Keith M. Lyons Jr.*

Lyons Law Firm
A Professional Corporation
512 South 8th Street
Las Vegas, NV 89101
www.LyonsLawFirm.net

*Also Admitted to Practice Law in Oregon

Telephone: (702) 432-8655 Facsimile: (702) 432-8715

Dissolution of Marriage Proceedings[1]

I. Disputing the Enforceability of Marital Agreements:

Nevada Adopted the Uniform Premarital Agreement Act in 1989. See Nev. R. Stat. 123A et. seq. A Premarital Agreement must be in writing and signed by both parties. Furthermore, it is enforceable without consideration. Nev. R. Stat. 123A.040.

Parties to a premarital agreement may contract with respect to:

(a) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
(b) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
(c) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
(d) The modification or elimination of alimony or support or maintenance of a spouse;
(e) The making of a will, trust or other arrangement to carry out the provisions of the agreement;
(f) The ownership rights in and disposition of the death benefit from a life insurance policy;
(g) The choice of law governing the construction of the agreement; and
(h) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

Nev. R. Stat. 123A.050(1). However, the right of a child to support may not be adversely

[1]The following material is not intended to constitute legal advice. Prior to making any decisions on the information contained herein you should seek out and discuss with an attorney any questions or decisions you are about to make concerning the legal issues set forth herein.

affected by a premarital agreement. Nev. R. Stat. 123A.050(2). Furthermore, in the event the premarital agreement eliminates alimony, and the elimination of alimony would make the person who is then being denied alimony at the time of divorce eligible for public assistance, a court can disregard the prevision eliminating alimony to the extent necessary to avoid that eligibility. Nev. R. Stat. 123.080(2).

A Premarital Agreement is not enforceable, against a party whom enforcement is sought, if that party proves that:

1. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:
   (a) That party did not execute the agreement voluntarily;
   (b) The agreement was unconscionable when it was executed; or
   (c) Before execution of the agreement, that party:
      (1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
      (2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
      (3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

Nev. R. Stat. 123A.080(1). Furthermore, the Court decides, as a matter of law, whether the agreement was unconscionable when it was executed. Nev. R. Stat. 123A.080(3). Finally. "[a]ny statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party." Nev. R. Stat. 123A.100.

II. Courtroom Technology and E-Discovery:

Nevada is slowly stepping into the future of Courtroom technology. Approximately a year a half ago Judge Miley held a divorce trial using video teleconferencing. In that case, the wife who suffered from severe MS and was bed ridden had moved out of state for medical care. She was unable to travel to Nevada. As a result, Judge Miley held the divorce trial using video teleconferencing. Furthermore, at the Advanced Family Law Seminar held in December of 2008, then Presiding Family Court Judge, now Chief Judge of the Eighth Judicial District Court of the State of Nevada, Art Richie advised the attendees at that seminar that the Family Court was developing the technology to conduct

some hearings via video teleconferencing. The exact standard and what protocols will be necessary for attorney's to attend these hearings without leaving their office is yet to be decided. Finally, the Presiding Judge of the Eighth Judicial District Court, Gloria Sanchez announced at a bench bar meeting on April 8, 2009 that the Court has now approved the use of a memory stick to download a copy of the video of the hearings in family court immediately after the hearing occurs for a minor fee. This will allow attorney's to economically obtain a copy of the video and accurately prepare the minutes. Finally although the Eighth Judicial District Family Court went paperless, in order to ensure that you motion, opposition or pre-trial memorandum is considered by the Court, you must deliver a courtesy copy of the document to the Judge's chambers which is hearing the case.

Electronic data discovery or "E Discovery" is quickly becoming mainstream in civil discovery. Just walk into any office and the first thing you will see is a computer, almost all correspondence, contracts and memorandums are stored on computer. Get on face book and my space and check out the opposing party, many times you will find negative comments and or information relevant to your case posted by the other party.

