

## Nevada Supreme Court Defines Blue Penciling Obligation Of Courts

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In 2016, I [wrote](#) about the Nevada Supreme Court's refusal to "blue pencil" non-compete agreements so as to make them enforceable. *Golden Road Motor Inn, Inc. v. Islam*, 132 Nev. 476, 488, 376 P.3d 151, 159 (2016). The Nevada legislature was not in accord and the following year enacted NRS 613.195(5)\*, which requires district courts to blue-pencil unreasonable noncompetition agreements and enforce the revised agreement. That statute was one of the issues that the Supreme Court addressed in a case that I [discussed](#) earlier this week. *Tough Turtle Turf, LLC v. Scott*, 139 Nev. Adv. Op. 47 (Nov. 2, 2023).

NRS 613.195(6) provides that a district court "shall revise . . . to the extent necessary" a noncompete that unreasonably limits the time, geographical area, or scope of activity; a greater restraint than is necessary to protect the employer; or imposes undue hardship on the employee. This mandate is at apparent odds with NRS 613.195(1) which declares a noncompete "void and unenforceable" if it imposes a restraint greater than necessary to protect the employer; any undue hardship on the employee; or restrictions that are not appropriate in relation to the valuable consideration supporting the agreement. In *Tough Turtle*, the Nevada Supreme

Court read these seemingly contradictory provisions together to hold that while a district court is not *a/ways* required to modify an overbroad noncompete agreement, it must do so "when possible".

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\*2017 Nev. Stat., ch. 324, § 1, at 1861, renumbered in 2021 as NRS 613.195(6). 2021 Nev. Stat., ch. 77, § 22.5, at 315.

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