IN THE SUPREME COURT OF THE STATE OF NEVADA

W. CHRIS WICKER; WOODBURN AND WEDGE,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JIM CROCKETT,

Respondents,

SHAE E. GITTER; JARED SHAFER,

Real Parties in Interest, /

No.

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Tracie K. Lindeman
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court, Clark County,
Case No. A697642

PETITIONERS', W. CHRIS WICKER AND WOODBURN AND WEDGE, APPENDIX, VOLUME III

WOODBURN AND WEDGE
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Docket 69961 Document 2016-08143

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Dated this 14th day of March, 2016.

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SHAE E. GITTER, and JARED SHAFER
as Special Administrator of the Estate of
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DISTRICT COURT

CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman, Plaintiffs, vs. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA, a public entity and component unit of the State of Nevada, Defendant.	Case No. A-14-697642-C Dept. No. XXIV

MOTION FOR ATTORNEYS' FEES

Plaintiffs Shae E. Gitter and Jared Shafer, as Special Administrator of the Estate of Kristine Jo Freshman (jointly, "Plaintiffs") move this Court for an Order awarding Plaintiffs their attorneys' fees pursuant to NRS 18.010 and 7.085. This Motion is based upon all pleadings and papers on file,

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together with the attached Memorandum of Points and Authorities, the declarations of Dennis L. Kennedy and Kelly B. Stout, and any oral argument permitted by the Court.

DATED this 9th day of November, 2015.

BAILEY❖KENNEDY

By: */s/ Dennis L. Kennedy*
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NOTICE OF MOTION

PLEASE TAKE NOTICE that the foregoing MOTION FOR ATTORNEYS' FEES will come on for hearing before the Court in Department XXIV, Courtroom 116 (Phoenix Building), on the 17 day of DECEMBER, 2015, at the hour of 9:00A.m., or as soon thereafter as counsel can be heard.

DATED this 9th day of November, 2015.

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By: */s/ Dennis L. Kennedy*
DENNIS L. KENNEDY
KELLY B. STOUT
MARK HESIAK
AMANDA L. STEVENS

Attorneys for Plaintiffs
SHAE E. GITTER, and JARED SHAFER
as Special Administrator of the Estate of
Kristine Jo Freshman

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Throughout the course of this litigation, Defendant Public Employees' Retirement System of Nevada ("PERS") has repeatedly taken positions that have needlessly extended this case, and were unsupported by law. In its efforts to avoid paying Shae survivor benefits, PERS asked this Court to violate well-established canons of statutory construction at every turn. Each time, this Court has ruled against PERS. As a result of PERS' frivolous arguments, Plaintiffs have spent almost five years pursuing this matter. Accordingly, Plaintiffs are entitled to recover attorneys' fees.

II. STATEMENT OF UNDISPUTED FACTS.

A. Factual History.[1]

On August 22, 1986, Kristine Jo Freshman ("Kristine") was hired as an employee of the Clark County School District and enrolled as a PERS Member.[2] In August 2007, Kristine completed a "Survivor Beneficiary Designation" identifying Shae as her survivor beneficiary.[3]

On December 6, 2009, Kristine was killed by her husband (and Shae's step-father), Walter E. Freshman ("Walter").[4] Walter subsequently pleaded guilty to second-degree murder for causing Kristine's death and was adjudicated a "killer" as defined in section 41B.130 of Nevada's "Slayer Statutes" (NRS 41B.010 – 41B.420).[5]

Believing that Kristine had designated Shae as her secondary survivor beneficiary, Shae submitted a completed Application for Survivor Benefits to PERS on April 11, 2011.[6] PERS denied Shae's application, and informed her that the PERS Act (NRS 246.010 – 286.820) prevents a PERS member's spouse from collecting benefits if he or she kills the member, but does not authorize PERS to pay benefits to any other person.[7]

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[1] As the Court is already familiar with the facts of this case, Plaintiffs simply provide a summary. However, more detailed facts are contained in Plaintiffs' Verified Complaint and Motion for Partial Summary Judgment, which were filed in this case and are expressly incorporated by reference.

[2] *See* Notc. of Entry of Order ¶¶ 1, 11, Ex. 1 [Granting Pls.'s Mot. for Partial Summ. J. and Denying Def.'s Mot. for Summ. J.], Jan. 29, 2015 [hereinafter Order Granting Pls.' MPSJ].

[3] Order Granting Pls.' MPSJ ¶¶ 3-4.

[4] *Id.* at ¶¶ 5-8.

[5] *Id.* at ¶¶ 9-10.

[6] *Id.* at ¶ 12.

[7] *Id.* at ¶ 13.

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B. Probate Court Order Requiring PERS to Produce Documents.[8]

In order to evaluate PERS' denial of benefits, Shae and Kristine's Estate requested copies of PERS' documents related to Kristine's PERS account.[9] PERS refused the request and took the position that neither Shae nor the Estate was entitled to copies of documents because PERS had unilaterally determined that neither was a beneficiary.[10] In order to obtain copies of the documents related to Kristine's PERS account, Shae and the Estate had to file suit and petition the Court for an Order instructing PERS to provide copies of the documents.[11] The Court ordered PERS to comply.

C. Procedural History of This Case.

Upon receiving the documents, Plaintiffs confirmed that Kristine had designated Shae as a secondary survivor beneficiary on her PERS Account. Plaintiffs then filed this action in order to collect survivor benefits that PERS has wrongfully withheld from Shae.

On March 13, 2014, Plaintiffs filed their Complaint in the Eighth Judicial District Court.[12] PERS was properly served with the Summons and Complaint on March 17, 2014.

On October 27, 2014, the Parties filed cross-motions for summary judgment.[13] Plaintiffs argued that section 41B.310 of Nevada's Slayer Statutes required PERS to treat Walter as having predeceased Kristine for the purpose of determining who was entitled to survivor benefits.[14] This means that PERS has to treat Kristine as being unmarried on the date of her death, which means that Shae, as Kristine's survivor beneficiary, would be entitled to benefits. PERS argued that the Slayer Statutes did not apply, claiming that it was not bound by statutes beyond those contained in the PERS Act. Specifically, PERS claimed that it did not owe survivor benefits to Shae because the PERS Act expressly precludes a spouse of a PERS Member from collecting PERS benefits if he or

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[8] The facts leading up to Plaintiffs' decision to re-open the probate case are well detailed in Plaintiffs' Verified Ex-Parte Petition for Appointment of Special Administrator and Issuance of Letters of Special Administration [hereinafter Probate Pet'n], which was filed in Case No. P-09-067265-E, and is expressly incorporated by reference and attached as Exhibit 6.

[9] Probate Pet'n at Exs. 6A-6E.

[10] Pls.' Mot. for Partial Summ. J. at Ex. 1 (Oct. 27, 2014) [hereinafter Pls.' MPSJ].

[11] *See* Probate Pet'n.

[12] Verified Compl., Mar. 13, 2014.

[13] Pls.' MPSJ; Def.'s Mot. for Summ. J., Oct. 27, 2014 [hereinafter PERS' MSJ].

[14] Pls.' MPSJ 10:12 – 12:2.

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she murders the PERS member, but does not authorize payments to any person other than the Member's spouse if the Member was married at the time of his or her death.[15]

The Court heard oral argument on December 2, 2014, and concluded that "NRS Chapter 41B [Nevada's Slayer Statutes] applies to PERS benefits for survivors of a deceased PERS member, including, but not limited to, Spousal Benefits and benefits for a survivor beneficiary pursuant to NRS 286.6767."[16] The Court further found that "[p]ursuant to NRS 41B.310(3), Walter Freshman is deemed to have predeceased Kristine Jo Freshman for the purposes of determining entitlement to PERS benefits for survivors as set forth in NRS 286.671 – 286.679, inclusive."[17] Finally, the Court determined that "[p]ursuant to NRS 41B.310(3), PERS shall treat Kristine Jo Freshman as being unmarried at the time of her death for the purpose of determining entitlement to PERS benefits for survivors."[18]

Accordingly, the Court ordered that "Shae E. Gitter, as the sole survivor beneficiary of Kristine Jo Freshman, is entitled to survivor benefits as set forth in NRS 286.6767 – NRS 286.6769, inclusive."[19]

Following the Court's entry of summary judgment in Shae's favor, the Parties were able to agree as to the amount of back payments PERS owed to Shae.[20] However, PERS refused to pay any interest on the back payments, and Plaintiffs were forced to bring another motion to compel PERS to pay interest.[21]

Based on the plain language of three separate statutory provisions, Plaintiffs argued that PERS owed pre-judgment and post-judgment interest.[22] First, Plaintiffs argued that PERS is required to pay interest under NRS 99.040(1)(a), which applies to money due "[u]pon contracts, express or implied."[23] In the alternative, Plaintiffs sought interest under NRS 99.040(1)(c), which

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[15] PERS' MSJ 9:1 – 11:26.

[16] Order Granting Pls.' MPSJ ¶ 31.

[17] *Id.* at ¶ 31.

[18] *Id.* at ¶ 32.

[19] *Id.* at 6:15-16.

[20] Ex. 4 at ¶ 18.

[21] *Id.* at ¶¶ 19-21.

[22] Pls.' Mot. for Pre-J. and Post-J. Interest 6:19 – 11:25.

[23] *Id.* at 7:6 – 9:19.

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applied to money due "[u]pon money received to the use and benefit of another and detained without his or her consent" or NRS 17.130, which applies "[w]hen no rate of interest is provided by contract or otherwise by law."[24]

Although PERS had earned interest on the nearly five years of survivor benefits it had wrongfully withheld from Shae, it took the position that it was not obligated to pay pre-judgment or post-judgment interest. Again, PERS argued that it is governed only by NRS Chapter 286, and was not subject to other statutes of general application.[25] PERS then asked the Court to read additional terms and requirements into NRS 99.040 to avoid its obligation to pay interest.[26]

The Court determined that Shae was entitled to interest under NRS 99.040(1)(a) at a rate of 12%.[27] The Court then entered judgment in Shae's favor in the amount of $272,572.16 ($203,231.76 in past-due survivor benefits and $69,340.40 in pre-judgment interest).[28]

A. Plaintiffs' Attorneys' Fees.

Plaintiffs have been represented by Bailey Kennedy since May 2012.[29] During that time, Bailey Kennedy engaged in substantial negotiations with the Attorney General's office in an effort to obtain documents related to Kristine's PERS account and to resolve the dispute regarding Shae's survivor benefits. When those negotiations failed, Bailey Kennedy filed a petition to re-open the Estate of Kristine Jo Freshman in order to obtain an Order directing PERS to provide copies of documents related to Ms. Freshman's PERS account.[30] These documents were necessary for Plaintiffs to determine whether any benefits were owed to Shae or the Estate.[31]

After obtaining proof of Shae's entitlement to survivor benefits, Bailey Kennedy filed a Complaint, which initiated this case.[32] After the Parties completed discovery,[33] Bailey Kennedy

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[24] *Id.* at 7:6 – 8:4, 9:20 – 11:25.

[25] Opp'n to Pls.' Mot. for Pre-J. and Post-J. Interest 3:8 – 4:16.

[26] *Id.* at 4:17 – 8:19

[27] Notc. of Entry of Order Granting Pls.' Mot. for Pre-J. and Post-J. Interest and Final J. 4:10-18, Oct. 16, 2015.

[28] *Id.* at 5:20-24.

[29] Ex. 4 at ¶ 4. Although Plaintiffs were previously represented by Mark Katz in the original probate proceedings who sought to obtain the the same documents no fees are sought for the representation by Mr. Katz.

[30] Probate Pet'n; Ex. 4 at ¶ 10.

[31] *Id.* at ¶ 8.

[32] *Id.* at ¶ 15.

[33] *Id.* at ¶ 17.

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successfully obtained summary judgment against PERS regarding its obligation to pay survivor benefits to Shae.[34] Counsel then participated in informal discovery and negotiations to determine the amount of benefits owed.[35] Bailey Kennedy then prevailed on a motion establishing PERS' obligation to pay pre-judgment and post-judgment interest.

In the current action, Plaintiffs have been primarily represented by attorneys Dennis L. Kennedy and Kelly B. Stout.[36] Dennis Kennedy has been practicing law in Nevada since 1975 and was the partner who supervised this case.[37] He is an adjunct professor at William S. Boyd School of law and is the co-author and co-editor of the Nevada Civil Practice Manual (2003-2013).[38] His rate is $800.00 per hour and he billed 11.0 hours to the matter.[39] Kelly B. Stout has been practicing law in Nevada since 2010 and was the associate responsible for the day-to-day management of this case.[40] She is an adjunct professor at William S. Boyd School of law and was an associate editor of the Nevada Civil Practice Manual (2003-2013).[41] During the course of this case, her rate has increased from $190.00 per hour to $260.00 per hour and she billed 273.25 hours.[42]

Additionally, Joshua M. Dickey, Esq.; Mark Hesiak, Esq.; Leon Gil, Esq.; Amanda Stevens, Esq.; Linda Thomas; and Bonnie O'Laughlin provided further litigation support: Joshua Dickey is a partner who has billed 0.25 hours at the rate of $395.00 per hour; Mark Hesiak is an associate who has billed 38.75 hours at $190.00 - $250.00 per hour; Leon Gil is a former associate who has billed 72.25 hours at the rate of $190.00 per hour; Amanda L. Stevens is an associate who has billed 19 hours at the rate of $200.00 per hour; Bonnie O'Laughlin is a paralegal who has billed 7.0 hours at the rate of $150.00 per hour; and Linda Thomas is a paralegal who has billed 0.25 hours at the rate of $150.00 per hour.[43]

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[34] Order Granting Pls.' MPSJ

[35] *Id.* at ¶ 18.

[36] Ex. 1 at ¶ 10.

[37] *Id.* at ¶ 4.

[38] *Id.* at ¶ 6; Ex. 2.

[39] Ex. 1 at ¶ 10.a; Ex. 3 at 17-18.

[40] Ex. 1 at ¶ 10.b; Ex. 5.

[41] Ex. 5.

[42] Ex. 3. at ¶ 23-46.

[43] Ex. 1 at ¶ 10.c – 10.g; Ex. 3 at 1-17, 19-22.

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Bailey Kennedy has billed 422.75 hours in this action, which total $273.25.[44] The amount of time spent was reasonable and necessary given the scope of representation and the work completed.[45]

III. ARGUMENT.

A. Legal Standard.

Defendants are entitled to an award of attorney's fees pursuant to NRS 18.010 and 7.085. NRS 7.085 provides:

> 1. If a court finds that an attorney has:
> (a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or
> (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State,
>
> the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.

NRS 18.010(2)(b) provides:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
> (a) . . .
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely

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[44] Ex. 1 at ¶ 9; Ex. 3.

[45] Bailey Kennedy agreed to represent the Plaintiffs on a contingency fee basis; however, it is able to recover fees at its usual rates. This means that Shae would be entitled to all (or a larger portion) of the gross recovery. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005 ("In Nevada, the method upon which a reasonable fee is determined is subject to the discretion of the court, which is tempered only by reason and fairness. Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a lodestar amount or a contingency fee." (internal citations and quotation marks omitted)); *see also Scott v. Zhou*, 120 Nev. 571, 574, 98 P.3d 313, 315 (2004) (affirming award of $10,000.00 award of attorneys' fees under NRS 10.010 based on attorney's ordinary hourly rate in contingency matter when plaintiff recovered $4,215).

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> resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

The Legislature has instructed that the Court shall liberally construe both provisions in favor of awarding attorneys' fees. NRS 7.085(2), 18.010(2)(b). Moreover, both sections were enacted "to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 7.085(2), 18.010(2)(b).

Accordingly, a party and the party's counsel may be ordered to pay the opposing party's attorney's fees when the party's defenses are frivolous or without reasonable grounds. *United Ins. Co. of Am. v. Chapman Indus.*, 120 Nev. 745, 748, 100 P3.d 664, 667 (2004) (finding that defendant's position in contravention of existing law was without reasonable grounds).

