City of Fallon refused to provide the Tribe with public sewer service to the Tribe's Trust Status land located within the corporate boundaries of the City of Fallon. The Federal District Court granted the Tribe's motion for summary judgment against the City of Fallon and its City Council members based upon the Equal Protection Clause of the United States Constitution. See, *Fallon Paiute-Shoshone Tribe, et al. v. City of Fallon, Nevada, et al*, 174 F.Supp.2d 1088 (D.Nev., 2001).

Mr. Zeh is active in civic affairs of the community in addition to his planning commission work. He is the former Chairperson of the YMCA of the Sierra Board of Directors and served for five consecutive terms as Chairperson of the Board of Managers of the Reno Family YMCA. He chaired the Environment and Land Use Sub-Committee of "One Region, One Vision." He is also the former Chairman and Chairman Emeritus of the Board of Directors of the Washoe Association for Retarded Citizens (WARC).

He is a member of the State Bars of Nevada and Minnesota and is admitted to practice before the United States District Court for the Districts of Nevada and Minnesota. He is also admitted before the United States Ninth Circuit Court of Appeals and the United States Supreme Court. Mr. Zeh is a member of the Nevada and Washoe County Bar Associations.

PETE CLADIANOS III, ESQ.



EXPERIENCE

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|----------------|---|
| 2003 - Present | <i>The Law Offices of Charles R. Zeh, Esq.</i> <ul style="list-style-type: none">• Representation of Indian Tribes in Contract and Governmental affairs matters.• Real Estate law research and practice.• Representation in Business Litigation.• Representation in Probate and Guardianships. |
| 1992 - 1998 | <i>Citizen's Advisory Committee to Downtown Redevelopment Agency</i> <ul style="list-style-type: none">• Represented community interests on the Advisory Committee.• Chairman of the Committee 1999. |
| 1987 - 1997 | Sands Hotel Casino
<i>Vice President Sales</i> <ul style="list-style-type: none">• Increased convention bookings by over three hundred percent.• Increased average hotel room rates. |
| 1985 - 1987 | Sands Hotel Casino
<i>Cage and Credit Manager</i> <ul style="list-style-type: none">• Created tracing system linking debts to receivable Accounts Receivable resulting in significant increase in collections. |

EDUCATION

- | | |
|-------------|---|
| 2003 | Admitted to Nevada State Bar |
| 1999 - 2003 | McGeorge School of Law <ul style="list-style-type: none">• Jurist Doctorate |
| 1977 - 1981 | University of Colorado Boulder <ul style="list-style-type: none">• B. A. Business Finance |