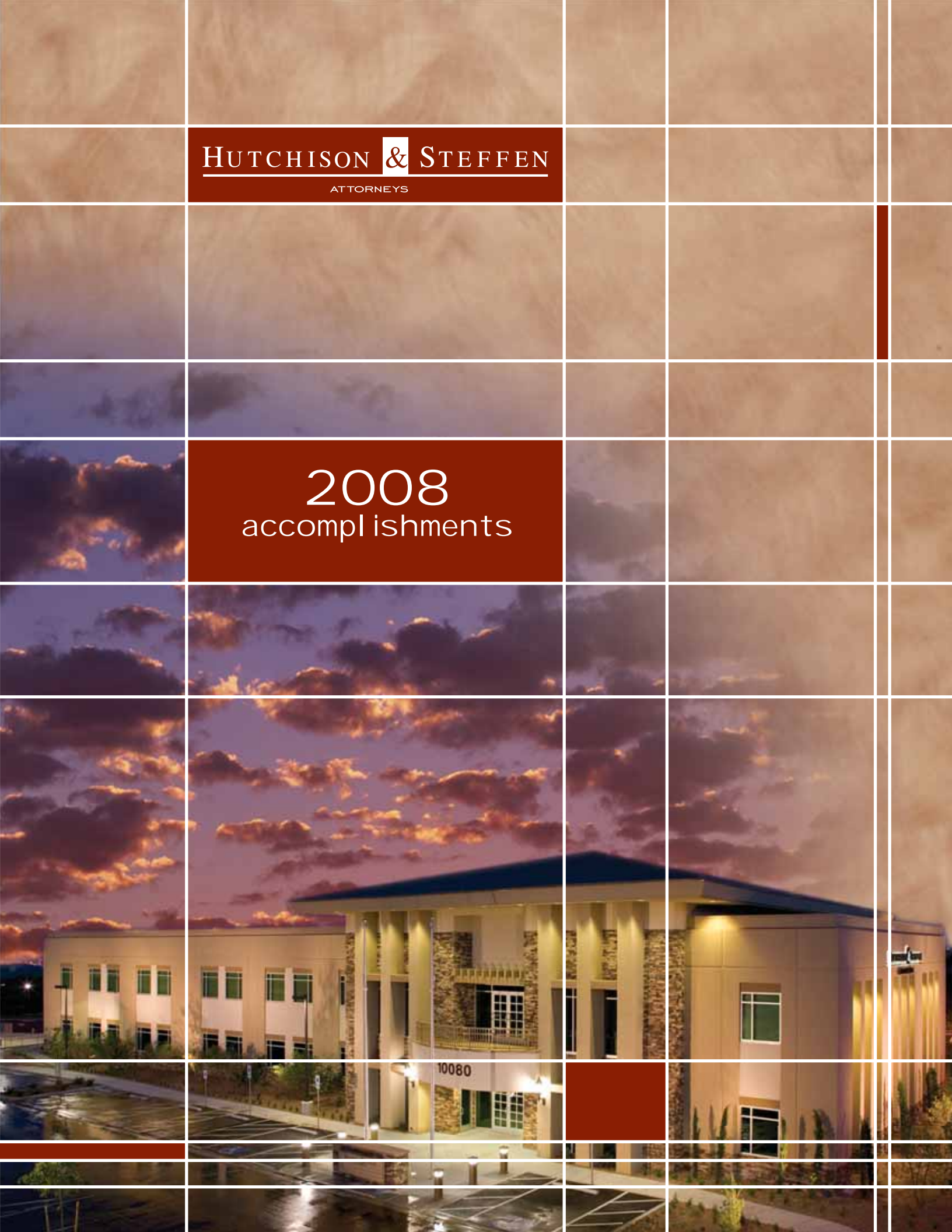


HUTCHISON & STEFFEN  
ATTORNEYS

2008  
accomplishments



## Table of Contents

Firm Philosophy	3
Partners Named	4
Firm Growth	5
Accomplishments	6-10
Notables	11
Community Involvement	12
Firm In The News	13
Published Articles	14-17
Practice Areas	18

The *2008 Accomplishments* is intended to share information about the Law Firm of Hutchison & Steffen, a Professional LLC. This document outlines examples of Firm accomplishments our attorneys have attained for clients in particular legal matters. For each case, the results were dependent upon case-specific facts.

This *2008 Accomplishments* document is merely a communication for our clients, former clients and other parties with whom we have had a prior business relationship. The *2008 Accomplishments* is not an advertisement or solicitation to any party, regardless of how any jurisdiction defines an advertisement or solicitation.

The attorneys of Hutchison & Steffen are not represented herein as specialists or experts in any particular area of the law. In addition, specific examples of matters outlined herein should not be construed to represent, guarantee, or predict similar results for future legal matters handled by the Firm.

©2009 Hutchison & Steffen, A Professional LLC

# Firm Philosophy

The Firm's philosophy is to understand and meet client needs and expectations while adhering to, and enhancing, the highest and best traditions of the practice of law. Hutchison & Steffen's attorneys pride themselves on their ability to provide effective, judicious representation at a cost-effective rate—and it is with the values of honesty, integrity, and professionalism that the Firm approaches every legal matter.



# Partners Named

## SCOTT A. FLINDERS



Scott A. Flinders practices primarily in the Firm's litigation department where he focuses on business and commercial litigation, insurance defense, and personal injury. He has represented clients in numerous trials, mediations and arbitrations, both as primary and as secondary counsel.