Throughout this litigation, PERS has taken unreasonable positions that are unsupported by existing law. In this matter, the facts were undisputed, and PERS has not argued for a change in the existing law. Nonetheless, PERS has repeatedly taken positions that are at odds with the plain language of Nevada's statutes.

First, PERS refused to allow Shae or the Estate of Kristine Freshman to obtain documents regarding Ms. Freshman's PERS account. PERS acknowledged that a member or a survivor beneficiary is entitled to copies of a member's PERS documents. However, PERS insisted (falsely) that Shae was not a beneficiary and then denied her access to the documents without a court order. This position needlessly prolonged the dispute and required a substantial amount of additional effort.

Next, PERS disputed the application of the Slayer Statutes despite the fact that the plain language of Chapter 41B makes them applicable to PERS benefits. The Court ruled against PERS on all counts and determined that Shae is entitled to survivor benefits, which currently total more than $272,572.16.[46]

/ / /

[46] Since the Judgment was entered, Shae has become entitled to two additional payments, each in the amount of $3,118.74.

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Similarly, PERS disputed whether it is obligated to pay pre-judgment and post-judgment interest on past-due payments. Again, PERS' position ignored the plain language of Nevada's statutes. Consequently, the Court ruled against PERS and determined that PERS owes pre-judgment and post-judgment interest on the past due benefits. The Court awarded Shae pre-judgment interest in the amount of $69,340.40 and post-judgment interest until paid.

It is evident from the Court's rulings that PERS' defenses against Plaintiffs' claims were patently unreasonable. PERS maintained its defenses despite the total lack of support in Nevada law. As a result, Shae has waited almost five years to recover survivor benefits. Accordingly, PERS and its Counsel should be ordered to pay Plaintiffs attorneys' fees.

IV. CONCLUSION.

As set forth above, Plaintiffs have expended tremendous time and resources pursuing this case against PERS. From the inception of the Parties' dispute, PERS has forced Plaintiffs to litigate issues for which it has no legal support. Accordingly, Plaintiffs seek attorneys' fees in the amount of $96,272.50.

DATED this 9th day of November, 2015.

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Kristine Jo Freshman

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8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 9th day of November, 2015, service of the foregoing MOTION FOR ATTORNEYS' FEES was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

W. CHRIS WICKER
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
cwicker@woodburnandwedge.com

CHRIS NIELSEN
693 West Nye Lane
Carson City, Nevada 89703
cnielsen@nvpers.org

Attorneys for Defendant
PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA

/s/ Jennifer Kennedy
An Employee of BAILEY❖KENNEDY

BAILEY❖KENNEDY
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Exhibit 1

Exhibit 1

DECLARATION OF DENNIS L. KENNEDY

I, Dennis L. Kennedy, declare as follows:

1. I am over eighteen (18) years of age and a resident and citizen of Clark County, Nevada. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and would do so if requested.

2. I am a Nevada-licensed attorney and counsel for Plaintiffs Shae E. Gitter and Jared Shafer in Gitter v. Public Employees Retirement System of Nevada, No. A-14-697642-C, which is pending in Department XXIV of the Eighth Judicial District Court of Clark County Nevada (the "Matter").

3. I make this Declaration in support of Plaintiffs' Motion for Attorneys' Fees (the "Motion").

4. I have practiced law in Nevada since 1975 and have worked on lawsuits involving securities fraud, contracts, real property, class actions, legal malpractice, and healthcare law.

5. Attached to the Motion as Exhibit 2 is a true and correct copy of my Curriculum Vitae (the "CV"), which is updated on a regular basis.

6. As noted in the CV, I have worked as an adjunct professor at the William S. Boyd School of Law, teaching both healthcare law and Nevada civil practice. I was also a co-author and co-editor of the Nevada Civil Practice Manual from 2003 until 2013, and have served on numerous Nevada State Bar and Nevada Supreme Court committees. I also serve as an expert witness in the area of professional responsibility and legal ethics.

7. Attached as Exhibit 3 to the Motion is a true and correct copy of Bailey❖Kennedy's billing records reflecting the attorneys' fees incurred by Plaintiffs in the Matter while represented by Bailey❖Kennedy.

8. Although Bailey❖Kennedy has been engaged on a contingency fee basis, attorney time was recorded on an hourly basis, and reflected in the attached billing records generated by Bailey❖Kennedy's billing software which are consistent with Bailey❖Kennedy's usual billing practices. These billing records are completed on a daily basis and accurately reflect the amount of

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time spent on each activity billed and the usual billing rates for each attorney who worked on the Matter. The draft bills generated by Bailey❖Kennedy's billing software were reviewed by the attorneys who worked on the Matter to ensure accuracy and precision. This procedure helps ensure that Bailey❖Kennedy's bills accurately reflect the time spent on and the work performed for the Matter.

9. The total amount of attorney's fees Bailey❖Kennedy billed to the Matter was $96,272.50.

10. I was the partner in charge of the Matter. During the course of Bailey Kennedy's representation of Plaintiffs, the following attorneys and staff have worked on the Matter:

a. I billed 11.0 hours at a rate of $800.00 per hour.

b. Kelly B. Stout is currently a fifth year associate attorney who was in charge of the day-to-day case management. During the course of this case, her billing rate increased from $190.00 per hour to $260.00 per hour and she billed 273.25 hours.

c. Joshua M. Dickey is a partner who assisted with drafting the Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment. He billed 0.25 hours at the rate of $395.00 per hour.

d. Mark Hesiak is currently a fourth year associate attorney who has assisted with various tasks throughout the course of the Matter. During the course of this case, his billing rate increased from $190.00 per hour to $250.00 per hour and he billed 38.75 hours.

e. Leon Gil was a former associate attorney who assisted with drafting documents, legal research, and discovery-related tasks. During the course of this case, his billing rate increased from $190.00 per hour to $230.00 per hour. He billed 72.25 hours at the rate of $190.00 per hour.

f. Amanda L. Stevens is currently a first year associate attorney who assisted with drafting the Memorandum of Costs. She billed 20 hours at the rate of $200.00 per hour.

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g. Bonnie O'Laughlin is a paralegal who assisted with document management and discovery-related tasks. She has billed 7.0 hours at the rate of $150.00 per hour.

h. Linda Thomas is a paralegal who assisted with preparing the Memorandum of Costs. She has billed 0.25 hours at the rate of $150.00 per hour.

11. I have reviewed Bailey❖Kennedy's billing records for the Matter. The amount of hours billed was reasonable and necessary in representing the Plaintiffs in the Matter.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 9th day of November, 2015.

DENNIS L. KENNEDY

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Exhibit 2

Exhibit 2

DENNIS L. KENNEDY
CURRICULUM VITAE

EDUCATION

- B.A. Economics, University of Washington (1972)
- J.D., University of Washington School of Law (1975)
- Board of Editors, Washington Law Review

PROFESSIONAL ASSOCIATIONS

- State Bar of Nevada
- American Bar Association
- American College of Trial Lawyers
- American Bar Association Standing Committee on Lawyers' Professional Responsibility

EMPLOYMENT

- Lionel Sawyer & Collins (1975 - 1/6/2006)
- Bailey❖Kennedy (1/9/2006 - present)

OTHER POSITIONS

- Adjunct Professor, UNLV/William S. Boyd School of Law; Health Care Law (2001, 2003, 2005); Nevada Civil Practice (2006, 2007, 2008, 2015)
- Chairman, Board of Trustees, Nathan Adelson Hospice (1995 - present)

PUBLICATIONS

- Co-Author, Nevada Civil Practice Manual (5th ed., 2001)(2003-2013 supplements)

- Co-Editor (with Professor Jeffrey Stempel), Nevada Civil Practice Manual (5th ed.) (2003-2013 supplements)

- Solo and Small Firm Ethics Traps, Clark County Bar Association COMMUNIQUE (December 2013)

SUPREME COURT AND BAR COMMITTEES

- State Bar of Nevada Disciplinary Committee (1989-1997). Chairman, Southern District (1993-1995)

- Member of State Bar Committee on Ethics and Professional Responsibility (December 2001 - December 2009; Chairman 2003-2007)

- Member of State Bar Committee on the Revisions to the Nevada Rules of Professional Conduct (the "Ethics 2000 Committee") (2003-2004)

- State Bar Professionalism Task Force (2004-present); Chairman, CLE Subcommittee (2009-2010). (Task force recently developed a mentoring program designed to assist newly admitted lawyers in the transition into the profession.)

- Nevada Supreme Court Bench-Bar Committee (SCR 14) (2005-present) (General function of the Committee is to consult with the Supreme Court on issues affecting the practice of litigation, including proposed amendments to the Nevada Rules of Civil and Appellate Procedure.)

- Member of Nevada Supreme Court Article 6 Commission (2007-2011) (Commission's projects were (i) the proposed intermediate court of appeals, (ii) changes in judicial selection process and (iii) changes in judicial campaign fund raising and disclosure). Final report of Commission issued June 2011

- Member of Nevada Supreme Court Committee on Public Access to Lawyer Discipline (1994). Committee report resulted in amendments to SCR 121

- Member of Nevada Supreme Court Committee on Judicial Ethics and Election Practices (1995). Committee report resulted in the adoption of the Rules Governing the Standing Committee on Judicial Ethics and Election Practices (1997)

- Member of Nevada Supreme Court Committee to Study the Amendment of NRCP 68 (offers of judgment) (2008-present)

RATINGS AND RANKINGS

- Martindale Hubbell "A" "V" rating.

- Mountain States "Super Lawyer" 2015; Top 10 – ranked third overall – for Nevada, Utah, Montana, Idaho and Wyoming.

- Mountain States "Super Lawyer" 2005-present (top 75 lawyers in Nevada, Utah, Montana, Idaho and Wyoming).

- Chambers U.S.A. - one of the top 5 commercial litigators in Nevada (2005-present).

- Best Lawyers In America - Commercial Litigation and "Bet the Company" cases (1998-present).

- Best Lawyers' 2012 Las Vegas Health Care Lawyer of the Year.

REPORTED CASES (1985-present)

- Lakeside Community Hospital v. Levenson, 101 Nev. 777, 710 P.2d 727 (1985).
- Herbst v. Humana Health Ins. of Nevada, 105 Nev. 586, 781 P.2d 762 (1989).
- In re Discipline of Stuhff, 108 Nev. 629, 837 P.2d 853 (1992).
- In re Discipline of Singer, 109 Nev. 1117, 865 P.2d 315 (1993).
- Forsyth v. Humana, Inc., 827 F. Supp. 1498 (D. Nev. 1993), aff'd in part and rev'd in part by Forsyth v. Humana, Inc., 99 F.3d 1504 (9th Cir. 1996); superseded on rehearing by Forsyth v. Humana, Inc., 114 F.3d 1467 (9th Cir. 1997); affirmed by Humana, Inc. v. Forsyth, 525 U.S. 299 (1999).
- Snoeck v. Brussa, 153 F.3d 984 (9th Cir. 1998).
- State of Nevada v. Reliable Health Care, 115 Nev. 253, 983 P.2d 414 (1999).
- Baker v. District Court, 116 Nev. 527, 999 P.2d 1020 (2000).
- Nguyen v. State, 116 Nev. 1171, 14 P.3d 515 (2000) (amicus brief for Nevada Resort Assn.).
- Brown v. District Court, 116 Nev. 1200, 14 P.3d 1266 (2000).
- Badillo v. American Brands, 117 Nev. 34, 16 P.3d 435 (2001).
- Badillo v. American Brands, 202 F.R.D. 261 (D. Nev. 2001).
- Michel v. Bare, 230 F. Supp. 2d 1147 (D. Nev. 2002).
- Maduka v. Sunrise Hospital, 375 F.3d 909 (9th Cir. 2004).
- Poulos v. Caesar's World, Inc., 379 F.3d 654 (9th Cir. 2004).
- International Game Technology, Inc. v. Second Judicial District Court, 122 Nev. Adv. Op. 13, 127 P.3d 1088 (2006).
- Leroy's Horse and Sports Place v. Racusin, 2001 WL 1345974 (9th Cir. November 1, 2001) (reversing district court judgment re damages and attorney's fees and remanding for jury trial); Leroy's Horse and Sports Place v. Racusin, CV-S-950-00927 (D. Nev. July 8, 2003) (jury verdict of $2,310,000); Hartunian v. Racusin, 2005 WL 79089 (9th Cir. January 14, 2005) (reversing district court order refusing to award pre-judgment interest on $2,310,000 jury verdict and remanding for determination of interest amount); Racusin v. American Wagering,

Inc., 465 F.3d 1048 (9th Cir. 2006), withdrawn on rehearing 493 F.3d 1067 (2007) (reversing BAP decision subordinating debt and affirming client's status as creditor entitled to payment of $2,310,000 judgment).

- Nanopierce Technologies, Inc. v. Depository Trust Clearing Corp., 123 Nev. 362,168 P.3d 73 (September 20, 2007) (brief and oral argument on behalf of amicus curiae North American Securities Administrators Assn.).

- State of Nevada v. District Court (RJR Tobacco), 125 Nev. 37, 44, 199 P.3d 828 (January 29, 2009).

- Betsinger v. D.R. Horton, Inc., 126 Nev. 162, 232 P. 3d 433 (May 27, 2010).

- Orion Portfolio Services 2, LLC v. Clark County, ex rel. University Medical Center, 126 Nev. Adv. Op. No. 39, 245 P. 3d 529 (October 14, 2010).

- U-Haul International, Inc. v. Albright, 626 F. 3d 498 (9th Cir. 2010).

- Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 57, 245 P.3d. 1182 (2010) (brief on behalf of amicus curiae United States Chamber of Commerce).

- Stultz v. Bellagio, LLC, Nevada Supreme Court Case No. 56164 (October 29, 2011).

- Walters v. Eighth Jud. Dist. Ct. ex rel. Cnty., of Clark, 127 Nev. Adv. Op. No. 66, 263 P.3d 231 (2011).

- In re City Center Construction and Lien Master Litigation, Nevada Supreme Court Case No. 57186 (October 19, 2011).

- Richman v. District Court, Nevada Supreme Court Case No. 60676 (May 31, 2013).

- Golden Gaming, Inc. v. Corrigan Management, Inc., Nevada Supreme Court Case Nos. 61696 and 62200 (March 26, 2015).

ETHICS/PROFESSIONAL RESPONSIBILITY REPRESENTATION

- Defense of non-Nevada lawyer on charges of unauthorized practice (and related offenses) before State Bar Disciplinary Panel (1998-1999). (Name of counsel and law firm are confidential.)

- Representation of candidate for district court in defense of complaint regarding campaign advertisements before Standing Committee on Judicial Ethics and Campaign Practices. (1998). Name of candidate is confidential.

- Representation of attorney in appeal of disqualification order (SCR 160). Brown v. Eighth Judicial District Court, 116 Nev. 1200, 14 P.3d 1266 (2000).

- Representation of attorney before fee dispute panel in matter involving recovery of quantum meruit fee in the absence of written fee agreement in contingent fee case. West v. Myers, No. 02-128.

- Representation of members of Nevada Commission on Judicial Discipline in defense of action challenging constitutionality of the Commission's rules and activities. Snoeck v. Brussa, 153 F.3d 984 (9th Cir. 1998).

- Representation of Members of Nevada Commission on Judicial Discipline in defense of RICO and Civil Rights claims. Mosley v. Gang, et al., Case No. CV-S-00-0976-JLQ(LRL).

- Representation of State Bar of Nevada in defense of action brought by out-of-state law firm challenging the constitutionality of SCR 199 firm name provision. Lewis & Roca v. Bare, Case No. CV-S-99-0757-JBR (RLH).