Proper e-discovery should begin with letter requesting the preservation of all relevant computer evidence. This places the opposing party on notice that the destruction of this computer evidence could turn into a spoliation of evidence case. If you believe that computer evidence exists the next step should be to hire a computer forensic examiner to examine the other parties computers, data storage, e-mails and other electronic evidence. This expert can also help draft your discovery requests so that you can identify and preserve the evidence. Once the evidence is identified and the type of data storage is determined, you can then seek to have your expert examine the other parties computers to obtain, review and document the data contained therein. See e.g. **Playboy Enterprises v. Welles**, 60 F.Supp.2d 1050, 1054 (S.D. CA 1999); **Trigon Insurance Company v. United States,** 204 F.R.D. 277 (E.D. Va 2001).

III. Admissibility of E-Mail as Evidence:

Ensuring that e-mails are admissible as evidence in support of a motion for summary judgment may be vital to the success of your case. In *Lorraine v. Markel American Insurance Co.,* 241 F.R.D. 534 (D.C. Md., May 4, 2007), the U.S. District Court for the District of Maryland denied Motions for Summary Judgment, without prejudice to re-file, based on each party's failure to ensure the admissibility of their proposed e-mail evidence in support of their petitions to enforce an arbitrator's award. Chief Magistrate Judge Paul W. Grimm's opinion provides a detailed and thoughtful approach to the necessity of ensuring that e-mails are admissible evidence for summary judgment under

Federal Rule of Civil Procedure 56(e) as well as at trial. Whether Electronically Stored Information is admissible depends on an analysis of the applicability of a number of Federal Rules of Evidence: relevance (Rule 401), authenticity (Rule 901(a)), hearsay covered by an exception (Rules 801, 803, 804 and 807), originals or duplicates (Rules 1001-1008) and whether the probative value outweighs the possible prejudice (Rule 403).[2]

In making the analysis, the court directed particular attention to the parties' failure to attempt any authentication of the critical e-mails. The party offering the document into evidence need only make a *prima facie* showing of the authenticity of the document. The court noted that while the standard is relatively low, counsel often fail to meet even this "minimal showing." Judge Grimm referred to this omission as a "self-inflicted injury which can be avoided by thoughtful advance preparation."

E-mails are the most frequent form of Electronically Stored Information that lawyers encounter. The lack of formality of e-mails coupled with their creation at or near critical events makes them frequent fodder as evidentiary exhibits. This fact is particularly true when proof requirements consist of state of mind, intent or motive. As with hard-copy evidence, direct or circumstantial evidence may be used for authentication. E-mails may be self-authenticating under Fed. R. Evid. 902(7) if, as with many business e-mails, the e-mail has a tag identifying the company-employer and the origin of the e-mail. The address of the sender, however, may be insufficient alone to authenticate a document since there can be unauthorized use of the computer. A person with personal knowledge of the sending or receiving of the e-mail may need to testify to provide adequate authentication.

Judge Grimm's opinion relies on newly amended Federal Rules of Evidence and provides guidelines for the admission of Electronically Stored Information, including authentication and overcoming hearsay objections. While the court went to great lengths to provide detailed paths to admissibility, practitioners should not overlook that stipulations or request for admissions under Fed. R. Civ. P. 36 can be employed to satisfy the requirements or to at least narrow the scope of the controversy. In the *Lorraine* case, counsel simply attached the exhibits to their Motions for Summary Judgment without any affidavits. This left the court without recourse other than to dismiss the motions. While acknowledging that e-mails and instant messages create authentication challenges, Judge Grimm rejected the need for a new legal framework to address the authentication of these and other forms of Electronically Stored Information.

---

[2]Comparable Nevada statutes are relevance (NRS 48.015, 48.025), hearsay covered by an exception (NRS 51.075 - NRS 51.305), originals or duplicates (best evidence rule) and whether the probative value outweighs the possible prejudice (NRS 48.035(1)).

Internet Web site postings and chat rooms create unique obstacles to authentication, since these sites often consist of postings of third parties that may not be within the control of the sponsor of the Web site. The authentication issues focus on whether the exhibit accurately reflects the Web posting and whether the owner is actually responsible for the postings.

In the case of chat rooms, messages consist of "conversations" by identified "screen names." If the intention is to introduce the exhibit against the purported owner of the screen name, circumstantial evidence, including unique identifiers in the screen name or text of the message, can be used. Text messages encounter the same authentication foundation issues. Fed. R. Evid. 901(b)(1) (witness with personal knowledge) or 901(b)(4) (distinctive characteristics of messages).