Flinders is a native of Porterville, California. He received his B.A. degree from Brigham Young University with a major in history, and his J.D. degree from Texas Tech School of Law. During law school, Scott excelled at mock trial and negotiation competitions. He is admitted to practice in both state and federal courts in Nevada and is also licensed in Texas.

## MARK J. CONNOT



Mark J. Connot practices primarily on business and commercial litigation, insurance defense, appellate litigation, and bankruptcy. He also has significant trial experience, having tried many cases in state, federal, and tribal courts and in administrative tribunals.

Connot was raised on a ranch in South Dakota. He earned a bachelor's degree in economics from South Dakota State University and graduated from the University of South Dakota School of Law with Sterling Honors. While in law school, Connot also earned an MBA degree. After graduation, he clerked for the Honorable John B. Jones, U.S. District Court, District of South Dakota, and then went into private practice.

He has served as lead counsel in over 25 jury and court trials and as second chair in many more. He was elected president of the South Dakota Trial Lawyers Association in 2004 and served on its board of governors for five years. He is a frequent lecturer at law schools and also presents continuing education seminars and classes in his practice areas. Connot is admitted to practice in Nevada, South Dakota, Nebraska, Wyoming, and North Dakota.

# Firm Growth

## New Attorneys Added



*Christina M. Alexander*



*Deidre J. Call*



*Jeremy C. Cooley*



*Arun Gupta*



*Stephen J. Mayfield*



*Cynthia G. Milanowski*



*Cami M. Perkins*



*Jacob A. Reynolds*



*Steven M. Rogers*

# Accomplishments

## HUTCHISON & STEFFEN SECURES HISTORIC \$388 MILLION JURY VERDICT AGAINST CALIFORNIA'S TAXING AGENCY

### VERDICT WILL HOLD GOVERNMENTAL AGENCIES ACCOUNTABLE FOR ABUSIVE CONDUCT



Mark A. Hutchison, lead counsel for Gilbert P. Hyatt, recently led a trial team in securing a jury verdict in his client's favor for \$388 million against the California Franchise Tax Board. The jury returned its verdict following approximately four months of intense trial testimony and argument and over 10 years of litigation. Hyatt, who received a key micro-processor patent in 1990, sued California's tax assessment and collection agency, alleging the agency audited him in bad faith and committed fraud and other intentional torts during its audit. The Franchise Tax Board claimed Hyatt was a California resident in 1991 and part of 1992, assessing him millions of dollars in income taxes for those years, including fraud penalties.

"The entire case, from start to finish, is unprecedented."

- Mark A. Hutchison,  
Lead Counsel for  
Gilbert Hyatt

Hutchison & Steffen has handled the lawsuit since the firm filed the complaint in January of 1998. "Many of the firm's attorneys played key roles in securing this historic victory for the client," said Hutchison. After the case was filed in Nevada, California took the case to the Nevada Supreme Court and then to the United States Supreme Court, arguing that Nevada courts could not adjudicate in Nevada Mr. Hyatt's claims against the California Franchise Tax Board. The United States Supreme Court disagreed and unanimously upheld the Nevada Supreme Court's ruling that Mr. Hyatt's intentional tort claims could proceed to trial in Nevada. Jury selection began on April 14, 2008.

The jury returned a unanimous liability and compensatory damage verdict on August 6, 2008, for \$138.1 million for fraud, intentional infliction of emotional distress, abuse of process, breach of confidential relationship, and invasions of privacy. On August 12, the jury unanimously determined that the Franchise Tax Board's conduct warranted punitive damages. On August 14, the jury rendered its verdict assessing \$250 million in punitive damages. Hutchison stated, "The entire case, from start to finish, is unprecedented." As reported in local and national news media, Hutchison observed that the ruling against the California Franchise Tax Board is like "the shot heard 'round the world at Lexington and Concord" for abusive taxing agencies. He continued that "government agencies should pause and reflect on the significance of this verdict."

Jury verdicts can have historical significance and Hutchison hopes this verdict will prevent further abuse of law-abiding citizens. "The amount of the verdict will make government agencies realize they are accountable for abusive conduct by employees - especially when the conduct is condoned and encouraged." The jury's \$388 million award makes it one of the largest verdicts in favor of an individual in United States history.

# Accomplishments

## JOSEPH R. GANLEY



*Joseph R. Ganley*

### **Consolidated v. Rodrigues:**

Joseph Ganley and Patricia Lee successfully enforced the client's non-competition agreement in a hotly contested case that involved unique employment law issues, particularly whether an ex-employee may open a business outside the geographic scope of the restrictive covenant and still be enjoined from competing. Consolidated obtained a temporary restraining order and, after a lengthy evidentiary hearing before Judge Timothy Williams in Department 16, a preliminary injunction against the defendant, which impacted approximately 80 or so employees. The injunction is extant and still being enforced by Hutchison & Steffen for Consolidated.



*Patricia Lee*

### **Alpha v. Crevoiserat:**

Joseph Ganley and Patricia Lee successfully defeated the plaintiff's non-competition agreement against the firm's client before Judge Jessie Walsh in Department 10. The Court held a comprehensive evidentiary hearing at which Hutchison & Steffen prevailed in defeating plaintiff's application for a temporary restraining order and preliminary injunction. Ganley and Lee also successfully defended claims against the client and successfully prosecuted claims for the client relating to corporate governance and law.