- Representation of law firm in challenge to constitutionality of Supreme Court Rule prohibiting use of trade name by lawyers. Michel v. Bare, 230 F. Supp. 2d 1147 (D. Nev. 2002) (declaring SCR 199(1) unconstitutional).

- Representation of candidate for district court in defense of complaint regarding allegedly untrue and defamatory statements made concerning opponent before Standing Committee on Judicial Ethics and Campaign Practices. (2002). Name of candidate is confidential.

- Representation of Nevada Commission on Judicial Discipline in defense of § 1983 civil rights claim. Luckett v. Hardcastle, et al., Case No. CV-S-05-0726 RLH-RJJ. (Complaint dismissed).

- Representation of attorney in defense of lawsuit alleging negligence and malpractice. Malignaggi v. Goldberg, Case No. A 508763, District Court, Clark County, Nevada (case dismissed).

- Representation of law firm in opposing disqualification motion. Provenza v. Yamaha Motor Co., Case No. A446708, District Court, Clark County, Nevada.

- Representation of law firm in opposing disqualification motion. Roth v. BMW, Case No. A453810, District Court, Clark County.

- Representation of non-Nevada lawyer regarding allegations of lack of candor toward tribunal (SCR 172) (2006). (Name of counsel and law firm are confidential.)

- Representation of law firm in opposing disqualification motion. Daniell v. Peake Development, Case No. A508494, District Court, Clark County.

- Representation of attorney in defense of State Bar proceeding regarding violations of NRPC 1.8 (business transactions with client) and NRPC 1.7 (conflict of interest). Name of attorney confidential (SCR 121).

- Representation of attorney in defense of claims for misappropriation of confidential information. Friedman v. Friedman, Case No. D07-376354D, District Court, Clark County, Nevada.

- Representation of attorneys in defense of claims alleging violations of NRPC 4.2 arising out of contacts with putative class members prior to class certification. Del Webb Communities, Inc. v. The Eighth Judicial District Court of the State of Nevada in and for the County of Clark, and The Hon. Timothy C. Williams, District Judge, and Real Parties in Interest, Case No. 49423, Nevada Supreme Court.

- Representation of attorney in defense of State Bar proceeding regarding violations of NRPC 1.5 (fees) and NRPC 4.2 (contact with represented person). Case dismissed. Name of lawyer is confidential. (SCR 121).

- Representation of entity owned by attorney in defense of NRPC 1.8 claim. In re Receivership of Southwest Exchange, Case No. A535439, District Court, Clark County, Nevada.

- Representation of attorney in defense of malpractice/breach of fiduciary duty claim. Sorrell v. Snell & Wilmer, Case No. 08-CV-00761-RCJ-LRL, U.S. District Court, Nevada. Case settled.

- Representation of attorney in appeal of judgment refusing to enforce contingency fee agreement's term regarding attorney's entitlement to particular fee in the event of his termination. Golightly v. Gassner, Case No. 50212, Nevada Supreme Court. Case decided.

- Representation of party in defense of claim for attorney's fees arising out of alleged "frivolous" litigation. Club 93, Inc. v. County of Elko, CV-C-08-163, Fourth Judicial District Court, Elko, Nevada. Case settled.

- Representation of client against attorney in claim for refund of alleged "non-refundable" retainer. Sperberg v. Hunterton, Case No. 08-149 (State Bar Fee Dispute Proceeding). Case decided.

- Representation of attorney in action against former partner and others for wrongful expulsion from law firm. Powell v. Powell Naqvi, Case No. 08-566761, Eighth Judicial District Court. Case settled.

- Representation of clients in seeking review of U.S. Magistrate Judge's order imposing monetary sanctions upon parties, individual lawyers, and law firm. Dennis Montgomery, Montgomery Family Trust v. eTreppid Technologies, L.L.C.; Warren Trepp, Department of Defense of the United States of America; and Does 1 through 10, and Related Cases, Case No. 3:065-CV-00145-PMP-VPC, U.S. District Court, District of Nevada. Matter settled.

- Representation of suspended attorney in proceedings seeking reinstatement to Nevada Bar. (In re Richard Pipkins). Matter pending. Representation terminated.

- Representation of attorney and law firm in opposing disqualification motion. Edwin K. Slaughter, et al. v. Uponor, Inc., et al., Case No. 2:08-CV-01223-RCJ-GWF, U.S. District Court, District of Nevada. Case dismissed.

- Representation of non-Nevada lawyer on State Bar inquiry into charges of unauthorized practice. (2009-2010). Matter concluded without action by State Bar. Name of lawyer is confidential.

- Representation of attorneys in defense of State Bar disciplinary proceeding alleging fee-splitting with non-lawyer and other matters. State Bar v. Eglet (Case No. SG-10-0874) and Adams (Case No. SG-12-0803).

- Representation of attorney in fee dispute arbitration. Davidson v. Gentile, Case No. 10-085, Nevada State Bar Fee Dispute Committee. Matter decided.

- Representation of attorney in defense of State Bar disciplinary proceeding. State Bar of Nevada v. Anthony Lopez, Bar No. 08-175 (and numerous related and consolidated cases). Matters pending.

- Representation of judicial candidate in action challenging constitutionality of Nevada Code of Judicial Conduct Canon 4, Rule 4.1(A)(11). Kishner v. Nevada Standing Committee on Judicial Ethics and Election Practices, Case No. 2:10-cv-01858-RLH-RJJ, U.S. District Court, Nevada. Matter concluded.

- Representation of attorney in matter where attorney disclosed confidential information relating to the representation of a client to prevent the commission of a criminal and fraudulent act by the client. Nevada RPC 1.6(b)(2) and (3). Attorney's name is confidential. Case settled.

- Representation of former clients in action against law firm and attorney. Frias Holding Co. v. Greenberg Traurig, Case No. A-10-630319-C, Eighth Judicial District Court, Clark County, Nevada. Engagement concluded.

- Representation of former client against law firm in defense of fee collection proceeding and in prosecution of malpractice counterclaim. Lionel Sawyer & Collins v. DeWald, State Bar Fee Dispute Committee Matter No. 10-108. Case dismissed.

- Representation of law firm and lawyers in dispute with insurer over coverage for claims of professional negligence. Pacifica v. Goold Patterson, et al., Case No. A557726 (and related cases), Eighth Judicial District Court, Clark County, Nevada. Matter settled.

- Representation of attorneys in defense of five consolidated disciplinary complaints arising out of consumer bankruptcy representation. Nevada RPC 1.3, 1.4, 5.3 and 8.1. State Bar v. Haines and Krieger, Case Nos.10-121-2842; 10-134-2842; 10-137-2557; SG10-0023; and SG10-0044. Matters concluded.

- Representation of law firm and lawyers in defense of lawsuit alleging violations of Nevada RPC 1.8. Richman v. Haines & Krieger, LLC, et al., Case No. A-11-643004-C, Eighth Judicial District Court, Clark County, Nevada; Case No. 60676, Nevada Supreme Court (May 31, 2013). Matter pending following remand.

- Representation of lawyers in defense of 46 consolidated bar grievances and complaints arising out of consumer bankruptcies and residential loan modifications. State Bar v. George Haines and David Krieger, Grievance No. SG11-1800 (and related matters).

- Representation of attorneys in challenge (by mandamus) to order of disqualification. In re City Center Construction and Lien Master Litigation: MGM Mirage Design Group v. District Court, Nevada Supreme Court Case No. 57186 (October 19, 2011).

- Representation of Trust Beneficiaries in motion to disqualify counsel for trustee. In Re Cook Trusts, Case No. P-11-071394-T. Eighth Judicial District Court, Clark County, Nevada. Matter Decided.

- Representation of former client in defense of fee collection suit by law firm and prosecution of malpractice counterclaim. Lionel Sawyer & Collins v. DeWald, Case No. 79 194 Y 00090 11 nolg (AAA). Engagement concluded.

- Representation of not-for-profit entity in State Bar proceeding alleging unauthorized practice by assisting homeowners in dealings with mortgage lenders. (Name of client is confidential). Engagement concluded.

- Representation of Stokes & Stokes, Ltd. in the defense of various bar grievances. Case settled.

- Representation of parties in action seeking to overturn arbitrators' decision on grounds of fraud and partiality. Parker v. Carlson, et al., Case No. A571921, Eighth Judicial District County, Nevada. Matter settled.

- Representation (special counsel) of Allstate Insurance Co. on privilege and work product issues arising from interviews of former clients of an attorney. Allstate Insurance Co., v. Balle, et al., Case No. 2:10-CV-02205-KJD-RJJ, United States District Court, District of Nevada. Matter concluded.

- Representation of attorney and law firm in defense of allegations of unauthorized practice (Rule 5.5) and failure to register as a multi-jurisdictional law firm (Rule 7.5A). Waite v.Clark County Collection Service, Case No.2:11-cv-01741-LRH-VCF, United States District court, District of Nevada. Matter concluded

- Representation of attorney in defense of State Bar disciplinary proceeding as to alleged violations of RPC 1.7 (current client conflict), RPC 5.4 (professional independence/fee splitting with non-lawyers), and RPC 8.4 (misconduct involving dishonesty and fraud). State Bar v. Noel Gage, Case No. 08-053-1890. Disciplinary case concluded with settlement. Settlement approved by the Nevada Supreme Court. Client reinstated as member of State Bar.

- Representation of bar applicant before State Bar Moral Character and Fitness Committee on charges relating to alcohol abuse, plagiarism and financial responsibility. In re Melanie Feldhauser-Thomas. Matter concluded.

- Representation of law firm and its clients in opposing motion to disqualify law firm for acquisition and use of allegedly privileged documents. In re C.E. Cook Family Trust, Consolidated Case No. P-11-071394-T, District Court, Clark County, Nevada. Matter concluded.

- Representation of attorney in defense of State Bar disciplinary proceedings as to alleged violation of trust account rules. State Bar v. Joseph Scalia, Case Nos. SG11-1737, SG12-0903. Engagement concluded.

- Representation of former client of law firm in dispute with law firm arising out of law firm's conflict of interest in defending former client and another defendant at trial, where former client was found liable and other defendant was not. Names of client and law firm are confidential. Matter settled.

- Representation of attorney in appeal of letter of private reprimand resulting from attorney's conduct in federal court litigation. In re Steven Gibson, Case No. SG-12-0104. Matter decided.

- Representation of law firm in dispute with second law firm over payment of fees alleged to be due under fee sharing agreement. Gage Law Firm v. Feinberg Mayfield Kaneda & Litt, LLP d/b/a Fenton Grant Mayfield Kaneda & Litt, LLP

f/k/a Feinberg Grant Mayfield Kaneda & Litt, Case No. A-14-697336-B, District Court, Clark County, Nevada. Matter pending.

- Representation of defendant entity sued by plaintiff's counsel with whom defendant entity had prior relationship, in proceedings regarding disqualification of plaintiff's counsel. Matter is confidential.

- Representation of departed lawyer in dispute with former firm regarding client files and compensation. Matter is confidential.

- Representation of law firm in dispute with departed lawyer regarding compensation. Matter is confidential.

- Representation of former attorneys' client in action against attorneys for malpractice and breach of fiduciary duty. McKenna v. Chesnoff, et al., Case No. 2-14-cv-1773-JAD-CWH pending in the United States District Court, District of Nevada.

- Representation of law firm and attorney in defense of claims for breach of duty and aiding and abetting breach of fiduciary duty. Hugh S. Proctor, et al. v. CPF Recovery Ways, LLC, et al., Case No. 2:14—cv-01693-RFB-PAL pending in the United States District Court, District of Nevada. Case settled.

- Representation of attorney in disciplinary proceedings resulting from attorney's conviction of a crime. State Bar of Nevada v. Chandan Manansingh, No. CR13-1850 (2015).

- Representation of attorney in defense of allegations of unauthorized practice of law. Matter is confidential.

- Representation of two partners of law firm in connection with their resignation from that firm and formation of a new firm. Matter is confidential.

- Representation of non-party for purpose of asserting accountant-client privilege in case where non-party's confidential information was at risk of disclosure. Core-Vent Bio Engineering, Inc. v. Polo Nevada Investments, Case No. A644240, Eighth Judicial District Court, Clark County, Nevada.

- Representation of attorney regarding potential disciplinary complaint arising out of litigation financing and transactions involving medical liens. Name of attorney is confidential.

- Representation of client in contemplated action against former attorney for malpractice. Names of client and attorney are confidential.

RETENTION AS EXPERT: ETHICS/PROFESSIONAL RESPONSIBILITY

- Retained by bar applicant to give expert testimony before State Bar Moral Character and Fitness Committee regarding duty of confidentiality arising out of applicant's seeking employment with law firm representing adverse party. Testimony given. (2004) (Name of bar applicant is confidential).

- Retained by Cherry & Bailus to give expert testimony before State Bar Fee Dispute committee on issues regarding attorneys' withdrawal/termination of representation. Testimony given.

- Retained by Dominic Gentile to give expert testimony in U.S. Bankruptcy Court, Orange County, California, on attorney's obligations to client upon withdrawal and attorney's duty to withdraw. Offer of proof; no testimony given. In re Ken Mizuno; The Bankruptcy Estate of Ken Mizuno v. Ken Mizuno, Dominic P. Gentile, Terrance G. Reed, et. al., Case No. SA94-14429LR, Adv. No. AD95-01043, United States Bankruptcy Court, Central District of California.

- Retained by Law Offices of Stan Hunterton to testify in State Court case on issues concerning attorney's obligations in billing client for fees and charging for costs and expenses. Report prepared. No testimony given. Shinehouse & Duesing, a Nevada partnership, and Rumph & Peyton, a Nevada Partnership v. R.D. Prabhu, an individual, Case No. A379297, District Court, Clark County, Nevada. Case dismissed and re-filed as Shinehouse & Duesing v. Prabhu, Case No. A456661, District Court, Clark County, Nevada. Case dismissed.

- Retained by Law Offices of Gary Logan to testify as to lawyer's duties to jointly represented clients. Testimony given. Nault v. Mainor, Case No. A401657, District Court, Clark County, Nevada, Mainor v. Nault, 120 Nev. Adv. Op. 84, 101 P.3d 308 (2004).

- Retained by Alverson, Taylor, Mortensen, Nelson & Sanders to testify as to duties of attorney (competence) and scope of representation. Report prepared. Case dismissed. Ilbert Mednicoff, an individual and CCN, Inc., a Nevada corporation v. George F. Holman, an individual, Robert L. Bolick, an individual, Stewart A. Gollmer, an individual, Gary Fields, an individual, Law Offices of Robert L. Bolick, Ltd., a Professional corporation and Does 1 through 100, inclusive, Case No. A377374, District Court, Clark County, Nevada.

- Retained by Alverson, Taylor, Mortensen, Nelson & Sanders to testify as to duties of law firm to supervise work of associate attorney. Report prepared. Case dismissed. Anthony Guymon, an incompetent person, by and through his Guardian ad Litem, Barbara Guymon; Barbara Guymon v. Cory J. Hilton; Hilton & Kahle; Villani, Hilton & Kahle; Villani, Gardner & Hilton; Perry & Spann; Pico & Mitchell, Ltd.; and Does 1 to 10, inclusive, Case No. 00-A-422013-C, District Court, Clark County, Nevada.

- Retained by Alverson, Taylor, Mortensen, Nelson & Sanders to testify as to lawyer's conduct in trial and settlement of case. Report prepared. Case dismissed. Mark J. Brown v. Alan Catley (and related cross actions), Case No. A381988, District Court, Clark County, Nevada.

- Retained by State Bar to testify in disciplinary proceeding as to lawyer's duties under SCR 170 (prohibition on filing frivolous litigation). State Bar v. Mirch, Case No. 3-34-20. Report prepared. Testimony given. In The Matter of Discipline of Kevin Mirch, Case No. 49212, Nevada Supreme Court, April 10, 2008 (attorney disbarred).