Computer animations and simulations raise unique evidentiary challenges. As demonstrative evidence, computer-generated animations raise issues common to the use of photographs, both conventional and digital, in that the animations must fairly portray the facts and illustrate the witnesses' testimony. In contrast, computer simulations in which the computer is used to analyze data and draw conclusions need an additional scientific foundation before admissibility, using a witness with knowledge not only of the program software but also of the data used in the calculation and the reliability of that data. A witness with personal knowledge or an expert may be used. Fed. R. Evid. 901(b)(1) and 901(b)(3).

Computer-stored records and data are the easiest to authenticate. While questions can arise from incorrect data entry or operation of the computer program, some courts have ruled that it goes to the weight of the evidence, not admissibility. *See, e.g., U.S. v. Meienberg,* 263 F.3d 1177, 1180-1181 (10th Cir. 2001). Other courts have taken a more restrictive view, insisting on focusing not on the creation of the records, but on the maintenance of those records once created. The policies and procedures for the use of equipment, databases and programs must be established, as well as the use of backup systems, to ensure the accuracy of the data to be introduced.

The court also addressed the applicability of the hearsay rules in the context of ESI. While much of the hearsay analysis for ESI, as well as the application of exceptions, is identical to that made for hard-copy documents, there are some applications that may be of particular relevance to ESI. Certain communications, such as those between the parties to a contract that prove the terms of the contract, are not considered hearsay because they are not "statements," but rather "verbal acts" or "legally operative facts," according to Judge Grimm. Thus, e-mails containing instructions, the contract or letters from an attorney relating to formation of the contract have all been considered non-hearsay.

The plethora of exceptions to the hearsay rule, including prior inconsistent statements (Fed. R. Evid. 801(d)(1)), admissions of a party opponent (Fed. R. Evid. 801(d)(2)), present sense impression (Fed. R. Evid. 803(1)), excited utterance (Fed. R. Evid. 803(2)), state of mind (Fed. R. Evid. 803(3)) and public records (Fed. R. Evid. 803(8)) as well as business records (Fed. R. Evid. 803(6)), are all available and applicable to ESI. Many litigants erroneously believe that an e-mail created by an employee on the employer's business computer qualifies the e-mail as a business record.

Importantly, the document must not only have been prepared in the course of business contemporaneously (or nearly contemporaneously), but also be based on personal knowledge. Moreover, it must be the regular practice of the business to maintain such a document and not simply the personal choice of the author. These qualifications become even more critical when e-mail chains are offered because many courts insist that each communication in the chain must be separately analyzed.

The Original Writing Rule may also need to be satisfied in order to gain the admissibility of a document containing ESI (Fed. R. Evid. 1001, 1002). This rule might come into play if the contents of the document need to be proved, such as in copyright, defamation and invasion of privacy cases. Because of the ephemeral nature of much of ESI, secondary evidence may be permitted under Fed. R. Evid. 1004. Finally, even after the requirements of relevance, authentication, hearsay and the Original Writing Rule are satisfied, a court is still required under Fed. R. Evid. 403 to balance the probative value of the evidence against the danger of undue prejudice.

While Judge Grimm allowed the parties to re-file their Motions for Summary Judgment without prejudice, this detailed opinion illustrates the pitfalls litigants should avoid when proffering Electronically Stored Evidence as evidence.

IV. Divorce Across State Borders:

A lawyer may often find a case where Nevada has little or no jurisdiction over your client. However, the other spouse moved to Nevada, files for Divorce and attempts to divide marital property, set/terminate alimony, divide bank accounts, retirement accounts and award child custody and/or child support. The lawyer representing the non-resident spouse who has no contacts to Nevada should file a special appearance and quash the Complaint to the extent it seeks to do anything other than divorce the parties. At the same time the lawyer should recommend that his non-resident client file a case in what ever state they reside in to proceed on the issues which Nevada lacks jurisdiction.