### **Hyatt v. Franchise Tax Board:**

Joseph Ganley participated significantly as a member of the Hutchison & Steffen case team that won one of the largest individual jury awards in United States history. After a lengthy jury trial, the firm secured a judgment of \$388 million (not including interest) in its client's favor. It was a landmark victory that has impacted taxing agencies throughout the United States.

### **Global Developments v. World Hockey Association:**

Joseph Ganley led a Hutchison & Steffen team that secured a federal court judgment in excess of 5 million dollars for its client against the defendant in a case that involved issues of fraud, corporate governance, breaches of fiduciary duties and the like.

### **Global Developments v. Omni Entertainment:**

Joseph Ganley led a Hutchison & Steffen team that secured a judgment of close to \$500,000 for its client against the defendants in a case that involved issues of fraud, corporate governance, breaches of fiduciary duties and the like.

# Accomplishments

## L. KRISTOPHER RATH



### **First Technology, LLC, v. Bodog Entertainment**

L. Kristopher Rath prevailed in a nearly 50-million-dollar lawsuit involving a Hutchison & Steffen client, First Technology, LLC, versus Bodog Entertainment. The lawsuit involved allegations of infringement on a method-related patent. The court entered a default judgment in June of 2007, and then upheld this judgment despite a challenge from the Bodog entities. The case is significant not only because of the large amount of the damages, but also because it sends a clear signal that online gaming and entertainment

companies are subject to the same patent and intellectual property laws that govern other enterprises.

The Bodog entities appealed the default judgment to the United States Court of Appeals for the Federal Circuit, which upheld the default, and affirmed the lower court's decision, on October 8, 2008.

## MARK J. CONNOT



### **State of Nevada Department of Transportation vs. Sunset Beach Girls, LLC**

Mark Connot successfully resolved a condemnation case involving a client of the Firm and the Nevada Department of Transportation ("NDOT"). The action involved a flyover on Blue Diamond Road and resulted in a 22-square-foot taking of the Client's property and two small easements by NDOT. The flyover significantly impacted visibility into the property and thus impacted the highest and best use potential of the property. NDOT contended that under Nevada law,

damages could not be awarded for impact on visibility. After hearing extensive arguments on that issue, the trial judge ruled that damages could be awarded for loss of visibility into the property. NDOT initially offered \$52,900 for the taking and the easements. After a three-day jury trial and 30 minutes before closing arguments, NDOT offered \$1.5 million plus an adjacent parcel of NDOT land, which the client accepted.

# Accomplishments

## HUTCHISON & STEFFEN PREVAILS IN NEVADA SUPREME COURT



*Michael K. Wall*

Michael Wall and Kevin Sutehall recently prevailed in a Nevada Supreme Court case involving disputed ownership rights to what had long been a family farm. Hutchison & Steffen represents one of the original owners of the farm, which was involuntarily sold by court order issued in a partition action some years ago. Wall and Sutehall pursued an appeal to the Nevada Supreme Court and obtained reversal of the sale, but the purchaser at the sale claimed he was still the owner of the farm despite the reversal because he was allegedly a bona fide purchaser for value without notice.

Hutchison & Steffen maintained that the district court lacked jurisdiction to enter its order of sale, but the purchaser argued the order of sale was merely voidable, not void. A new district court judge agreed, and issued a restraining order against the original owners from taking any action to cloud the title of the purchaser. Wall and Sutehall went again to the



*Kevin M. Sutehall*

Nevada Supreme Court, arguing that the five-year deadline of NRCP 41(e) is not only mandatory, it is jurisdictional: making the sale order void and not just voidable. The Nevada Supreme Court agreed. In a published opinion, the Nevada Supreme Court held for the first time that the five-year deadline of NRCP 41(e) is jurisdictional, and that orders entered in violation of the rule are void.

As a result of this important victory, the original owners can now bring the case before the district court for an ultimate decision about the land's legal ownership. Wall, who leads Hutchison & Steffen's

Appellate Practice Group, is a former supervising staff attorney for the Nevada Supreme Court and has years of experience in appellate litigation. Sutehall, an associate with Hutchison & Steffen, assisted Wall on all aspects of the case.

Although the legal issues in this case are very complex, Wall believes the decision supports the concepts of due process. His experience and practice with appellate law, a highly specialized area of legal practice, enabled him to achieve this important victory for the client.

# Accomplishments

## KUMEN L. TAYLOR



### **Bonnie Grace Woodland v. Norman D. Mecham and Mitzi A. Mecham:**

Kumen Taylor tried this case in Idaho. It involved a trustee of a trust who was 102 years old. Due to health problems, he decided to sell some valuable trust property to provide the means to pay his medical and living expenses while he convalesced in a care center. Taylor's client purchased the property to assist the trustee, whom he had known for most of his life. The trustee died shortly after the sale was completed.

One of the trustee's daughters became aware of the sale after her father's death and sued her sister who had assisted her father in the sale of the property. She also sued Taylor's client. She claimed her father was incompetent at the time of the sale due to age, medication and other factors. She claimed her sister and the client colluded to purchase the trust property at below fair market price.

Following a four-day trial, the court found in favor of Hutchison & Steffen's client. The court quieted title to the property in favor of the client and awarded him 9 shares of valuable water rights, which were appurtenant to the property.