- Retained by Holland & Hart to testify as to duties owed by lawyer who engages in business transactions with clients. Rivers v. Romano, et al., Case No. A483701, District Court, Clark County, Nevada. Report prepared. Testimony given. Case dismissed.

- Retained by attorney to testify regarding duties under SCR 152 (scope of representation), SCR 153 (diligence) and SCR 166 (declining or terminating representation), State Bar v. Goldberg, No. 04-013-1536. Testimony given. Case dismissed.

- Retained by Cristalli & Saggese to testify as to issues regarding formation of attorney-client relationship, scope of representation, and breach of duties arising therefrom. Johnson v. Smith, Case No. 512364. Report prepared. Case dismissed.

- Retained by Snell & Wilmer to testify regarding duties and responsibilities of attorney providing opinion in real estate sale transaction. Sundance West LLC, et al. v. Orix Capital Markets, LLC, Case No. CV-04-01995, Second Judicial District Court, Washoe County, Nevada. Report prepared. Case dismissed.

- Retained by Alverson, Taylor, Mortensen, Nelson & Sanders to testify regarding issues pertaining to insurer's "captive" law firm, including disclosure and client consent requirements. Artisan Tile & Plumbing, Inc., a Nevada corporation, formerly known as Davila Jimenez, Inc. doing business as Pueblo Landscape Company, Inc. v. Assurance Company of America, a New York Corporation; Bennion Clayson Marias & Haire fka Bennion & Clayson; Does 1 through 10, inclusive, Case No. A503744, District Court, Clark County, Nevada.

- Retained by Menter & Witkin to testify regarding (i) attorney's acceptance of defense of insured subject to insurer's litigation guidelines; (ii) conflicts arising from attorney's representation of four co-defendants in construction defect litigation; (iii) duty of insurer to provide independent counsel; and (iv) whether attorney's conduct met standard of care. National Fire & Marine Insurance Company v. Roger Gurr and Elsie Gurr (and counterclaim), Case No. 3:05-CV-

0658-BES-VPC, United States District Court, District of Nevada. Report prepared. Case settled.

- Retained by Alverson, Taylor, Mortensen & Sanders to testify regarding attorney's conduct in determining proper defendants in litigation. Lesky v. Callister, Case No. 527875, District Court, Clark County, Nevada. Report prepared. Case dismissed.

- Retained by Gordon & Silver to testify regarding conduct of attorney and law firm in business transaction with client. Richards v. Allison, MacKenzie, et al., Case No. 03-01781A, First Judicial District Court, Carson City, Nevada. Report prepared. Case dismissed. Appeal pending.

- Retained by Deaner Scann Malan & Larsen to testify regarding an alleged conflict of interest arising from law firm's prior work and status of lawyer as shareholder in party to case. D & J Properties v. Siena Office Park 2, Case No. A537781, District Court, Clark County, Nevada. Report prepared. Testimony Given. Matter decided.

- Retained by Solomon Dwiggins & Freer to testify regarding the conduct of a lawyer and his law firm in the handling of an estate where the lawyer acted as trustee of various trusts and retained his own law firm to represent him. Leseberg v. Woods, Case No. P59334, District Court, Clark County, Nevada. Report prepared. Deposition testimony given. Trial testimony given. Case settled.

- Retained by Menter & Witkin to testify regarding (i) duties of Nevada lawyer residing out of state and maintaining office in Nevada (SCR 42.1); and (ii) duties of multi-jurisdictional law firm maintaining office in Nevada (NRPC 7.5A). Roger and Elsie Gurr v. National Fire & Marine Insurance Company, Reiser & Associates, and Does 1 through 40, Case No. 07-CV-615-HDM-VPC, in the United States District Court, Reno. Report prepared. Case settled.

- Retained by Lewis Brisbois Bisgaard & Smith to testify regarding restitution of fees paid to law firm who is later disqualified due to conflict of interest. American Heavy Moving and Rigging, Inc. v. Lewis Brisbois Bisgaard & Smith, LLP, State Bar Fee Dispute Case No. 07-055 (State Bar Fee Dispute Panel). Rebuttal report prepared. Testimony given. Case decided.

- Retained by Michael Warhola to testify regarding waiver of attorney-client privilege by inadvertent disclosures of e-mail from client. Seidman v. Dilloo, Case No. D260143, District Court, Clark County, Nevada. Report prepared.

- Retained by attorney as consulting expert regarding opposing counsel's violations of NRPC 1.2(d) and 8.4(d) by rendering legal aid and advice to fugitive client to enable him to prosecute and defend litigation in Nevada. Joseph A. Bravo, David Z. Chesnoff, and Eckley M. Keach, Capital Growth Limited, Inc., Punta Arena De

La Ventana, S.A. de C.V., Boca De La Salina, SA De C.V. v. Capital Growth, LLC, and Kerry Rogers, and All Related Actions, Case No. A536644, A542755, A535548, District Court, Clark County, Nevada. Report prepared. Underlying case dismissed. Bar Grievance filed. Screening panel testimony given. Matter decided.

- Retained by attorney as consulting expert to advise whether opposing counsel's conduct (harassment of witness) violated NRPC 8.4(d). Julia Brady, et al v. Kerry Rogers, et al., Case No. A572440, District Court, Clark County, Nevada. Report prepared. Underlying case dismissed.

- Retained by Alverson, Taylor, Mortensen, Nelson & Sanders to testify regarding duties and responsibilities of a lawyer who is counsel of record in pending litigation, whose client retains other counsel and then ceases communicating with the lawyer. Geier v. Denue, et al., Case No. A525183, Eighth Judicial District Court, Clark County, Nevada. Report prepared. Case settled.

- Retained by Marquis & Aurbach (later replaced by Lionel Sawyer & Collins) to testify regarding duties of lawyer who prepares a trust document, is appointed trustee upon client's death, and then retains his own law firm to represent the trust. In the Matter of the Total Amendment and Restatement of the William Eversole Family Trust Originally Dated April 6, 1996, Case No. P-09-0654430-T, Eighth Judicial District Court, Clark County, Nevada. Report prepared. Case settled.

- Retained by law firm to advise as to firm's duties when potential conflict arises between clients jointly represented by firm in defense of litigation. NRPC 1.7. (Name of firm and identities of clients are confidential).

- Retained by Thorndal Armstrong Delk Balkenbush & Eisinger to testify regarding the scope of duties owed by a lawyer who has been retained to render only limited services. Brewer v. State of Nevada, et al., Case No. 554064, Eighth Judicial District Court, Clark County, Nevada. Report prepared. Matter settled.

- Retained by Alverson, Taylor, Mortensen, Nelson & Sanders to testify regarding the duties owed to a minority shareholder by a lawyer who represents a closely held corporation. Jackson v. Ira Levine, et al., Case No. A538983, Eighth Judicial District Court, Clark County, Nevada. Report prepared. Trial testimony given. Case decided.

- Retained by Schiff Hardin, LLP to testify as to reasonableness of attorneys' fees. DTPI Holdings, LLP v. Forrest Binkley & Brown Capital Partners, LLP, Case No. 2:07-CV-00690-BES-RJJ, U.S. District Court, District of Nevada. Report prepared. Case decided.

- Retained by Doyle Berman Murdy, P.C. to opine on attorney's conduct in representing several parties in related transactions. XMASCO, LLC v. Wellborn & Associates, P.C., et al., Case No. A566261, Eighth Judicial District Court, Clark County, Nevada. Case dismissed.

- Retained by Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, to testify as to attorney's duties regarding safekeeping and distribution of client's funds. Azine, et al. v. Johnson, et al., Case No. A587009, Eighth Judicial District Court, Clark County, Nevada. Case settled.

- Retained by Lewis Brisbois Bisgaard & Smith to testify as to law firm's duties in preparing and communicating with client regarding drafts of transactional documents. Padilla v. Smith, Case No. A569307, Eighth Judicial District Court, Clark County, Nevada. Report prepared. Case settled.

- Retained by Solomon Dwiggins & Freer to testify regarding attorney's conduct in representing trustors and beneficiaries of a trust. Buck v. Hoffman, Case No. CV09-00324, Second Judicial District Court, Washoe County, Nevada. Report prepared. Deposition taken. Case settled.

- Retained by Lewis Brisbois Bisgaard & Smith to testify regarding attorney's conduct in representing closely held corporation. RPC 1.13. Rita Quam Family Trust, et al. v. OPA Management, LLC, et al., Case No. A568829, Clark County District Court. Report prepared. Case concluded on summary judgment in favor of attorney. Amended Complaint filed,. Additional report prepared. Matter settled.

- Retained as special counsel to brief and argue defendants' rights and obligations (*vis-a-vis*, non-settling plaintiffs) regarding possibly privileged or confidential documents received by defendants from some plaintiffs as a part of a settlement. Klaas v. Vestin Mortgage, Case No. A528385, Clark County District Court (matter decided).

- Retained by Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLP to testify as to lawyer's obligations upon receipt from a third party of documents and information which appear to have been misappropriated from adverse party. Merits Incentives, LLC v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark, 127 Nev. Adv. Op. 63, 262 P.3d 720 (2011).

- Retained by Thorndal, Armstrong, Delk, Balkenbush & Eisinger to testify regarding attorney's conduct (diligence and competence) in representing client in complex mechanic's lien litigation. Maui One Excavating v. Mead & Pezzillo, et al., Case No. A539801, Clark County District Court. Report prepared. Case settled.

- Retained by Robertson & Vick, LLP to testify as to reasonableness of attorneys' fees. Voggenthaler, et al. v. Maryland Square, et al., Case No. 2:08-CV-01618 RCJ (GWF), U.S. District Court, District for Nevada. Report prepared. Matter decided.

- Retained by Travelers Companies, Inc. to opine on issues relating to the unauthorized practice of law (Nevada RPC 5.5 and SCR 49.10). Opinion prepared.

- Retained by Chamberlain Hrdlicka White Williams & Martin to opine on several Nevada RPC 8.3 issues in Valdez v. Cox Communications, et al., Case No. 2:09-CV-1797-PMP-RJJ in the U.S. District Court, District of Nevada. (Oral opinion delivered.)

- Retained by Mark Zaloras and the Law Offices of Peter Goldstein to opine on several malpractice, billing and fee issues. Gaxiola-Lim v. Michel, Case No. A-10-613812-C, Clark County District Court. Preliminary report prepared. Matter settled.

- Retained by the Cashill Law Firm to opine on attorney's entitlement to a fee for work done on behalf of an incompetent client. Merle Layton Trust, Case No. PR98-00336. Second Judicial District Court, Washoe County, Nevada. Report prepared.

- Retained by Marquis Aurbach Coffing to testify as to attorney's conduct in representation of clients and matters relating to negotiation of release from malpractice liability. Gugino v. Nevada Contractors Ins. Co., et al., Case No. A-11-637935-B, Clark County District Court. Report prepared. Testimony given. Matter pending.

- Retained by Vernon L. Bailey, Esq. to testify as to attorneys' conduct in representation of clients and matters relating to legal malpractice, breach of fiduciary duty and negligence. Inca Investments, Inc.; Platina, Inc. v. Kevin R. Hansen, Esq.; Wilde Hansen, LLP; Gregory L. Wilde, Esq.; Richard S. Ehlers, Esq., Case No. A-09-604391-C, Clark County District Court. Report prepared. Deposition taken. Case settled.

- Retained by Laxalt & Nomura to testify as to attorneys' obligations to and conduct affecting opposing party in litigation. Pompei v. Hawes, et al., Case No. A-11-642012-C, Clark County, District Court. Report prepared. Deposition taken. Matter pending.

- Retained by Randolph Goldberg to testify as to attorney's conduct regarding various issues. State Bar v. Goldberg, Case Nos. 09-049-1536; 09-102-1536; and 09-235-1536. Report prepared. Matter pending.

- Retained by multi-jurisdictional law firm to render advice on compliance with Nevada registration and practice requirements (Nev. R.P.C. 7.5A).

- Retained by Christian, Kravitz, Dichter, Johnson & Sluga, LLC to testify regarding attorneys' obligations when terminating employment with a law firm and starting a new firm. Burr v. Dodds, Case No. A-11-650060-B, Clark County District Court. Matter settled.

- Retained by Hong & Hong to testify as to duties of attorneys (competence) in conduct of litigation. Wacht v. Peel & Brimley, Case No. A646410, Clark County District Court. Report prepared. Matter decided.

- Retained by attorney to render opinion on duties regarding disposition of disputed funds held by attorney. (Nev. R.P.C. 1.15) (Attorney's name is confidential.)

- Retained by Greenspoon Marder, P.A. to render opinion on attorney's duty to obtain clients' informed consent before settling or dismissing claims. Pittman v. Westgate Planet Hollywood Las Vegas, LLC, Case No. 2:09-CV-00878-PMP-GWF, United States District Court, District of Nevada. Report prepared. Matter decided.

- Retained by Simon & Berman to render opinion on conduct of lawyer and law firm in representing client in litigation (diligence, competence and communications)., Chandler v. Black & LoBello, et al., Case No. A-11-643955, refiled as Case No. A-12-660252, Clark County District Court. Matter settled.

- Retained by Lewis Brisbois Bisgaard & Smith LLP to render opinion on conduct of attorney in matters pertaining to failed investment. Softwind Capital, LLC v. Global Project Solutions, LLC, et al., Case No. 2:11-CV-02057-JCM-GWF, United States District Court. Case settled.

- Retained by Lewis Brisbois Bisgaard & Smith LLP to render opinion on conduct of attorney regarding loans made to client (Nevada RPC 1.8). Albert D. Massi v. Donald and Mary Nobis, Case No. A672579 in the District Court, Clark County, Nevada. Case settled.

- Retained by law firm as consulting expert to render opinion regarding attorney's duty to report misconduct by opposing counsel. Nevada RPC 8.3(a). Name of law firm and subject attorney are confidential.

- Retained by Lewis Roca Rothgerber to render opinion on whether the common religious affiliation of the judge and one party's counsel requires the judge to recuse himself. Lynan v. Health Plan of Nevada, Case No. A583772 and Magana v. Health Plan of Nevada, Case No. A583816, District Court, Clark County, Nevada. Report prepared. Matter decided.

- Retained by Littler Mendelson to render opinion as to the propriety of self-dealing and other activities by company's in-house counsel. Randazza v. Excelsior Media Corp., JAMS Case No. 1260002283. Report prepared. Testimony given. Case decided.

- Retained by Judy M. Sheldrew, Esq. to render an opinion on the propriety of several attorneys' conduct in dealing with client having diminished capacity Andrews v. Rowe, et al., Case No. 12-PB-0075 in the Ninth Judicial District Court, Douglas County, Nevada. Report prepared. Case settled.

- Retained by Christine A. Zack to opine on issues of unauthorized and multi-jurisdictional practice of law. In re: Fundamental Long Term Care, Inc., Case No. 8-11-BK-22258-MGW, District of Florida. Matter settled.

- Retained by Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, to opine on issues of supervision and trust account matters. SBS Retail, Inc. v. Yves Chantre, Inc., Case No. A-13-681083-C, District Court, Clark County, Nevada. Matter pending.

- Retained by Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, to opine on issues regarding the conduct of class counsel in dealing with class representative. Goldsmith v. Sill, et al., Case No. 2-12-CV-0090-LDG-CWH in the U.S. District Court, District of Nevada. Report prepared. Case pending.

- Retained by Lewis Brisbois Bisgaard & Smith LLP to opine on issues regarding conduct of counsel with respect to claims alleged in David Siebrasse, as Personal Representative of the Doreen Siebrasse Estate v. Jeffrey Burr, Ltd.; Jeffrey Burr; Mark Dodds; John Mugan; et al., Case No. A-11-648532-C, in the District Court, Clark County, Nevada. Report prepared. Case settled.

- Retained by Lewis Brisbois Bisgaard & Smith LLP to opine on issues regarding conduct of counsel with respect to claims alleged in T&R Construction Group v. Clark Tatom, LLC; and Bradley R. Tatom, Case No. A-13-689637-B, in the District Court, Clark County, Nevada. Report prepared. Case settled.