Furthermore, in the event assets, usually retirement accounts and/or real property were earned and/or purchased and paid for prior to the parties moving to the state of Nevada, the lawyers should be prepared to brief that other state's laws to ensure that the division of the property conforms to the state wherein the property was earned and/or purchased. For real property purchased and paid for while the parties resided in other states, Nevada lacks in rem jurisdiction over that property. Other states divide credit card debt based solely on whose name is on the credit card. Furthermore, many states allow an unequal division of "marital property" based on the circumstances. In the event you are representing a individual who lived a majority and/or all the time during the marriage in another state, the lawyer needs to research and brief that states laws to ensure that his or her client is protected. If that law provides a different result than Nevada law, the law of the other state must be argued to preserve the client's appeal rights if the decision under Nevada law is less favorable than the decision under another states laws.

Section 188, of the **Restatement (Second) of Conflicts of Law** (1971) provides the appropriate steps to analyze whether Nevada law, or another States law should apply. When determining the state laws to be applied, the contractual contacts to be considered are: a) the place of contracting; b) the place of negotiation of the contract; c) the place of performance; d) the location of the subject matter of the contract; and e) the domicile, residence, nationality, place of incorporation and place of business of the parties. **Restatement (Second) of Conflicts of Law** § 188 (1971)

V. Mediation:

Nevada Revised Statute 3.475 mandates the establishment of programs of mandatory mediation in counties whose population is 400,000 or more and states:

1. In a county whose population is 400,000 or more, the district court shall establish by rule approved by the Supreme Court a program of mandatory mediation in cases that involve the custody or visitation of a child.

2. The program must:
   (a) Require the impartial mediation of the issues of custody and visitation and authorize the impartial mediation of any other nonfinancial issue deemed appropriate by the court.
   (b) Authorize the court to exclude a case from the program for good cause shown, including, but not limited to, a showing that:

      (1) There is a history of child abuse or domestic violence by

one of the parties;

(2) The parties are currently participating in private mediation; or

(3) One of the parties resides outside of the jurisdiction of the court.

* * * *

(d) Prohibit the mediator from reporting to the court any information about the mediation other than whether the dispute was resolved.

(e) Establish a sliding schedule of fees for participation in the program based on the ability of a party to pay.

* * * *

(g) Allow the court to refer the parties to a private mediator.

* * * *

5. This section does not prohibit a court from referring a financial or other issue to a special master or other person for assistance in resolving the dispute

Furthermore, Eighth Judicial District Court Rule, Rule 5.70 states:

(a) Pursuant to NRS 3.475 the Eighth Judicial District Court, Family Division, has established a court-connected mandatory mediation program through the Family Mediation Center (FMC). All parties filing an answer for domestic contested child custody, access or visitation disputes must attend mediation prior to the hearing or trial of their matter. The mediation process will function independent of any other court proceedings. In the event there are issues of child abuse or domestic violence involved, or if one party is living out of state, a waiver excluding mandatory mediation may be filed. For good cause shown, the assigned trial judge may waive the requirement of mandatory mediation in individual cases. Parties may participate in mediation through the private sector by submitting a "Private Mediator Form" available in the county clerk's office.

(b) When a party should file for mediation:

(1) Upon notice of the filing of a contested answer, the plaintiff must, within 10 days, absent good cause, file a Stipulation and Order for Mediation or a FMC Request and Order for Mediation.

(2) If a Motion for Custody and Complaint for Divorce are filed

simultaneously, the moving party must also complete a Request and Order for Mediation. The non-moving party may at any time upon service of the answer and/or after the non-moving party has been served with the Complaint and/or Motion, prepare and file the FMC Request and Order for Mediation.

(3) The Court may at any time, upon its own motion, refer the parties to mediation.

(c) Parties can access mediation through the court-connected program by:

(1) Stipulation and Order for Mediation. If both parties mutually agree to attend mediation, the attorneys or the parties may request mediation by stipulation and order. If the parties are represented by an attorney, then it is the responsibility of the attorney to prepare the Stipulation and Order for Mediation. If neither party is being represented, then the Plaintiff must prepare the Stipulation and Order.

(A) The moving party shall complete a "Stipulation and Order for Mediation." The completed stipulation and order for mediation must include address information and telephone numbers for both parties.

(B) The completed order is routed to the court assigned to the case for judicial signature by the moving party or their attorney.