### **Erica Hamilton v. Todd Davis:**

This case involved an auto pedestrian accident, which occurred in a high school parking lot. Hutchison & Steffen's client was driving his car exiting the parking lot. He turned around to put a book in the back seat of his car. At the same time, the plaintiff began crossing the lane of travel in front of the car. When the client turned back around, the plaintiff was directly in front of him. He slammed on his brakes but was unable to avoid striking the plaintiff and knocking her to the ground.

Plaintiff suffered a disk herniation in her thoracic spine and sued the client who offered her \$50,000 to settle the case. The plaintiff refused and demanded \$86,000. The case was tried to a jury. The jury found that both parties were equally negligent. The plaintiff received no award because a 50/50 verdict results in a no cause of action in Utah.

# Notables



*Mark A. Hutchison*

## **FOUNDING PARTNER MARK A. HUTCHISON NAMED TO SUPER LAWYERS 2007 LIST**

Founding partner Mark A. Hutchison was named to the 2007 Mountain States Super Lawyers list. This announcement was made public in the fall of 2008. This national listing identifies the top attorneys in each region based on practice areas. Hutchison was named to the prestigious list for his business litigation practice.



*Joseph R. Ganley*

## **PARTNER JOSEPH R. GANLEY ACHIEVES HIGHEST MARTINDALE-HUBBELL® RATING**

Joseph R. Ganley recently received the highest possible rating by Martindale-Hubbell®, the legal community's premier peer rating service. The AV rating places Ganley in the top tier of attorneys rated for ethical standards and legal excellence. The AV rating is a significant accomplishment as lawyers are rated by sitting judges and their peers.



*Michael K. Wall*

## **PARTNER MICHAEL K. WALL APPOINTED TO STATE SUPREME COURT COMMITTEE**

Michael K. Wall was named to the Nevada Supreme Court Bench Bar Committee. The Supreme Court established the committee in 2005 to review its rule changes, court processes and internal operating procedures. The committee also develops outreach programs to educate the bar and the public about the court and its work, practices and procedures.



*Tanya N. Lewis*

## **ASSOCIATE TANYA N. LEWIS JOINS AMERICAN INNS OF COURT**

Tanya N. Lewis was accepted into the Las Vegas Chapter of the American Inns of Court for 2007-2008. The American Inns of Court is a professional organization designed to advance the skills, professionalism and ethics of the legal bench and bar. The chapter includes many of the community's best and most experienced judges and attorneys.

# Community Involvement

## HUTCHISON & STEFFEN SPONSORS EAGLE BALLOON IN THE 2008 SUMMERLIN PATRIOTIC PARADE



In recognition of our country's celebration of Independence Day, the Firm's partners, associates, and staff came together to provide an amazing display of the American Bald Eagle during the Summerlin Patriotic Parade on July 4th. This symbol of freedom has a wingspan of 33 feet, is 25 feet tall and takes twelve balloon handlers to navigate it through the parade route.

The Firm was honored to participate in this celebration of American heritage and freedom. The eagle received many cheers and much applause along the parade route.



# Firm In The News

## HISTORIC VICTORY MAKES INTERNATIONAL NEWS

Hutchison & Steffen obtained a \$388 million award in its representation of a client against California's taxing agency (see page 6 for the story). Below is a sampling of the dozens of news agencies that reported the award, which is one of the largest verdicts in favor of an individual in United States history.

Yahoo! Finance

Forbes.com

FindLaw Legal News

Boston Business Journal

Silicon Valley Business Journal

San Francisco Business Times

Dallas Business Journal

Houston Chronicle

Washington Business Journal

Los Angeles Business

Sacramento Business Journal

Denver Business Journal

In Business Las Vegas

Fox

Philadelphia Business Journal

CBS

Phoenix Business Journal

Finance Industry Today

Austin Business Journal

ABC

Yahoo! UK

Dayton Business Journal

Houston Business Journal

NBC

Atlanta Business Journal

St. Louis Business Journal

Pacific Business Journal

Plus dozens of other media outlets



## Putting Together the Pieces of Civil Discovery: Tips from Discovery Commissioner Bonnie Bulla

By Tanya Lewis

Those of us who practice in the field of civil litigation know that disputes over civil discovery—whether it is written discovery, depositions, or the timelines established by the parties—are often like death and taxes—inevitable and unavoidable. Discovery disputes that cannot be resolved by parties are heard in Clark County by the Civil Discovery Commissioner, Bonnie Bulla, who took the bench in January 2007 after Commissioner Thomas Bigger moved to the Probate Commissioner's office.

The topics of discovery and discovery disputes are often items of discussion and concern among attorneys. Rules may seem to change frequently, parties may be adverse, and the possibility of sanctions always exists. Common concerns include completing documents such as Joint Case Conference Reports and stipulations correctly and avoiding mandatory discovery conferences and sanctions. Commissioner Bulla was gracious enough to take time to sit down with me to discuss some important points that she thought that attorneys appearing before her should know:

### Joint Case Conference Reports

As almost everyone knows, parties are required to hold an Early Case Conference (ECC) within 120 days of the filing of the defendant's answer. The purpose of the ECC is to disclose documents and witnesses, frame the issues of the case, and plan discovery dates and deadlines. The topics addressed at the ECC are memorialized with the Joint Case Conference Report (Joint Case Conference Report), which is then filed.

EDCR 1.90(a)(2) states:

Time limits for discovery commissioner. Except in complex litigation as defined in N.R.C.P. 16.1(f), the discovery commissioner shall ensure that pretrial discovery is completed within 18 months from the filing of the joint case conference report. Discovery in complex litigation shall be

completed within 24 months from the filing of the joint case conference report.