- Retained by Fulbright & Jaworski to opine on that firm's conduct in representing related entities in commercial transaction. Verano Land Group, LP v. VTLM Texas LP, et al, Case No. A-12-655514-B in the Eighth Judicial District Court, Clark County, Nevada. Report prepared. Deposition taken. Matter pending.

- Retained by Bowen Hall to opine on (i) propriety of lawyer threatening to withdraw from case during contested hearing unless the client accepted a settlement offer, and (ii) other issues of competency and diligence. James J "Butch" Peri v. Stephen C. Mollath; Prezant & Mollath; et al., Case No. CV08-02546 in the Second Judicial District Court, County of Washoe, State of Nevada. Trial testimony given. Case settled.

- Retained by Wilson, Elser, Moskowitz, Edelman & Dicker, LLP to opine on lawyer's duties with respect to firm trust account and partner's improper conduct. SBS Retail Inc., et al. v. Yves Chantre Inc., et al., Case No. A-13-681083-C, in the District Court, Clark County, Nevada. Report prepared. Case settled.

- Retained by Lewis Roca Rothgerber to opine on attorneys' conduct during trial and compliance with Nevada RPC 3.3 (candor to the tribunal) in the matter entitled Health Plan of Nevada, Inc., et al. v. Helen Meyer, et al., Nevada Supreme Court Case No. 64692. Report prepared. Case settled.

- Retained by McDonald Family Trust to opine on the conduct of shareholders and the entity's counsel in a related party transaction. Nevada RPC 1.13. Russell G. Sheltra, individually and as Trustee of the Russell G. Sheltra Gaming Trust and Little Bonanza, Inc. v. Margaret McDonald and Timothy McDonald, Individually and as Trustees of the Robert and Gloria McDonald Family Trust, et al., Case No. CV14-01111, in the Second Judicial District Court, Washoe County, Nevada. Case pending.

- Retained by Holland & Knight to opine on the reasonableness of attorneys' fees in the matter entitled Leerad, LP, et al. v. Imperial Credit Corporation d/b/a A.I. Credit Corporation, et al., Case No. A631490, in the Eighth Judicial District Court, Clark County, Nevada. Report prepared. Case pending.

- Retained by Thorndal, Armstrong, Delk, Balkenbush & Eisinger to opine on conduct of attorney in commercial real estate transaction. Shulman v. Bendavid, Case No. A682679, District Court, Clark County, Nevada. Case Pending. Report prepared. Deposition taken. Case settled.

- Retained by Clyde Snow & Sessions to opine on attorney's conduct in a matter affecting several clients (RPC 1.7; 2.2). United States of America v. Leon Benzer, et al., Case No. 2:13-cr-00018-JMC-GWF pending in the United States District Court, District of Nevada. Report prepared. Testimony given. Matter decided.

- Retained by Liberty Media Holdings LLC to opine on conduct of its in-house counsel in several matters. Randazza v. Liberty Media Holdings, LLC, Case No. A-12-673275-C in the Eighth Judicial District Court, Clark County, Nevada. Report prepared. Matter pending.

- Retained by Weinberg Wheeler Hudgins Gunn & Dial to opine on conduct of attorneys in representation (and withdrawal) of clients in litigation. Lee v. 70 Ltd. Partnership, Case No. A-13-691389-C, Eighth Judicial District Court, Clark County, Nevada. Report prepared. Matter pending.

- Retained by Rock Fusco & Connelly, LLP to opine on conduct of attorneys in the conduct of litigation. International Game Technology v. Armstrong Teasdale, LLP, Case No. A-15-715079-C, Eighth Judicial District Court, Clark County, Nevada.

- Retained by Durham Jones & Pinegar to opine on conduct of attorney with respect to financial dealings with client (RPC 1.7 and 1.8). Center Firearms Corp. v. Long Mountain Outfitters, Case No. A-14-709294-B, Eighth Judicial District Court, Clark County, Nevada.

- Retained by law firms to opine on issues regarding potential conflicts of interest which arise after retention in a matter. Names of law firms are confidential.

- Retained by Faux Law Group to opine on lawyers' conduct in the litigation and settlement of a matter. Nahabedian v. Sutcliffe, et al., and related claims, counterclaims and third-party claims, Case No. A-12-673897-C, District Court, Clark County, Nevada. Case pending.

- Retained by Gibbs, Giden, Locher, Turner & Senet LLP to opine on the conduct of a law firm and its attorneys (competence and supervision) in the representation of an HOA client. Vistana Condominium Owners Assn., Inc. v. Kummer Kaempfer Bonner Renshaw & Ferrario, Case No. 08-A-578306, District Court, Clark County, Nevada. Case pending.

- Retained by Rimini Street, Inc. and Seth Ravin to opine on the reasonableness of the fees and costs incurred by the Plantiffs' counsel in the case entitled Oracle USA, Inc., et al. v. Rimini Street, Inc. and Seth Ravin, Case No. 2:10-cv-0106-LRH-PAL pending in the United States District Court, District of Nevada.

CONTINUING LEGAL EDUCATION INSTRUCTION (1997-Present)

- Clark County Bar Association (6/25/15): "Things You Don't Know Can Hurt You – Here are 12 of them"
- Water Law Institute: 17th Annual Law of the Colorado River Conference (5/1/15): "Ethics and Social Media"

- Southern Nevada Association of Women Attorneys (1/15/15): "Ethics Issues for 2015"

- Clark County Bar Association (11/13/14): "11th Annual Ethics CLE"

- American Bar Association Section of Environment, Energy and Resources, 32nd Annual Water Law Conference: Ethics for Water Lawyers (6/6/14)

- Association of Legal Administrators, Las Vegas Chapter (5/13/14): "Issues in New Business Intake."

- American Bar Association Group Legal Services Association and Solo, Small Firm and General Practice Division Annual Meeting (5/2/14): "Ethics Issues In Marketing and Client Development."

- State Bar of Nevada: Section of Environmental and Natural Resources Law (2/27/14) "Ethics Issues for Environmental Lawyers."

- Clark County Bar Association (12/13/13). 10th Annual Ethics CLE.

- City of Henderson, City Attorneys' Annual Retreat (10/17/13). "A Lawyer Walks Into a Bar . . . The Dangers of Casual Advice and Conversation."

- Las Vegas Paralegal Society: Keeping Abreast of Conflicts and Unauthorized Practice (6/18/13).

- Association of Legal Administrators, Las Vegas Chapter: Legal Administrator's Role in Preventing Malpractice (6/11/13).

- American Bar Association Section of Environment, Energy and Resources, 31st Annual Water Law Conference: Water Lawyers and Ethics (6/7/13).

- Clark County Bar Association (5/8/13) "4th Annual Solo and Small Firm Ethical Traps."

- UNLV Boyd School of Law (3/8/13) "Professionalism and Popular Culture."

- Clark County Bar Association (11/2/12). 9th Annual Ethics CLE.

- Clark County Bar Association (3/28/12). "3rd Annual Hanging Out a Shingle? Solo and Small Firm Ethical Traps."

- American Bar Association Business Law Section Spring Meeting (3/22/12). "Saints and Sinners: Ethical Issues and Dilemmas in Client and Practice Development."

- Southern Nevada Association of Women Attorneys (2/24/12). "Ten for Twelve: Ethics 2012."

- Clark County Bar Association (11/3/11) "8th Annual Ethics CLE."

- Nevada Paralegal Assn. (6/18/11) "UPL: Attorney Supervision of Paralegals."

- Department of Energy Contractor Attorneys' Assn. (5/27/11) "Ethics: Ten Things You Should Know."

- Southern Nevada Association of Women Attorneys (2/25/11) "Ten For Eleven: Ethics 2011."

- Clark County Bar Association (2/4/11) "Hanging Out A Shingle? Solo and Small Firm Ethical Traps."

- Clark County Bar Association (9/30/10) "7th Annual Ethics Issues: 2010."
- American Society of Breast Surgeons (4/30/10) Avoiding and Responding to Litigation.
- Clark County Bar Association (3/26/10) Avoiding Solo/Small Firm Ethical Traps.
- Southern Nevada Association of Women Attorneys (2/26/10) Ethics 2010: Ten Thoughts for '10.
- State Bar of Nevada (11/12/09): Nevada Legal Ethics (2009).
- State Bar of Nevada, Clark County Bar Association and Washoe County Bar Association (10/13/09, Las Vegas; 10/14/09, Carson City): 2009 Professionalism Summit.
- Clark County Bar Association (9/18/09): "Sixth Annual Ethics Issues: 2009."
- Public Relations Society of America (7/24/09): "Keeping Out of Hot Water: Legal Considerations in Communications."
- Lecture and panel discussion with Justice Nancy Saitta and District Judge Linda Bell: "Professionalism in Litigation." Boyd School of Law (4/1/09).
- Southern Nevada Association of Women Attorneys (2/20/09): "ETHICS 2009: Being Good Gets Harder Every Year."
- State Bar of Nevada (12/5/08): "Nevada Legal Ethics 2008."
- State Bar of Nevada (11/19/08): "Nevada Legal Ethics 2008."
- Indiana State Bar Association (11/13/08): "Ethics: A Western Perspective on Maintaining A Healthy Legal Practice."
- Clark County Bar Association (9/19/08): "Fifth Annual Ethics Issues 2008" (Prepared materials. Presentation made by David J. Merrill).
- Southern Nevada Association of Women Attorneys (2/22/08): "Ethics 2008 - Be Careful Out There."
- State Bar of Nevada (11/30/07) "Nevada Legal Ethics 2007."
- State Bar of Nevada (11/16/07) "Nevada Legal Ethics 2007."
- Clark County Bar Association (10/31/07) "Lawyer Advertising: The New Rules."

- Wisconsin Law Alumni Association (9/8/07) "The New Rules of Professional Conduct."
- Clark County Bar Association (8/24/07) "Fourth Annual Legal Ethics - 2007."
- National Assn. of Retail Collection Attorneys (5/11/07) "Ethics Issues for Legal Collection Professionals."
- Southern Nevada Association of Women Attorneys (2/23/07) "Desperately Seeking Ethics - 2007."
- State Bar of Nevada (12/1/06) "Nevada Legal Ethics 2006."
- State Bar of Nevada (11/17/06) "Nevada Legal Ethics 2006."
- Clark County Bar Assn. (6/30/06) "Ethics 2006: The New Nevada Rules of Professional Conduct."
- State Bar of Nevada Professionalism Summit: Speaker and Panel Member (4/20/06).
- Southern Nevada Association of Women Attorneys (1/27/06) "Ethics Issues for 2006."
- State Bar of Nevada (11/18/05) "Nevada Legal Ethics 2005."
- State Bar of Nevada (11/4/05) "Nevada Legal Ethics 2005."
- Clark County Bar Assn. (9/15/05) "Ethics 2005: Current Issues."
- Clark County Bar Assn. (3/4/05) Speaker and Panel Member: First Annual Professional Summit.
- State Bar of Nevada (11/19/04) "Ethics 2004: Year in Review."
- State Bar of Nevada (11/5/04) "Ethics 2004: Year in Review."
- Clark County Bar Assn. (7/30/04) "Current Issues In Ethics."
- Lorman Business Institute (7/20/04) "Current Issues in Ethics."
- National Hospice Assn. (3/21/04) "Legal Issues For Physicians In End of Life Care."
- Southern Nevada Assn. of Women Attorneys (1/30/04) "Ethics Issues for 2004."

- State Bar of Nevada (1/20/04) "Workers Compensation: Current Issues in Ethics."
- National Business Institute (10/21/03) "Current Issues In Attorney Client Privilege and Confidentiality."
- Sterling Educational Systems (9/25/03) "Common Ethical Problems for Transactional Lawyers."
- Clark County Bar Assn. (2/28/03) "ERISA 2003: What's New?"
- Southern Nevada Assn. of Women Attorneys (1/31/03) "Ethics: 2003."
- State Bar of Nevada (11/22/02) "Nevada Legal Ethics - the Year In Review."
- American Corporate Counsel Assn. (6/18/02) "Issues of Attorney-Client Privilege for In-House Counsel."
- National Business Institute (12/7/01) "Current Issues In Legal Ethics:Nevada 2001."
- National Business Institute (7/13/01) "Attorney-Client-Privilege and the Work Product Doctrine In Nevada."
- National Business Institute (12/12/00) "Practical Legal Ethics."
- State Bar of Nevada (3/31/00) "Professionalism and Ethics."
- Southern Nevada Assn. of Women Attorneys (1/28/00) "Multi-Disciplinary Practice: Ethical Considerations."
- State Bar of Nevada (12/10/99) "Winning Without Losing Your Professionalism."
- National Business Institute (11/17/99) "Practical Legal Ethics."
- Law Seminars Int'l. (6/25/99) "Ethics Considerations for Construction Lawyers."
- National Practice Institute (12/4/98) "Ethical Problems: Dealing With Difficult Lawyers."
- ALAS (10/21/98) "Ethical Issues for Healthcare Lawyers."
- State Bar of Nevada (3/21/98): "Ethics and Attorneys' Fee Agreements."
- CLE International (12/5/97) "Current Issues In Ethics"

- Institute for Paralegal Practice (8/26/97) "Preventing Unauthorized Practice of Law"

[Additional CLE instruction available upon request.]

Exhibit 3

Exhibit 3

Bailey Kennedy, LLP

Transactions Listing (Wide) Report

Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Joshua M. Dickey						
9/18/2015	JMD	10655-001 / Gitter, Shae Ellen / NVPERS Review/analyze and revise order and judgment; conference with Kelly B. Stout regarding the same	T	0.2500	395.0000	98.7500
		Professional: Joshua M. Dickey		0.2500		98.7500

Bailey Kennedy, LLP

Transactions Listing (Wide) Report

Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Leoncio Gil						
6/14/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Meeting with Kelly B. Stout regarding case background facts and research project.	T	0.2500	190.0000	47.5000
6/18/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Meeting with Kelly B. Stout regarding requirements to reopen probate proceeding in Nevada.	T	0.2500	190.0000	47.5000
6/18/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding requirements to reopen probate proceeding in Nevada.	T	0.2500	190.0000	47.5000
6/19/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding requirements to reopen probate in Nevada and scope of supplemental orders.	T	0.5000	190.0000	95.0000
6/20/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding public records requests in Nevada and retirement options for state pension plans.	T	1.5000	190.0000	285.0000
6/24/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Meeting with Kelly B. Stout regarding petition to reopen.	T	0.2500	190.0000	47.5000
6/24/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding request for public documents and petitions to reopen probate.	T	1.7500	190.0000	332.5000
6/26/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding public records requests and petitions to reopen.	T	4.5000	190.0000	855.0000
6/27/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding petitions to reopen.	T	0.5000	190.0000	95.0000
7/1/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Research regarding pension forms, pension publications, petitions to reopen probate. Draft petition to reopen probate administration.	T	3.5000	190.0000	665.0000