(C) The signed order is filed in the clerk's office by the party or their attorney, and a copy is forwarded to FMC for appointment scheduling by the party or their attorney.

(2) Request and Order for Mediation. Where a stipulation between parties cannot be obtained, either party, or an attorney, may initiate the mediation process pursuant to the above time lines. This process also includes post-divorce issues in which the parties have a valid, custody order and only one party wishes to access mediation prior to motioning the court.

(A) Either party or attorney completes a "FMC Request and Order for Mediation," available at the county clerk's office. The completed order must include address information and telephone numbers for both parties.

(B) The completed order is routed to the court assigned to the case for judicial signature by the moving party or their attorney.

(C) The signed order is filed in the clerk's office and a copy is forwarded to FMC for appointment scheduling by the party or their attorney.

(3) Court Order for Mediation. Where either party has not initiated mediation services prior to a court appearance, regarding contested custody issues, the court signs an order in open court, filed by the court clerk, directing the parties to FMC to begin the mediation process.

(A) Parties present order for services to FMC and appointments are scheduled.

(d) Parties or counsel, by agreement, may select a private mediator.

(1) If a private mediator is selected, a "Private Mediation Form" must be filed with the court. The notice shall include the name of the mediator and the date set for the first mediation conference.
(2) The parties shall contract directly with the private mediator and be responsible for payment of fees and scheduling for mediation service.
(3) The mediator has a right to withdraw from any case.
(4) Private mediators shall provide written proof to the court that the parties have attended mediation. This report shall indicate that the parties successfully mediated a full or partial parenting agreement, or that they reached an impasse.

(e) Mediation shall be held in private, and all communications, verbal or written, shall be confidential and shall not be disclosed, even upon waiver of the privilege by either or both parties, except where the mediator is required to report any information which falls within the scope of the child abuse reporting requirements.

(f) FMC shall establish procedures to assure that cases which are inappropriate for mediation or which may require special protocols for the

protection of parties are screened prior to any contact between the parties in the mediation process.

(g) A party who believes a case is inappropriate for referral to mediation may seek an exemption from mediation.

(1) The party seeking an exemption must file a motion with the court.
(2) The motion should be filed with the initial pleading of the moving party.
(3) The motion may be filed at a later time if new information is obtained supporting a motion.

(h) A party may have a third person present for support before and after meetings with the mediator; however, the support person may not be present during mediation sessions.

(I) Upon order to FMC, a mediation appointment, which includes both parties, shall be scheduled, unless exempted by NRS 3.475.

(1) Counsel for the parties shall be provided an opportunity to confer with the mediator prior to the mediation conference and shall be excluded thereafter, where, in the discretion of the mediator, exclusion of counsel is deemed appropriate or necessary, by the mediator.
(2) If an interpreter is required to conduct the mediation process, it is the responsibility of the party needing the interpreter to pay for and/or provide one. A family member should not be used as the interpreter without the consent of the other party and opposing counsel. The interpreter's role shall be strictly limited to that of interpreting, not offering opinions or suggestions.

(j) Outcome of mediation services shall be reported to the court as follows:

(1) If the mediation is successful in resolving any of the custody, access or visitation issues, a written agreement shall be submitted to the court.

(2) In the event that agreement is not reached, the mediator shall notify the court in writing that mediation has been concluded and an agreement was not reached.

(3) If one or both parties fail to appear at any mediation conference, the mediator shall report the identity of each person who failed to appear to the court. The court may, thereafter, take whatever action it deems necessary or appropriate, including imposing sanctions.

(4) A partial parenting agreement outlining any unresolved issues may be submitted. The partial parenting agreement may include options A and B, which will describe each parent's desired outcome, to be determined by the court.

(k) If both parties agree to remediate after initially mediating through FMC, mediation can again be offered by FMC. The previous parenting agreement must have been signed by a judge. Any outstanding fees must be paid in full before services are initiated.

(l) The FMC mediator or private mediator shall not conduct an evaluation of the parties after mediation or as part of the mediation process. Additionally, the FMC mediator or private mediator shall not provide written or verbal recommendations as part of the mediation process.

(m) The Family Division may adopt and approve forms which private practitioners are required to use. Upon notification, the court has the discretion to modify, amend, or supplement the existing forms or add new forms.