NRCP 16.1(f) prescribes:

In a potentially difficult or protracted action that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, the court may, upon motion and for good cause shown, waive any or all of the requirements of this rule. If the court waives all the requirements of this rule, it shall also order a conference pursuant to Rule 16 to be conducted by the court or the discovery commissioner.

Parties whose discovery dates exceed the time prescribed by EDCR 1.90 will be summoned for a discovery conference in front of the Commissioner to discuss the issues of the case. The Court will then determine whether good cause exists to extend discovery beyond 18 months. To avoid a discovery conference, structure the discovery deadlines appropriately.

### Stipulations and Motions To Extend Discovery

Another area in which the Discovery Commissioner notes continuing issues is the subject of stipulations and motions to extend discovery.

**Bonnie** continued on page 26



n 1  
se  
ate a

# Published Articles

(Continued from previous page)

## **Bonnie** *continued from page 25*

ery. EDCR 2.35 was enacted in October 2005 to ensure that parties, when moving or stipulating to continue discovery deadlines, were providing the court with adequate information regarding the reason for the continuance. The rule states:

### **Rule 2.35. Extension of discovery deadlines.**

(a) Stipulations or motions to extend any date set by the discovery scheduling order must be in writing and supported by a showing of good cause for the extension and be received by the discovery commissioner within 20 days before the discovery cut-off date or any extension thereof. A request made beyond the period specified above shall not be granted unless the moving party, attorney or other person demonstrates that the failure to act was the result of excusable neglect.

(1) All stipulations to extend any discovery scheduling order deadline shall be lodged with the discovery commissioner and shall include on the last page thereof the words "IT IS SO ORDERED" with a date and signature block for the commissioner or judge's signature.

(2) A motion to extend any discovery scheduling order deadline shall be set in accordance with Rule 2.34(c).

(b) Every motion or stipulation to extend or reopen discovery shall include:

(1) A statement specifying the discovery completed;

(2) A specific description of the discovery that remains to be completed;

(3) The reasons why the discovery remaining was not completed within the time limits set by the discovery order;

(4) A proposed schedule for completing all remaining discovery;

(5) The current trial date; and

(6) Immediately below the title of such motion or stipulation a statement indicating whether it is the first, second, third, etc., requested extension, e.g.:

STIPULATION FOR EXTENSION OF TIME TO COMPLETE DISCOVERY (FIRST REQUEST)

(c) The court may set aside any extension obtained in contravention of this rule.

The Commissioner's office reports that many attorneys are submitting motions and stipulations that are not compliant with EDCR 2.35 because they do not contain all of the information required by the rule. Unfortunately, the Discovery Commissioner's office returns many motions and stipulations for lack of compliance, and if, upon re-submis-

sion, the motion or stipulation is not compliant, the court will set a discovery conference to discuss how to bring the request into compliance.

## **Sanctions: How to Avoid Them**

Certainly, we all have the goal of avoiding sanctions whenever and wherever possible. The Commissioner's office has had repeated issues with parties filing attachments to a Joint Case Conference Report that contain personal information, such as social security numbers, financial information, or medical records. The Commissioner states that the only exhibits that should be attached to a JCCR are a list of witnesses or a list of documents, and that should other exhibits be attached that breach a party's confidential information, the attaching party will likely be sanctioned \$1.00 per page.

The Commissioner emphasizes that one of the most frequent reasons that parties are sanctioned is the failure to answer discovery in a timely manner. Should a party file a motion to compel against a non-answering party, she is likely to award attorney fees to the party that filed the motion.

## **Requests for Admission**

NRCP 36 states that requests for admission that are not answered within 30 days are deemed admitted by the non-answering party. The Commissioner states that she will consider a motion filed to retroactively extend the deadline to answer requests for admission on a case-by-case basis. Factors that would weigh into the decision whether or not to actually grant a motion to extend would be the length of the delay in responding to the requests, the time elapsed from the deadline to the filing of the motion, and whether or not the closure of discovery is imminent.

## **Professionalism**

Commissioner Bulla emphasizes that one of her goals is to increase professionalism among attorneys who appear before her court and professionalism in the discovery process. One thing that she will not tolerate is rudeness to her staff members, and iterates the importance of respect in our professional community. While the stresses of a daily litigation practice can take their toll on anyone, this is no excuse to treat others with anything less than respect. **G**

*Tanya N. Lewis has been an associate with Hutchison & Steffen since 2004. She practices primarily in the areas of insurance defense, commercial litigation and collections, and family law. She is a 1999 graduate of the Seattle University School of Law and is licensed to practice in Nevada and Washington State.*

# Published Articles



## Zealous Representation Through Various Trusts

By Stephen Mayfield

I recently had a heated conversation with a financial planner who said to me, "I wish you attorneys would stop always recommending a living trust when a will is all the client needs. It seems to me you are just trying to make money." Without waiving attorney-client privilege regarding our mutual client, I assured my friend that the trust I recommended for the client was, in my estimation, absolutely necessary for the client to accomplish her intended result. I also explained how, on several occasions, I had not recommended a living trust where a simple amendment to an existing trust, or a will would suffice. He did not seem impressed.