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Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
7/2/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Meeting with Kelly B. Stout and Mark Hesiak regarding petition to reopen probate. Teleconference with Jared Shafer, Kelly B. Stout, and Mark Hesiak regarding the same.	T	0.2500	190.0000	47.5000
7/2/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Draft petition to reopen probate administration.	T	6.2500	190.0000	1,187.5000
7/3/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Revise petition to reopen probate administration. Email to Kelly B. Stout with updated draft attached.	T	0.5000	190.0000	95.0000
7/8/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Meeting with Kelly B. Stout regarding case status.	T	0.2500	190.0000	47.5000
8/8/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Receipt and review of Kelly B. Stout emails regarding case status and updates for client.	T	0.2500	190.0000	47.5000
8/12/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of Kelly B. Stout emails and draft petition for probate court	T	0.7500	190.0000	142.5000
8/21/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Receipt and review of email from Kelly B. Stout regarding case status. Meeting with Kelly B. Stout regarding case status and progress on Petition to Reopen in probate court.	T	0.2500	190.0000	47.5000
8/23/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of draft Verified Petition to Reopen Probate Administration. Review of probate documents and correspondence with NVPERS. Draft declarations in support of Verified Petition to Reopen Probate Administration.	T	4.5000	190.0000	855.0000
8/26/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Draft declarations for Verified Petition To Reopen Probate Administration. Meeting with Kelly B. Stout regarding draft declarations.	T	4.2500	190.0000	807.5000
9/30/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Revise Petition to Reopen Probate and attached declarations.	T	3.7500	190.0000	712.5000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
9/30/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Meeting with Kelly B. Stout regarding revisions to Petition to Reopen Probate and attached declarations.	T	0.2500	190.0000	47.5000
10/1/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of latest revisions to Petition to Reopen Probate and attached declarations. Meeting with Jennifer J. Kennedy regarding the same.	T	0.2500	190.0000	47.5000
10/18/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of Petition to Reopen Probate. Meeting with Jennifer J. Kennedy regarding Petition for Letters of Special Administration. Draft Petition for Letters of Special Administration.	T	2.5000	190.0000	475.0000
10/23/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Revise Petition for Special Administration and for Issuance of Letters of Special Administration. Review of revisions to the same by Mark Hesiak. Draft Order Approving Petition for Special Administration. Revise declarations for Petition for Special Administration. Draft Consent and Verification for Petition for Special Administration. Draft Letters of Special Administration.	T	4.2500	190.0000	807.5000
10/23/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Mark Hesiak regarding revisions to Petition for Special Administration and for Issuance of Letters of Special Administration.	T	0.2500	190.0000	47.5000
10/24/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Revise Petition for Special Administration and for Issuance of Letters of Special Administration. Revise Order Approving Petition for Special Administration. Revise Letters of Special Administration.	T	3.5000	190.0000	665.0000
10/24/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Jennifer J. Kennedy regarding revisions to Petition for Special Administration and for Issuance of Letters of Special Administration.	T	0.2500	190.0000	47.5000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
10/25/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of revisions to Petition for Special Administration and for Issuance of Letters of Special Administration by Jennifer J. Kennedy.	T	0.2500	190.0000	47.5000
11/14/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS v. Reno Newspapers (Nev. 2013). Draft email to Kelly B. Stout regarding same.	T	0.5000	190.0000	95.0000
11/15/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of Verified Petition and Exhibits. Met with Cheryl E. Snider regarding preparation for filing. Email to Kelly B. Stout regarding the same.	T	1.5000	190.0000	285.0000
11/20/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Receipt and review of emails from Kelly B. Stout regarding obtaining signatures from declarants. Draft response regarding the same.	T	0.2500	190.0000	47.5000
11/21/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Meeting with Kelly B. Stout regarding case status.	T	0.2500	190.0000	47.5000
12/2/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Draft email to Amy Deittrick, Jared Shafer, Kelly B. Stout, and Mark Hesiak regarding declarations for Verified Ex-Parte Petition for Appointment of Special Administrator.	T	0.2500	190.0000	47.5000
12/11/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of Verified Petition for Issuance of Letters of Special Administration. Compile exhibits for the same. Conference with Jennifer J. Kennedy regarding preparations to file petition. Draft emails to Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding her declaration.	T	1.5000	190.0000	285.0000
12/12/2013	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Revise and check citations in Verified Petition for Issuance of Letters of Special Administration. Conference with Jennifer J. Kennedy regarding filing the same.	T	2.0000	190.0000	380.0000
2/26/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Edit Complaint	T	0.5000	190.0000	95.0000

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3/14/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Research regarding service of process for action filed against Public Employees' Retirement System of Nevada	T	1.5000	190.0000	285.0000
3/14/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of Verified Complaint	T	0.2500	190.0000	47.5000
3/14/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Confer with Kelly B. Stout regarding service of process on Attorney General and PERS	T	0.2500	190.0000	47.5000
5/9/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of emails from Kelly B. Stout and Jennifer J. Kennedy regarding Early Case Conference	T	0.2500	190.0000	47.5000
6/3/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review jury demand and email from Jennifer J. Kennedy regarding the same	T	0.2500	190.0000	47.5000
6/17/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review draft Plaintiffs' First Set of Requests for Admission and First Set of Interrogatories to Defendant Public Employees' Retirement System of Nevada; cursory review of documents uploaded to CaseLogistix; review Defendant Public Employees' Retirement System of Nevada's Initial Disclosures	T	2.0000	190.0000	380.0000
6/17/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Research regarding administrative law issues pertaining to Plaintiffs' First Set of Requests for Admission	T	0.5000	190.0000	95.0000
6/18/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Draft additional Request for Admission and Interrogatory for first set of requests	T	0.2500	190.0000	47.5000
6/20/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of final draft of First Set of Interrogatories to Defendant; confer with Mark Hesiak regarding drafting First Set of Requests for Production of Documents	T	0.2500	190.0000	47.5000
6/23/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Begin drafting First Set of Requests for Production of Documents	T	0.2500	190.0000	47.5000

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6/24/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Research regarding Chapter 286 of Nevada Revised Statutes, eligibility for survivor beneficiaries, and published PERS policies	T	1.5000	190.0000	285.0000
6/25/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Research regarding Chapter 286 of the Nevada Revised Statutes regarding eligibility for survivor benefits	T	0.5000	190.0000	95.0000
6/25/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review of documents in anticipation of drafting requests for production of documents, including Official Policies of NVPERS, advisory opinion requested by NVPERS Retirement Board, and memorandum from NVPERS Executive Staff to retirees	T	0.5000	190.0000	95.0000
6/25/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Draft Plaintiffs' First Set of Requests for Production of Documents to Defendants	T	2.0000	190.0000	380.0000
6/25/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Plaintiffs' First Set of Requests for Production of Documents to Defendants	T	0.5000	190.0000	95.0000
6/30/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review Joint Case Conference Report	T	0.2500	190.0000	47.5000
8/1/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze Public Employees Retirement System of Nevada's Answers to Plaintiffs' First Set of Admissions and Interrogatories	T	0.5000	190.0000	95.0000
8/1/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Confer with Mark Hesiak regarding Public Employees Retirement System of Nevada's Answers to Plaintiffs' First Set of Admissions and Interrogatories	T	0.2500	190.0000	47.5000
8/1/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding scope of Nevada Rule of Civil Procedure 36 and requests for application of law to hypothetical facts	T	1.0000	190.0000	190.0000
8/13/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Edit and finalize Plaintiffs' First Set of Requests for Production of Documents to Public	T	0.5000	190.0000	95.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		Employees' Retirement System of Nevada				
8/18/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Research regarding legal issues addressed in Fallini v. Estate of Michael Adams litigation for Kelly B. Stout	T	1.0000	190.0000	190.0000
9/2/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze email from Kelly B. Stout regarding proposal for supplemental discovery responses and previous Public Employees' Retirement System of Nevada discovery responses	T	0.2500	190.0000	47.5000
10/21/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze documents produced by Nevada Public Employees' Retirement System with First and Second Supplemental Disclosures	T	2.2500	190.0000	427.5000
10/30/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review Motion for Partial Summary Judgment, exhibits to the same, and Errata to Motion for Partial Summary Judgment	T	0.5000	190.0000	95.0000
11/17/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review Defendant's Motion for Summary Judgment and Plaintiffs' Opposition to the same	T	1.0000	190.0000	190.0000
11/18/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review Defendant's Opposition to Plaintiffs' Motion for Summary Judgment; review related statutory language	T	0.5000	190.0000	95.0000
11/21/2014	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review draft Reply in Support of Plaintiffs' Motion for Partial Summary Judgment and Defendant's Reply to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment	T	0.7500	190.0000	142.5000
2/2/2015	LAG	10655-001 / Gitter, Shae Ellen / NVPERS Review Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment	T	0.2500	230.0000	57.5000
			Professional: Leoncio Gil	72.2500		13,737.5000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Mark Hesiak						
1/21/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review file and draft letter to Attorney General regarding Estate's request for NVPERS records	T	0.5000	190.0000	95.0000
2/4/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Draft waiver for review of NVPERS records by Bailey Kennedy. Conference with Kelly B. Stout regarding same	T	0.2500	190.0000	47.5000
6/3/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Prepare letter to Attorney General regarding inspection of NVPERS records	T	0.2500	190.0000	47.5000
6/17/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout and Dennis L. Kennedy regarding strategy	T	0.2500	190.0000	47.5000
7/2/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference call with Kelly B. Stout, Leoncio A. Gil, and Jared Schafer regarding re-opening probate for purposes of obtaining documents from NVPERS. Conference with Leoncio A. Gil regarding potential conflicts	T	0.5000	190.0000	95.0000
7/30/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Shae Gitter and Kelly B. Stout regarding strategy. Conference with Kelly B. Stout regarding same	T	0.5000	190.0000	95.0000
7/31/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding case strategy	T	0.2500	190.0000	47.5000
8/1/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding case strategy	T	0.5000	190.0000	95.0000
8/5/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding case strategy	T	0.2500	190.0000	47.5000
8/9/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding strategy and grounds for reopening estate	T	0.2500	190.0000	47.5000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
8/22/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Petition to reopen estate of Kristine Freshman	T	0.5000	190.0000	95.0000
9/20/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding status of case	T	0.2500	190.0000	47.5000
10/22/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review Petition for Special Administration and for Issuance of Letters of Special Administration	T	1.0000	190.0000	190.0000
10/23/2013	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Leoncio A. Gil regarding revisions to Petition for Special Administration and for Issuance of Letters of Special Administration. Conference with Kelly B. Stout regarding same.	T	0.5000	190.0000	95.0000
2/6/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding strategy and slayer statutes	T	0.5000	190.0000	95.0000
2/24/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Complaint. Conference with Kelly B. Stout regarding same	T	0.5000	190.0000	95.0000
5/5/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review NVPERS' Answer. Conference with Kelly B. Stout regarding same and strategy	T	0.5000	190.0000	95.0000
5/23/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Attend Early Case Conference with Kelly B. Stout	T	0.2500	190.0000	47.5000
5/27/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding written discovery. Review all documents in Case Logistix and begin drafting Interrogatories and Requests for Admissions	T	3.5000	190.0000	665.0000
5/28/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft, review, and revise Interrogatories and Requests for Admission. Multiple conferences with Kelly B. Stout regarding same	T	2.7500	190.0000	522.5000
6/2/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Joint Case Conference Report and transmit to opposing counsel for review.	T	0.5000	190.0000	95.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		Conference with Kelly B. Stout regarding document review and case strategy				
6/4/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review documents for initial disclosures. Multiple conferences with Kelly B. Stout regarding same	T	2.0000	190.0000	380.0000
6/5/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding initial disclosures. Conference with Bonnie R. O'Laughlin regarding document production and redactions	T	0.5000	190.0000	95.0000
6/17/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Joint Case Conference Report and transmit to opposing counsel	T	0.2500	190.0000	47.5000
6/20/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Interrogatories and Requests for Admission. Conference with Kelly B. Stout regarding same. Conference with Leoncio A. Gil regarding drafting Requests for Production	T	0.5000	190.0000	95.0000
7/7/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kimberly Okezie regarding discovery conference. Conference with Kelly B. Stout regarding same	T	0.2500	190.0000	47.5000
8/1/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review NVPERS discovery responses. Multiple conferences with Leoncio A. Gil regarding same. Conference with Kelly B. Stout regarding same. Conference with Leoncio A. Gil regarding research related to same. Review research related to discovery objections. Conference with Kelly B. Stout regarding same	T	1.2500	190.0000	237.5000
10/27/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Motion for Summary Judgment. Conference with Kelly B. Stout regarding same	T	0.7500	190.0000	142.5000
11/13/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding strategy for Opposition to Motion for Summary Judgment	T	0.5000	190.0000	95.0000

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11/17/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding Opposition to Motion for Summary Judgment	T	0.5000	190.0000	95.0000
11/20/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Kelly B. Stout regarding Reply in Support of Motion for Summary Judgment	T	0.7500	190.0000	142.5000
11/21/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Reply in Support of Motion for Summary Judgment. Conference with Kelly B. Stout regarding same	T	0.7500	190.0000	142.5000
12/1/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Kelly B. Stout regarding strategy for oral argument	T	1.2500	190.0000	237.5000
12/3/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Shae Gitter regarding strategy for settlement and appeal. Conference with Kelly B. Stout regarding same	T	0.5000	190.0000	95.0000
12/11/2014	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Order Granting Summary Judgment	T	0.5000	190.0000	95.0000
1/12/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Kelly B. Stout regarding Order on Motion for Summary Judgment and strategy for resolving case	T	0.5000	250.0000	125.0000
2/10/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding attorneys' fees and pre-judgment interest	T	0.5000	250.0000	125.0000
4/21/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding case status and consultation with accountant to determine final judgment amount	T	0.2500	250.0000	62.5000
4/29/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with potential consultants	T	0.2500	250.0000	62.5000

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5/26/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review engagement letter from JWA Advisors. Conference with Kelly B. Stout regarding same	T	0.2500	250.0000	62.5000
5/28/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey and Kelly B. Stout regarding case status and expert retention	T	0.2500	250.0000	62.5000
6/11/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding status conference and judgment calculation	T	0.2500	250.0000	62.5000
7/6/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Kelly B. Stout regarding PERS' calculation of benefits owed and whether interest is collectable from PERS. Email PERS materials to expert for review and verification	T	0.5000	250.0000	125.0000
7/8/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding expert. Email to Kirk Jacobsen regarding same.	T	0.2500	250.0000	62.5000
7/9/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conference with Kelly B. Stout regarding strategy for seeking interest. Review and revise Stipulation and Order regarding Judgment	T	0.7500	250.0000	187.5000
7/15/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Email expert regarding status of case and interest calculations. Conference with Kelly B. Stout regarding same	T	0.2500	250.0000	62.5000
7/17/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding strategy and Motion for Prejudgment Interest	T	0.5000	250.0000	125.0000
7/22/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference call with William Hinsdale and Kirk Jacobsen regarding benefits calculation. Conference with William Hinsdale regarding calculation of reduced benefit	T	0.7500	250.0000	187.5000
7/23/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding interest calculation and strategy for briefing on same	T	0.2500	250.0000	62.5000

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7/29/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Kelly B. Stout regarding interest calculation. Review William Hinsdale's calculation of same. Calculate interest at various rates to verify William Hinsdale's calculation and in preparation for motion regarding same	T	1.5000	250.0000	375.0000
7/30/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review exhibit to Motion regarding Interest	T	0.2500	250.0000	62.5000
8/6/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding argument strategy	T	0.2500	250.0000	62.5000
8/7/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review Opposition to Motion for Interest. Multiple conferences with Kelly B. Stout regarding same	T	0.7500	250.0000	187.5000
8/13/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding delegation of contractual duties. Multiple conferences with Kelly B. Stout regarding same and strategy for Reply	T	2.2500	250.0000	562.5000
8/14/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Reply in Support of Motion for Pre-Judgment and Post-Judgment Interest. Multiple conferences with Kelly B. Stout regarding same	T	1.5000	250.0000	375.0000
9/11/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Order Granting Motion for Interest. Conference with Kelly B. Stout regarding same	T	0.7500	250.0000	187.5000
9/16/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review Order on Motion for Pre-Judgment Interest. Review draft Judgment. Conference with Kelly B. Stout regarding same	T	0.7500	250.0000	187.5000
9/21/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Review draft of Order and Judgment. Conference with Kelly B. Stout regarding same	T	0.5000	250.0000	125.0000
10/1/2015	MH	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding Order and Judgment	T	0.2500	250.0000	62.5000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
			Professional: Mark Hesiak	38.7500		8,217.5000