(n) FMC fees may be assessed to parties referred to mediation based upon a sliding fee scale. The minimum fee for each party shall be $50.00 and the maximum fee for each party shall be $200.00. Parties who are receiving public assistance shall receive a fee waiver for mediation services upon verification of benefits. Nonpayment of these fees may subject the party to the issuance of an order to show cause why the party should not be held in contempt.

VI. Collaborative Law Approach:

The Collaborative law approach was developed in the late 1980 and has slowly grown as an alternative to the adversarial nature of most divorce cases. Collaborative divorce is an alternative method to resolve disputes respectfully, with at least a modicum of dignity, with the guidance of individuals lawyers, without going to court, while working with trained professionals who are important to all areas of your client's life. Depending

on the circumstances these professionals include, include but are not limited to: Psychologists, Life Coaches, Custody Evaluators, Financial Planners, Real Estate Appraisers, Certified Public Accounts and/or Business Appraisers.

The key elements of a Collaborative divorce are created by statutory and/or contractual commitments, in which the parties agree to:

1. Negotiate a mutually acceptable settlement without having courts decide issues.
2. Maintain open communication and information sharing.
3. Create shared solutions acknowledging the highest priorities of all.

If the parties agree to attempt to use the Collaborative Divorce process, the parties typically enter into a written agreement agreeing to abide by the key elements set forth above and the confidentiality of the process. As part of agreement the parties must agree to provide all relevant documents and information relating to the issues to be resolved, and that they will work together toward a shared resolution. If the parties need experts to reach a shared resolution, the Collaborative Divorce process encourages the use of jointly retained neutral experts. Typically the parties meet together with their attorney's to provide assistance and any experts necessary to jointly resolve their disputes.

The Collaborative Divorce process is not appropriate for everyone. It requires that the individuals involved, both the individuals and their attorneys, be committed to working with and not against the other party. Furthermore, the individuals who are able to accept the divorce, can learn to manage their emotions, and are interested in the well-being of the other side and committed to the process are good candidates for a Collaborative Divorce. Those individuals involved in this process should be able to take the long view and be thinking of the future and the maintenance of a relationship with the other side whether based on long term financial issues and/or the care and well being of their children.

Furthermore, the parties must recognize that although the intent of the Collaborative Divorce process is "getting to yes" i.e., achieving an agreement, it may not be successful.

As a result, the parties must be advised that collaborative process fails, there will be the added time and expense of hiring new lawyers and taking the matter to court.

The lawyers role[3] in the collaborative divorce process is to:

1. advise their respective clients of the law which applies to their circumstances;
2. promote and exhibit honestly, mutual respect and dignified behavior;
3. guide clients through a process of cooperative conflict by employing disagreement as a way to achieve creative solutions to problems;
4. get to know their clients and establish a rapport with a parties involved in the process;
5. foster respectful communication and listening skills for all parties in order to promote the interest of both sides;
6. identify the issues and concerns of all parties;
7. foster stability, reason and reality in emotionally charged situations;
8. cooperate with one another and provide all necessary disclosure and discovery;
9. assist the client in organizing disclosure documentation and in understanding the disclosure documentation from the other side;
10. assist in analyzing the consequences of competing values and possible choices;
11. respect the choices made by the client even if they are different from what the law may offer;
12. employ clear and neutral language in both written and verbal communication;
13. understand that court is not an option and refrain from employing adversarial tactics and techniques; and
14. remain committed to finding effective ways to assist the parties in reaching agreement and overcoming impasses by using mediation and neutral experts to provide a third opinion.

[3] See www.CollaborativeDivorce.net, Lawyers Role in Collaborative Divorce

VII. Handling a Self-Representing Party at the Other Side of the Table:

The Nevada Rules of Professional Conduct, Rule 4.1 states:

> Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly:
>
> (a) Make a false statement of material fact or law to a third person; or
>
> (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Furthermore, Nevada Rules of Professional Conduct, Rule 4.3 states:

> Dealing With Unrepresented Person. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Finally, Nevada Rules of Professional Conduct, Rule 4.4 states:

> Respect for Rights of Third Persons.
>
> (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
>
> (b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.