The fact remains that some people have a negative impression of estate planning attorneys because of their misconception that we are glorified salespeople, as opposed to qualified legal counselors who advocate important legal strategies. The qualified estate planning attorney has the ethical obligation to "zealously represent" his or her client, just as much as a civil litigator or criminal defense attorney does. The difference is we are advocating for the client so that they or their estate will incur fewer legal costs down the road, to assist them in maximizing the available estate tax exemptions, and to ensure that their estate will be administered and distributed just as they want.

The seasoned estate planner is well versed in the reasons why estate planning is so important and what exactly his or her responsibility as an advocate entails. Unfortunately, there are many "professionals" out there who either misunderstand the estate planning purposes and process, or they offer counsel and services which is likely an unauthorized practice of law violation, either of which results in the client receiving incorrect advice. You may have even fallen prey yourself to a well meaning, but ill-informed financial planner, accountant, or investment broker and received misinformation. After all, if you practice full time in an area of law that does not directly relate to estate planning, you are likely too busy to delve deeply into the world of estate planning, and probably do not fancy the rigors of tax law, which, let's face it, can be overwhelming and can dramatically affect how an estate plan should be written.

As a practicing estate planning attorney, I hope to give the non-estate planning counselor an idea of some

common issues and concerns to be aware of so you can "zealously represent" your client's interests in the event the conversation turns toward wills, trusts, probate and estate taxes.

### Probate avoidance

One of the most common reasons for seeking a living trust is to help an estate avoid probate. My financial planner friend could not fathom why attorneys always seem to preach against the evils of probate as the first reason for a living trust. Granted, if a person's estate is composed of joint tenancy property, accounts that have designated beneficiaries or pay on death accounts, then probate avoidance may not be a major concern. However, one thing people usually forget about joint tenancy property is that despite the benefit of avoiding probate on the death of the first to die, the death of the survivor does not enjoy that same result. Ultimately, the property will go through probate if it meets the statutory value.

That being said, what is the big deal about probate? Why indeed is it such a burden that estate planning attorneys everywhere decry it as though probate exposure will leave a client deaf, dumb and blind? Well, certainly it is no big deal to those who practice in probate. After all, we are lawyers and as such, we generally enjoy attending hearings, preparing court documents, and crossing swords with opposing attorneys. However, the typical estate beneficiary does not want to go court, and they certainly do not want to wait six to twelve months, or perhaps more, to finally receive their share of the estate.

For me, one of the biggest benefits to avoiding probate, is the avoidance of stress that the family has to endure in the administration of the estate. Typically, people will need to grieve for a time, and then they will be eager to move on with their lives. Unfortunately, for many people, even in the best circumstances, where there is little or no conflict or litigation involving the estate, probate administration can be frustrating. The passing of a loved one, especially a beloved spouse or child, is often devastating. For those who have never gone through such a loss, it is often difficult to understand the emotional roller coaster that it is. Now add

(Continued from previous page)

to that the burden of fulfilling personal representative duties and sometimes clients will break down under the weight of the constant reminder of their loss.

Personal representatives have to deal with their own emotions as well as the mundane realities of probate administration such as verifying petitions, organizing, inventorying and holding assets until distribution is permitted by the court, obtaining appraisals, establishing bank accounts, paying bills and of course the always pleasant duty of preparing tax returns. Then after all of that fun, they get to write out a substantial check to the attorney who made all that madness possible. I believe that a simple cost/benefit analysis of the expense of a living trust versus the monetary expense and emotional trauma of probate will always weigh in favor of the living trust.

### Estate tax flux

With the impending sunset of the Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA) scheduled to occur on January 1, 2011, I often hear questions from clients about whether they will still need a complex trust if the estate tax applicable exclusion remains larger than \$2,000,000 (the amount for 2008). The answer is, it really depends. If the applicable exclusion is finally set at \$3,000,000, which inci-

dentally is the figure many commentators have suggested is likely, a simple trust may suffice. The real problem is that even if Congress finally comes to an agreement, there is no guarantee that any decision made in the next year or so will remain static. If history has shown us anything, it is that Congress rarely if ever will "leave well enough alone."

Interestingly the recent word from Washington is that the Senate passed a bill, which if passed by the House, will set the estate tax applicable exclusion at \$3,000,000 with the Generation Skipping Transfer Tax (the "GST Tax") at only \$2,000,000. An in depth discussion of the GST Tax is beyond the scope of this article, but suffice it to say that if that is the ultimate decision, then it will give planners several unique challenges. Generally, when the value of an estate is expected to exceed the estate tax applicable exclusion, the estate planning attorney will recommend an AB or ABC trust for married couples so as to isolate the benefit of each individual spouse's exclusion. If done correctly, this strategy will allow the trustors' designated beneficiaries to enjoy the benefits of both trustors' applicable exclusion, rather than just one.

If the trustors subsequently want the principal of their estate to pass to grandchildren or people of the same generation as their grandchildren (a "Skip Person" for GST Tax

**Estate** continued on page 38

**Estate** continued from page 37

purposes), and if the \$3,000,000 applicable exclusion with a \$2,000,000 GST exemption becomes law, then deciding how to fund the credit shelter trust (the trust generally equal to the applicable exclusion available for the estate of the first spouse to die) will be more difficult. During the EGTRRA years, deciding how to fund the credit shelter trust has been comparably an easy decision because the GST exemption has been equal to the applicable exclusion. With an unequal value between the applicable exclusion and the GST exemption, the goals of the client will need to be clearly defined and discussed. For example, if the main beneficiaries are the trustors' children rather than grandchildren, then the common marital pecuniary or reverse marital pecuniary funding provisions will likely meet the client's needs. Alternatively, if the clients are more inclined to leave the bulk of their estate to a Skip Person then more care will be needed.