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Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Dennis L. Kennedy						
8/27/2013	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit motion to reopen estate. Conference with Kelly B. Stout regarding case strategy.	T	0.5000	800.0000	400.0000
2/3/2014	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Several conferences with Kelly B. Stout regarding analysis of case.	T	0.2500	800.0000	200.0000
10/27/2014	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding issues regarding evidence. Revise and edit motion for summary judgment.	T	0.7500	800.0000	600.0000
12/5/2014	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding hearing on Motion for Summary Judgment.	T	0.2500	800.0000	200.0000
12/19/2014	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise order granting Motion for Summary Judgment. Conference with Kelly B. Stout regarding revisions to order.	T	0.7500	800.0000	600.0000
5/27/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze expert retainer agreement.	T	0.2500	800.0000	200.0000
7/8/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding recovery of interest. Legal research regarding recovery issue. Conference with Kelly B. Stout regarding conclusions.	T	1.0000	800.0000	800.0000
7/9/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Several conferences with Kelly B. Stout regarding interest issues,	T	0.5000	800.0000	400.0000
7/30/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Numerous conferences with Kelly B. Stout regarding argument regarding interest recovery.	T	0.5000	800.0000	400.0000
7/31/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise motion regarding interest. Conference with Kelly B. Stout regarding case	T	0.5000	800.0000	400.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		status and strategy.				
8/14/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit reply memorandum in support of motion for interest. Conference with Kelly B. Stout regarding case strategy.	T	0.7500	800.0000	600.0000
8/31/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Prepare for argument of motion regarding amount of interest.	T	1.0000	800.0000	800.0000
9/1/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Prepare to argue motion for interest. Appear and argue motion for interest. Post-argument conference with Kelly B. Stout regarding case strategy.	T	3.0000	800.0000	2,400.0000
9/12/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise order regarding interest.	T	0.2500	800.0000	200.0000
10/1/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Kelly B. Stout regarding case status and motion for attorneys' fees.	T	0.2500	800.0000	200.0000
11/9/2015	DLK	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Motion for Attorney's Fees. Review declaration in support of same.	T	0.5000	800.0000	400.0000
		Professional: Dennis L. Kennedy		11.0000		8,800.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Bonnie O'Laughlin						
2/19/2014	BRO	10655-001 / Gitter, Shae Ellen / NVPERS Review documents in evidence folder and upload same to Case Logistix (document mangement system). Code data field for same.	T	1.7500	150.0000	262.5000
5/23/2014	BRO	10655-001 / Gitter, Shae Ellen / NVPERS Prepare first draft of Initial Disclosures. Load 82 documents into Case Logistix Library (document management system) in preparation for discovery disclosures. Prepare first draft of Joint Case Conference Report.	T	2.0000	150.0000	300.0000
5/27/2014	BRO	10655-001 / Gitter, Shae Ellen / NVPERS Code 97 documents for date and document type in Case Logistix in preparation for initial discovery disclosures.	T	1.0000	150.0000	150.0000
6/5/2014	BRO	10655-001 / Gitter, Shae Ellen / NVPERS Review 305 pages and redact documents for personal identification. Run production of Initial Disclosures.	T	1.0000	150.0000	150.0000
6/6/2014	BRO	10655-001 / Gitter, Shae Ellen / NVPERS Prepare final draft of Plaintiffs' Initial Disclosures.	T	1.2500	150.0000	187.5000
		Professional: Bonnie O'Laughlin		7.0000		1,050.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Amanda L. Stevens						
5/28/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey, Dennis L. Kennedy, Mark Hesiak, and Kelly B. Stout regarding case update and strategy.	T	0.2500	200.0000	50.0000
9/23/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to draft Mmorandum of Costs	T	0.7500	200.0000	150.0000
9/21/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze docket in preparation for drafting Memorandum of Costs.	T	0.2500	200.0000	50.0000
10/2/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Memorandum of Costs.	T	2.2500	200.0000	450.0000
10/6/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Memorandum of Costs.	T	0.2500	200.0000	50.0000
10/9/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Memorandum of Costs.	T	2.0000	200.0000	400.0000
10/12/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Memorandum of Costs and Kelly B. Stout declaration in support of the same. Email to Kelly B. Stout regarding same.	T	3.0000	200.0000	600.0000
10/19/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Check updated docket information.	T	0.2500	200.0000	50.0000
10/21/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Memo of Cost. Gather back up documentation for same. Email with Kelly B. Stout regarding same.	T	2.0000	200.0000	400.0000
10/22/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS Review and revised Memorandum of Cost. Conference with Kelly B. Stout regarding same.	T	3.2500	200.0000	650.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
10/23/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS	T	4.7500	200.0000	950.0000
		Preparation and assembly of exhibits for Memo and Cost. Review and revise same.				
11/9/2015	ALS	10655-001 / Gitter, Shae Ellen / NVPERS	T	1.0000	200.0000	200.0000
		Legal research regarding motion for attorney fee's in a contingency case.				
		Professional: Amanda L. Stevens		20.0000		4,000.0000

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Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Linda Thomas						
10/23/2015	LT	10655-001 / Gitter, Shae Ellen / NVPERS Redact exhibit and compile final exhibits to Memo of Costs in preparation for filing same.	T	0.2500	175.0000	43.7500
		Professional: Linda Thomas		0.2500		43.7500

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Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Professional: Kelly B. Stout						
4/24/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding case background. Conference with John R. Bailey regarding potential scope of representation. Begin legal research regarding statutes and regulations governing NVPERS.	T	1.0000	190.0000	190.0000
4/25/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue legal research regarding statutes and regulations governing NVPERS.	T	0.7500	190.0000	142.5000
4/30/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding case. Review documents provided by Shae Gitter. Legal research regarding statute of limitations and administrative remedies available.	T	0.5000	190.0000	95.0000
5/1/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey regarding administrative procedures. Prepare for client intake interview.	T	0.7500	190.0000	142.5000
5/2/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Shae Gitter. Legal research regarding payments to NVPERS beneficiary.	T	1.2500	190.0000	237.5000
5/3/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey regarding case strategy. Telephone conference with Mark Katz regarding Kristine Freshman's estate. Telephone conference with Jared Schafer and Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding same. E-mail communication with Shae Gitter regarding authorization to release information.	T	1.0000	190.0000	190.0000
5/7/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey regarding new evidence. E-mail communication with Mark Katz regarding Kristine Freshman's estate. Legal research regarding Chapter 41B of the Nevada Revised Statutes (NRS) and cases citing same. Legal research regarding the legislative history of NRS 286.669 and NRS Chapter 41B. Telephone conference with Legislative Counsel Bureau regarding same. Review and analyze documents received from	T	4.5000	190.0000	855.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		Mark Katz & Jared Schafer. Review and analyze briefing on Plaintiffs' Motion for Summary Judgment in Augustine v. Public Employees Retirement System of Nevada. Legal research regarding ERISA preemption.				
5/8/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Amy Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding contact with NVPERS and estate of Kristine Freshman. Telephone conference with Shae Gitter regarding case status.	T	0.2500	190.0000	47.5000
5/9/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) requesting an update on Kristine Freshman's account. Draft letter to Kimberley Okezie. E-mail communication with Shae Gitter regarding case status and requesting further information.	T	1.0000	190.0000	190.0000
5/15/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding case status.	T	0.2500	190.0000	47.5000
6/7/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Shae Gitter regarding case status.	T	0.2500	190.0000	47.5000
6/28/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey regarding case strategy and status.	T	0.2500	200.0000	50.0000
7/10/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Amy Viggiano Deittrick regarding NVPERS documents.	T	0.2500	200.0000	50.0000
7/19/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Amy Viggiano Deittrick regarding NVPERS' response to request for documents regarding Kristine Freshman's retirement account from the Estate of Kristine Freshman. Legal research regarding NRS 286.117 governing access to records.	T	0.5000	200.0000	100.0000
7/20/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey regarding NVPERS' response to Estate's request for	T	1.2500	200.0000	250.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		documents and strategy for going forward. Review probate documents for Estate of Kristine Freshman. E-mail communication with Shae Gitter regarding strategy.				
7/30/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review case file. E-mail communication with with Shae Gitter regarding same.	T	0.2500	200.0000	50.0000
9/25/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with Shae Gitter regarding case status.	T	0.2500	200.0000	50.0000
9/29/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Shae Gitter regarding representation of Kristine Freshman's estate and case strategy.	T	0.2500	200.0000	50.0000
10/4/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Correspondence with Shae Gitter. Continue legal research regarding NVPERS.	T	1.2500	200.0000	250.0000
11/8/2012	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review legal research regarding NVPERS statutory and regulatory scheme, relevant cases, attorney general opinions, and case documents.	T	3.7500	200.0000	750.0000
1/28/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review draft letter to Nevada Attorney General. E-mail communication with Mark Hesiak regarding same.	T	0.2500	200.0000	50.0000
4/9/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Shae Gitter regarding case status, release for information, and engagement letter. E-mail communication with Shae Gitter regarding same.	T	0.5000	200.0000	100.0000
6/10/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review letter for Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding request for documents. Conference with Mark Hesiak regarding same. E-mail communication with Shae Gitter regarding same. Review case documents and statutes regarding account documents.	T	2.2500	200.0000	450.0000
6/24/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Leoncio A. Gil regarding Petition to Reopen Probate. Conference with	T	0.5000	200.0000	100.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		Leoncio A. Gil and Dennis L. Kennedy regarding same. Leave telephone message for Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding case. E-mail communication with Shea Gitter regarding case status.				
6/20/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review NVPERS documents. Conference with Leoncio A. Gil regarding public records request. E-mail communication with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding request for documents regarding Kristine Freshman.	T	1.5000	200.0000	300.0000
6/25/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review e-mail communication from Shae Gitter. Respond to same.	T	0.2500	200.0000	50.0000
6/17/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Leave voicemail for Shae Gitter regarding case status. E-mail communication with Shae Gitter regarding same. Conference with Dennis L. Kennedy regarding case. Telephone conference with Alan Freer regarding same.	T	1.2500	200.0000	250.0000
7/1/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Leoncio A. Gil regarding petition. E-mail communication with Shae Gitter regarding case status. Leave message for Kimberly O'Kezie (Deputy Attorney General). Telephone conference with Amy Viggiano Deittrick (Professional Fiduciary Services) regarding possibility of regarding-opening probate. Conference with Mark Hesiak regarding same.	T	0.7500	200.0000	150.0000
7/2/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Leoncio A. Gil, and Mark Hesiak, Jared E. Schafer and Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding possibility of re-opening probate. E-mail communication with Shae Gitter regarding case status.	T	0.5000	200.0000	100.0000
7/8/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Leoncio A. Gil regarding case status. E-mail communication with Shae Gitter regarding same. Leave voice mail for Kimberley A. O'Kezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding case.	T	0.2500	200.0000	50.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
7/3/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review legal research regarding NVPERS administration and distribution of benefits. Conference with Leoncio A. Gil regarding case strategy.	T	1.2500	200.0000	250.0000
7/11/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review draft petition to regarding-open probate. Review documents available on NVPERS website to identify documents to request from	T	2.0000	200.0000	400.0000
7/24/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Shae Gitter regarding case status.	T	0.2500	200.0000	50.0000
7/30/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Prepare for and attend meeting with Shae Gitter regarding case strategy and status. Conference with Mark Hesiak regarding same. Legal research regarding probate.	T	6.7500	200.0000	1,350.0000
7/31/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding case strategy.	T	0.2500	200.0000	50.0000
8/1/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding petition to re-open probate and estate's right to pension documents.	T	0.2500	200.0000	50.0000
8/9/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to revise and edit petition to re-open probate. E-mail communication with Leoncio A. Gil and Mark Hesiak regarding same.	T	1.7500	200.0000	350.0000
8/23/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Leoncio A. Gil regarding declarations in support of Petition to Reopen Probate. Review Declaration for Kelly B. Stout.	T	0.5000	200.0000	100.0000
8/26/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Leoncio A. Gil regarding declarations. E-mail communication with Amy Viggiano Deittrick regarding Petition and declarations.	T	0.2500	200.0000	50.0000
8/21/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Leoncio A. Gil regarding petition. Revise and edit Petition to Reopen Probate.	T	1.5000	200.0000	300.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
8/4/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding probate procedure and estates.	T	2.5000	200.0000	500.0000
8/8/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Mark Hesiak, Leoncio A. Gil, and Dennis L. Kennedy regarding strategy. E-mail communication with Shae Gitter regarding case status. Revise and edit Leoncio A. Gil's draft of Petition to Reopen Probate.	T	2.5000	200.0000	500.0000
8/10/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to revise and edit petition to re-open probate. E-mail communication with Leoncio A. Gil and Mark Hesiak regarding same.	T	2.0000	200.0000	400.0000
8/30/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review Dennis L. Kennedy's revisions to Petition to Reopen Probate. Incorporate Dennis L. Kennedy's and Mark Hesiak's revisions to Petition. E-mail communication with Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding same. E-mail communication with Shae Gitter regarding same. Begin to design Case Logistix database and enter document information.	T	2.2500	200.0000	450.0000
9/3/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding Petition to Reopen Probate.	T	0.2500	200.0000	50.0000
9/5/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding draft of Petition to Reopen Probate.	T	0.2500	200.0000	50.0000
9/6/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding draft Petition to Reopen Probate. Review draft Petition in preparation for teleconference with Shae Gitter regarding same.	T	0.5000	200.0000	100.0000
9/20/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding same case status and strategy and communication expectations. E-mail communication with Shae Gitter regarding same.	T	0.7500	200.0000	150.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
9/18/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding case progression. Conference with John R. Bailey regarding same.	T	0.2500	200.0000	50.0000
9/23/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding case status and long-term strategy.	T	0.2500	200.0000	50.0000
9/24/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Shae Gitter regarding case status and long-term strategy.	T	0.2500	200.0000	50.0000
9/23/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada) regarding Petition to Reopen Estate. E-mail communication with Shae Gitter regarding same.	T	0.2500	200.0000	50.0000
9/29/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Petition to Reopen Estate. Revise declarations for Kelly B. Stout, Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.), Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.), and Shae Gitter. Insert declaration citations into Petition. Revise exhibit numbers.	T	3.0000	200.0000	600.0000
9/30/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Compile exhibits to Petition to Reopen Estate. Verify citations to exhibits. E-mail communication with Leoncio A. Gil regarding tasks required to finalize motion. Conference with Leoncio A. Gil regarding final revisions to Petition. Review Leoncio A. Gil revisions to Petition and declarations. E-mail communication with Shae Gitter regarding revisions to Petition.	T	2.5000	200.0000	500.0000
10/7/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Finalize Petition to Reopen Probate.	T	0.5000	200.0000	100.0000
10/18/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Leoncio A. Gil regarding Petition for Appointment of Special Administrator. Conference with Jennifer J. Kennedy regarding same.	T	0.5000	200.0000	100.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
10/10/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Jennifer J. Kennedy regarding probate filing procedure. Legal research regarding same.	T	1.0000	200.0000	200.0000
10/15/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications and conferences with Jennifer J. Kennedy regarding regarding-filing of petition.	T	1.5000	200.0000	300.0000
11/20/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review documents received from Jared Schafer. E-mail communication with Leoncio A. Gil regarding same.	T	0.2500	200.0000	50.0000
11/11/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding revised Petition.	T	0.2500	200.0000	50.0000
11/15/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review revised Petition for Special Administrator. E-mail communication with Leon Gil regarding same. E-mail communication with Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding revised declarations and petition. E-mail communication with Shae Gitter regarding same.	T	0.7500	200.0000	150.0000
11/20/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review documents received from Amy Viggiano Deittrick & Jared Shafer (Professional Fiduciary Services of Nevada, Inc.). Conference with Leoncio A. Gil regarding same.	T	0.2500	200.0000	50.0000
12/4/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review documents received from Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.). E-mail communication with Amy Viggiano Deittrick regarding case status.	T	0.2500	200.0000	50.0000
12/27/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Jennifer J. Kennedy regarding case filings and procedure.	T	0.2500	200.0000	50.0000
12/31/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review Order Granting Ex Parte Petition for Appointment of Special Administrator and case documents. Leave voicemail for Kimberley A. OKezie (Deputy Attorney General, Bureau of	T	0.5000	200.0000	100.0000