One possible way to avoid any GST Tax and yet fully fund the credit shelter trust is to add a general power of appointment for the benefit of the trustors' children. This can have the desired effect of passing the estate indirectly to the Skip Person and simultaneously result in the estate not being subject to the GST Tax. Unfortunately this is not a panacea because in order for this plan to work, the trustors will need to communicate clearly with their children how they should exercise that general power of appointment in order for the plan to work in favor of the Skip Person. If the children have a different agenda than the trustors, well I think you can see that the Skip Person may be left out in the cold.

Another alternative would be to fund the credit shelter trust with just the GST exemption of \$2,000,000 and rely on the marital exemption to avoid any estate tax at the death of the first to die. This may have the result of greater estate tax at the death of the second spouse to die, but it also may open the door to segue into introducing the client to the estate tax benefits of creating an additional trust such as a Grantor Retained Annuity Trust or an Irrevocable Life Insurance Trust.

### Certified Legal Nurse Consultants

Some of our services include:

- Screen or investigate cases for merit
- Assess the alleged damages/injuries
- Define applicable standards of care
- Summarize, translate and interpret medical records

**Risk Free  
Guarantee**  
Expert Consultant  
Expert Witness

Contact us for a **FREE** initial consultation

**ARN CONSULTING** C: 702.374.1637  
A Partnership You Can Trust F: 702.739.7243  
www.arnconsultingonline.com E: ARNConsulting@cox.net

For the experienced estate planning attorney, the various possibilities are intriguing and intellectually stimulating. However, in keeping with the theme of the attorney's duty to "zealously represent" the client's interests, the simplest answer may actually be the best. Because of all of the current uncertainty as to the estate tax, a simple Disclaimer Trust may give the client just enough flexibility to isolate that portion of the estate of the first spouse to die to ensure that the beneficiaries get the benefit of both trustors' applicable exclusion. Unfortunately this strategy is not without pitfalls as well. A Disclaimer Trust requires the surviving spouse to formally disclaim a portion of the decedent spouse's estate. The formalities are not arduous but they must be strictly met, otherwise the benefit will be lost. Be aware that if a Disclaimer Trust is chosen, it may be incumbent upon the drafting attorney to check up on the client from time to time to ascertain whether the client needs additional assistance. Remember that in estate planning, when an attorney is sued for malpractice it is more likely that the plaintiff will be the trust beneficiary than the trustor.

### FDIC

In the wake of the economic downturn and the general concern over the stability of the banking system, I have recently heard questions about whether bank assets held in trust will be sufficiently protected through FDIC. Fortunately, the good news is that assets held in trust potentially have greater FDIC protection than held outright and free of trust.

Funds held in deposit with a bank that is FDIC insured are insured not just to the value of the amount held in the account, but to the interest beneficially held by each beneficiary. For example, an account with a value of \$1,000,000 that is owned outright is only insured up to \$100,000. That is obviously not the most attractive scenario. For the risk-averse investor it is downright scary. Conversely, if that same account is held by a trust with ten beneficiaries, each beneficiary's separate interest share worth \$100,000 is insurable up to the total insurable amount.

Of course there are limitations and this explanation is an oversimplification, but for the client who is already inclined to put substantial holdings aside for children or grandchildren, the trust option may offer more flexibility and perhaps more importantly, greater peace of mind. **Q**

*Stephen J. Mayfield has an LL.M. in Taxation and is an Associate Attorney with Hutchison & Steffen practicing in the areas of estate planning, business & tax planning and probate. Stephen would like to thank Brett K. Sellers, CPA for his input and advice for this article.*

# Areas of Practice

## Administrative Law

The attorneys of Hutchison & Steffen are well-versed in environmental regulation and bring experience in addressing numerous environmental concerns. The Firm embraces federal, state, and local laws for clean air and water, hazardous and solid waste, radioactive mixed waste, radioactive waste disposal, endangered species, and the clean-up of hazardous waste sites.

## Alternative Dispute Resolution

The Firm offers a distinct alternative dispute resolution practice. The Firm provides advice and representation to clients who desire to resolve disputes in mediation, arbitration, or other alternative dispute resolution processes. The Firm's attorneys are seasoned practitioners before mediators and arbitrators.

## Appellate Litigation

The attorneys bring to their clients an extensive history in the practice of appellate law. They have participated as counsel in cases before the United States Supreme Court, Federal Appellate Courts, and the Nevada Supreme Court. The Firm's experience in the Nevada Supreme Court is unparalleled in the state, and two of Hutchison & Steffen's attorneys offer combined experience of almost thirty years. One was with the Court for fifteen years, retiring as Chief Justice, and another was both a staff attorney and a long-time supervising staff attorney at the Court.

## Asset Protection & Business Planning

Our attorneys understand the importance of protecting a client's assets against claims by potential creditors. The Firm's attorneys employ a variety of asset protection techniques to discourage or make impractical the seizure of assets or the collection of judgments. Hutchison & Steffen's asset protection strategies include the creation of Spendthrift Trusts, Offshore Asset Protection Trusts (OAPTs), Separate Property Trusts, retirement plans, family limited partnerships, and the gifting of property to descendants.

## Business & Commercial Litigation

Hutchison & Steffen brings extensive experience to most major areas of commercial litigation. The Firm's practice handles matters of corporate, contract, intellectual property, environmental, employee relations, and product liability. Additionally, counsel is provided in preventative measures to avoid litigation. Litigators at Hutchison & Steffen have experienced repeated success before juries and judges for large national companies, local companies, and individuals.

## Construction Law

Our construction-defect practice brings extensive experience and a solid reputation with the select group of mediators, special masters, expert witnesses, plaintiffs' attorneys, developers' attorneys, and subcontractors' attorneys who dominate Nevada's construction-defect legal practice. The attorneys of Hutchison & Steffen have litigated and tried many construction-defect cases and possess extensive educational and hands-on experience in the construction industry, providing a broad base for representing a variety of clients in construction-defect litigation.

## Corporate & Transactions

The attorneys provide clients with a broad range of legal services related to corporate transactions. These services include drafting documents for the formation and sale of business entities such as corporations, general partnerships, limited liability partnerships, and limited liability companies, as well as contracts and related documents covering many facets of business transactions. Additionally, legal services are provided to clients who wish to obtain protection of their intellectual property rights (e.g., trademarks and copyrights) under both state and federal laws.

## Creditor's Rights & Bankruptcy

Our attorneys regularly serve as counsel to creditors in proceedings filed under Chapters 7, 11, and 13 of the U.S. Bankruptcy Code. With an approach both aggressive and thorough, the Firm effectively guides troubled entities through the reorganization process and a return to profitability. Hutchison & Steffen routinely handles consumer and non-consumer bankruptcy filings and related bankruptcy litigation in the bankruptcy courts of Nevada, Utah, and Colorado.

## Employment Law

Hutchison & Steffen offers diverse experience in the complex environment of employment/labor law, with particular expertise in non-competition and confidentiality agreements. Offering knowledgeable advice with regard to various aspects of federal and state labor law and regulations, the Firm represents clients before administrative bodies on various employer/employee matters such as unemployment and workers' compensation claims.

## Estate Planning

The Firm offers exceptional estate planning services with a commitment to meeting the goals and unique needs of each client. The Firm's attorneys provide solid advice and legal tools to maximize clients' wealth, and to ensure the proper distribution of their assets. Hutchison & Steffen's estate planning practice includes the facilitation of wills and trusts, probate administration, and asset protection; additionally, the Firm's attorneys are seasoned and skilled in estate and probate litigation.

## Family Law

We offer a complete range of legal services in the practice of family law. The Firm's attorneys are well-respected by family court judges, mediators, special masters, and practitioners for their experience, family-law knowledge, and aggressive representation of clients. The Firm represents clients in all aspects of family and domestic law, including separation and divorce proceedings, community property division and settlement, child custody, visitation and support, child abuse, termination of parental rights, spousal support, and domestic violence (including protective orders).

## Healthcare Professionals Advocacy

Our attorneys represent physicians and healthcare organizations in a variety of matters to include physician contracting, litigation, medical-malpractice defense, physician licensing, and credentialing. Additionally, the Firm is active in mergers of medical practices, managed-care contracting, hospital contracts, and the purchase and sale of professional practices.

## Insurance Defense

The Firm's attorneys have successfully represented the insureds of these companies in hundreds of challenging and varied cases. The scope of the Firm's representation includes general commercial liability, auto liability, premises liability, and professional malpractice defense. The Firm's attorneys also provide counsel to insurance companies in bad-faith litigation.

## Landlord/Tenant

Our attorneys litigate on behalf of owners/landlords in a comprehensive array of landlord/tenant issues. These matters include commercial and residential evictions related to nuisance, lease violations, abandonment, breach of contract, and non-payment of rent. The Firm has one of the largest and most active landlord/tenant practices in Nevada, and its attorneys are recognized as experts in the field.

## Personal Injury

The Firm offers a personal injury practice which carefully selects the representation of individuals who have suffered personal injuries or damages by motor vehicles, bad faith, wrongful death, and medical malpractice. The Firm has extensive experience in litigating major personal injury actions to successful conclusion.

## Professional Liability Defense

We have successfully defended numerous claims of malpractice filed against attorneys, doctors, dentists, and other professionals. Fellow professionals demand the highest degree of aggressive and competent representation, and the Firm has enjoyed tremendous success in the defense and prosecution of these cases.

## Real Estate Law

The Firm provides a wide-range of legal assistance to clients for transactions related to the acquisition, development, and disposal of real property. The Firm also provides land-use planning, eminent domain, and zoning advice to clients. In its experienced representation of businesses and developers against defaulting lending institutions, the Firm has been highly successful.

## Trust & Probate Litigation

Hutchison & Steffen represents trustees, banks, investment professionals, and private individuals who are involved in disputes concerning estates and trusts. When appropriate, the Firm works closely with other trust and estate professionals to maximize the client's opportunities for a successful resolution of these disputes.

HUTCHISON & STEFFEN  
ATTORNEYS

**HUTCHISON & STEFFEN**  
ATTORNEYS

A FULL-SERVICE, AV-RATED LAW FIRM

PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NEVADA 89145

702-385-2500 • FAX 702-385-2086

INFO@HUTCHLEGAL.COM  
HUTCHLEGAL.COM

LAS VEGAS • RENO • SALT LAKE CITY • PHOENIX

©2009 HUTCHISON & STEFFEN