Search Description:
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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		Governmental Affairs) regarding same.				
12/10/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Jennifer J. Kennedy regarding Petition for Ex Parte Appointment of Special Administrator.	T	1.0000	200.0000	200.0000
12/11/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Jennifer J. Kennedy regarding Petition for Appointment of Special Administrator. Review e-mail communications with Amy Viggiano Deittrick (Professional Fiduciary Services of Nevada, Inc.) regarding same.	T	1.0000	200.0000	200.0000
12/12/2013	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Jennifer J. Kennedy and Leoncio A. Gil related to finalizing Petition for Appointment of Special Administrator.	T	0.7500	200.0000	150.0000
1/2/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review e-mail correspondence from Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.). Conference with Jennifer J. Kennedy regarding certified copies of Order.	T	0.2500	200.0000	50.0000
1/8/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Draft letter to Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding Order authorizing inspection of PERS documents.	T	0.2500	200.0000	50.0000
1/30/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding status of PERS' document production. E-mail communication with Shae Gitter and Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding same.	T	0.2500	200.0000	50.0000
2/3/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding 126 pages of documents received from PERS. Review same. Conference with Dennis L. Kennedy regarding same. Multiple e-mail communication with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding same. Legal research regarding PERS benefits and survivor beneficiaries.	T	2.7500	200.0000	550.0000

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2/4/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding legislative history of NRS 286.669 and Chapter 41B.	T	1.0000	200.0000	200.0000
2/5/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding potential remedies.	T	1.0000	200.0000	200.0000
2/6/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to draft complaint.	T	1.7500	200.0000	350.0000
2/7/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding claims. E-mail communication with Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding case status. E-mail and text message communication with Shae Gitter regarding same.	T	2.0000	200.0000	400.0000
2/24/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Finish drafting Complaint. Conference with Mark Hesiak regarding same.	T	2.2500	200.0000	450.0000
2/25/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise draft Complaint. E-mail communication with Shae Gitter regarding case status, strategy, and timeline. E-mail communication with Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding draft complaint.	T	1.2500	200.0000	250.0000
2/12/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding case.	T	0.2500	200.0000	50.0000
2/26/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise Verified Complaint to incorporate Leoncio A. Gil's revisions. E-mail communication with Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding same. E-mail and text communication with Shae Gitter regarding same.	T	0.5000	200.0000	100.0000
3/3/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Text message communication with Shae Gitter regarding case status.	T	0.2500	200.0000	50.0000
3/14/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding service of process on Attorney General and PERS. Conference with	T	1.0000	200.0000	200.0000

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		Leoncio A. Gil regarding same. Telephone conference with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) regarding same.				
3/18/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Jennifer J. Kennedy regarding service of Summons and Complaint.	T	0.2500	200.0000	50.0000
3/17/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Jennifer J. Kennedy regarding cost of serving Summons and Complaint.	T	0.2500	200.0000	50.0000
5/2/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding PERS' Answer to Complaint.	T	0.2500	200.0000	50.0000
5/5/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS' Answer to Complaint. E-mail communication with Kimberley A. Okezie (Deputy Attorney General, Bureau of Governmental Affairs) and W. Chris Wicker (counsel for PERS) regarding scheduling early case conference.	T	0.5000	200.0000	100.0000
5/6/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with Kimberley A. OKezie (Deputy Attorney General, Bureau of Governmental Affairs) and W. Chris Wicker (counsel for PERS) regarding scheduling early case conference.	T	0.2500	200.0000	50.0000
5/9/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding case status. Telephone conference with Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding same.	T	0.5000	200.0000	100.0000
5/22/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Bonnie R. O'Laughlin regarding Joint Case Conference Report.	T	0.2500	200.0000	50.0000
5/28/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Bonnie R. O'Laughlin's draft Joint Case Conference Report. Revise and edit same. Multiple conferences with Mark Hesiak regarding written discovery. Revise and edit jury demand.	T	1.5000	200.0000	300.0000
5/29/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Finalize draft Joint Case Conference Report. E-mail communication with Shae Gitter regarding	T	0.7500	200.0000	150.0000

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Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		case status and discovery strategy. E-mail communication with Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding same.				
6/2/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding case status and strategy. Telephone conference with Mark Hesiak regarding same.	T	0.5000	200.0000	100.0000
6/16/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Plaintiffs' draft interrogatories and requests for admission to PERS.	T	0.7500	200.0000	150.0000
6/20/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with Mark Hesiak and Leoncio A. Gil regarding draft requests for admission and interrogatories to PERS. Finalize same. E-mail communication with Shae Gitter regarding same.	T	0.7500	200.0000	150.0000
6/30/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze Notice to Appear for Discovery Conference. Begin to review and revise draft requests for production of documents.	T	1.0000	200.0000	200.0000
7/15/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Attend discovery conference. E-mail communication with Shae Gitter and Jared Shafer regarding same.	T	1.5000	200.0000	300.0000
7/28/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding case status. Review scheduling order.	T	0.5000	200.0000	100.0000
7/22/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Kelly Weaver (Woodburn & Wedge) regarding extension of time for PERS to respond to interrogatories and requests for production of documents.	T	0.2500	200.0000	50.0000
7/31/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to review PERS' responses to interrogatories.	T	0.5000	200.0000	100.0000
8/1/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS' responses to interrogatories and requests for production of documents.	T	0.7500	200.0000	150.0000

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8/18/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Jared E. Shafer (Professional Fiduciary Services of Nevada, Inc.) regarding case status and strategy. E-mail communication with Leoncio A. Gil and Mark Hesiak regarding same.	T	0.2500	200.0000	50.0000
8/12/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review, revise and edit Leoncio A. Gil's draft requests for production of documents to PERS.	T	1.2500	200.0000	250.0000
8/14/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding requests for production of documents to be served on PERS. Finalize same.	T	0.5000	200.0000	100.0000
9/2/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review PERS' responses to interrogatories and requests for admission. E-mail communication with Kimberley A. Okezie (Deputy Attorney General, Bureau of Governmental Affairs) and Chris Wicker (counsel for PERS) regarding proposal to stay Plaintiffs' efforts to compel discovery.	T	0.5000	200.0000	100.0000
9/7/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Kimberley A. Okezie and Chris Wicker (counsel for PERS) regarding discovery issues.	T	0.2500	200.0000	50.0000
9/9/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Chris Wicker (Counsel for PERS) regarding discovery issues.	T	0.2500	200.0000	50.0000
9/18/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding discovery and strategy for summary judgment.	T	0.2500	200.0000	50.0000
9/11/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Mark Hesiak regarding discovery strategy.	T	0.2500	200.0000	50.0000
9/16/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Mark Hesiak regarding PERS' request for an extension of time to respond to written discovery requests.	T	0.2500	200.0000	50.0000

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10/21/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review PERS' document disclosure. Begin to draft Motion for Summary Judgment.	T	2.7500	200.0000	550.0000
10/22/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft fact section of Motion for Partial Summary Judgment regarding liability. Legal research regarding statutory interpretation.	T	3.2500	200.0000	650.0000
10/23/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding legislative history of Nevadas Slayer Statutes. Review briefing from Augustine v. PERS. Continue to draft Complaint.	T	7.5000	200.0000	1,500.0000
10/24/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Motion for Partial Summary Judgment.	T	5.0000	200.0000	1,000.0000
10/25/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Complete draft of Motion for Partial Summary Judgment. Revise and edit same.	T	2.2500	200.0000	450.0000
10/26/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to revise and edit Motion for Partial Summary Judgment. Review additional documents from State v. Freshman. E-mail and text communication with Shae Gitter and Jared Shafer regarding same. Draft Gitter Declaration in Support of same. E-mail communication with Mark Hesiak regarding same.	T	4.2500	200.0000	850.0000
10/27/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding draft Motion for Partial Summary Judgment and supporting declaration. Revise and edit Motion for Partial Summary Judgment. Draft Declaration of Kelly B. Stout in support of same. Incorporate Mark Hesiak's revisions to same. Incorporate Dennis L. Kennedy's revisions to same. Revise and finalize footnotes and citations.	T	6.2500	200.0000	1,250.0000
10/28/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review Errata to Motion for Partial Summary Judgment. E-mail communication with Dianne Kelling (Legal Assistant, Woodburn and Wedge) regarding same.	T	0.2500	200.0000	50.0000

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11/11/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS' Motion for Summary Judgment. Legal research regarding same.	T	1.7500	200.0000	350.0000
11/5/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Chris Wicker & Kimberly Okezie (counsel for PERS) regarding extension of time to file responses to Motions for Summary Judgment.	T	0.2500	200.0000	50.0000
11/13/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS' Motion for Summary Judgment. Conference with Dennis L. Kennedy regarding strategy for responding to same. Conference with Mark Hesiak regarding same. Legal research regarding contract claims. Begin to draft opposition brief.	T	4.7500	200.0000	950.0000
11/14/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding legislative history of relevant bills. Conference with Mark Hesiak regarding strategy for responding to PERS' Motion for Summary Judgment. Continue to draft same.	T	3.5000	200.0000	700.0000
11/15/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding legislative history of PERS Act and revisions. Legal research regarding legislative history of slayer statutes. Continue to draft opposition to PERS' Motion for Summary Judgment.	T	3.0000	200.0000	600.0000
11/16/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft opposition to PERS' Motion for Summary Judgment. Legal research regarding same. Revise and edit same.	T	4.0000	200.0000	800.0000
11/17/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding opposition to PERS' Motion for Summary Judgment. Conference with Dennis L. Kennedy regarding same. Incorporate Dennis L. Kennedy's revisions to same. E-mail and text message communication with Shae Gitter regarding same. Finalize same.	T	2.7500	200.0000	550.0000
11/18/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS' opposition to Plaintiffs' Motion for Summary Judgment. Begin	T	1.0000	200.0000	200.0000

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		legal research for reply brief.				
11/19/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue legal research for Reply to Plaintiffs' Motion for Partial Summary Judgment. Begin to draft same.	T	3.7500	200.0000	750.0000
11/20/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Sarah E. Harmon regarding reply brief in support of Plaintiffs' Motion for Summary Judgment. Conference with Mark Hesiak regarding same. Telephone conference with Dennis L. Kennedy regarding same. Legal research regarding same. Continue to draft reply brief. Revise and edit same to incorporate new arguments.	T	7.2500	200.0000	1,450.0000
11/21/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Reply to Plaintiffs' Motion for Partial Summary Judgment. Conference with Mark Hesiak regarding same. Review and incorporate Mark Hesiak's revisions to same. Finalize same. E-mail and text message communication with Shae Gitter regarding same. Review and analyze PERS' Reply in support of its Motion for Summary Judgment.	T	2.7500	200.0000	550.0000
12/2/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Attend hearing on PERS' Motion for Summary Judgment and Plaintiffs' Motion for Partial Summary Judgment. E-mail communication with Jared Shafer regarding same. Conference with Sarah E. Harmon regarding case status and strategy. Conference with Mark Hesiak regarding same. E-mail communication with Paulette Tandy (UNLV School of Business) regarding referral for financial expert.	T	3.0000	200.0000	600.0000
12/1/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding strategy for hearing on PERS' Motion for Summary Judgment and Plaintiffs' Motion for Partial Summary Judgment. Conference with Joshua M. Dickey regarding same. Review briefs and legal authority in preparation for hearing.	T	4.5000	200.0000	900.0000
12/3/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Francine Lipman regarding tax implication of PERS benefits. Conference with Mark Hesiak regarding case status and strategy. Telephone conference with Shae Gitter and Mark Hesiak regarding same.	T	1.0000	200.0000	200.0000

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12/5/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Dennis L. Kennedy regarding case status and strategy.	T	0.2500	200.0000	50.0000
12/8/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to draft Order Granting Motion for Partial Summary Judgment. Legal research regarding damages.	T	2.2500	200.0000	450.0000
12/9/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment.	T	0.7500	200.0000	150.0000
12/24/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with opposing counsel regarding draft Order Granting Plaintiffs' Motion for Partial Summary Judgment.	T	0.2500	200.0000	50.0000
12/19/2014	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit draft Order Granting Plaintiffs' Motion for Partial Summary Judgment.	T	0.5000	200.0000	100.0000
1/12/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Order on Counter-Motions for Summary Judgment. Conference with Mark Hesiak regarding case status and strategy. Telephone conference with Chris Wicker (counsel for PERS) regarding stipulation to extend trial date and moving forward.	T	0.7500	260.0000	195.0000
1/16/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and finalize Order regarding Cross-Motions for Summary Judgment. E-mail communication with Chris Wicker (counsel for PERS) regarding same.	T	0.5000	260.0000	130.0000
1/26/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Draft Stipulation to Extend Trial. Revise and edit same.	T	1.0000	260.0000	260.0000
1/29/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Notice of Entry of Order regarding cross-motions for summary judgment.	T	0.2500	260.0000	65.0000
1/30/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Chris Wicker (counsel for PERS) regarding stipulation to extend trial.	T	0.2500	260.0000	65.0000

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2/2/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conference with Jennifer J. Kennedy regarding format of Stipulation and Proposed Order to Extend Trial Date. E-mail communication with Chris Wicker (counsel for PERS) regarding same.	T	0.5000	260.0000	130.0000
2/17/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with Jennifer J. Kennedy regarding rescheduled dates for trial.	T	0.2500	260.0000	65.0000
2/9/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Lengthy e-mail communication with Shae Gitter and Jared Schafer regarding case status and strategy.	T	0.5000	260.0000	130.0000
3/19/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Chris Wicker (Counsel for PERS) regarding judgment. Text message communication with Shae Gitter regarding same.	T	0.2500	260.0000	65.0000
5/15/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter regarding expert retention.	T	0.5000	260.0000	130.0000
5/27/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review engagement letter for Kirk Jacobson (financial expert). Conference with Mark Hesiak regarding same.	T	0.2500	260.0000	65.0000
5/28/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with John R. Bailey, Mark Hesiak, and Dennis L. Kennedy regarding case status and strategy.	T	0.2500	260.0000	65.0000
6/1/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with W. Chris Wicker (counsel for PERS) regarding PERS' damages calculation. Conference with Mark Hesiak regarding same.	T	0.2500	260.0000	65.0000
6/9/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with W. Chris Wicker (counsel for PERS) regarding damages calculation and status check.	T	0.2500	260.0000	65.0000

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6/10/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding calculation of benefits. E-mail communication with W. Chris Wicker (counsel for PERS) regarding same.	T	3.2500	260.0000	845.0000
6/11/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Prepare for and attend status check.	T	2.2500	260.0000	585.0000
6/17/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with W. Chris Wicker (counsel for PERS) regarding supplemental information regarding calculation of damages.	T	0.2500	260.0000	65.0000
6/22/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with W. Chris Wicker (counsel for PERS) regarding supplemental information regarding calculation of damages.	T	0.2500	260.0000	65.0000
6/29/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding case status and strategy. E-mail communication with W. Chris Wicker (counsel for PERS) regarding stipulated judgment.	T	0.5000	260.0000	130.0000
6/23/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with assistant for W. Chris Wicker (counsel for PERS) regarding PERS' production of supplemental information pertaining to stipulated judgment. E-mail communication with Mark Hesiak regarding same.	T	0.2500	260.0000	65.0000
7/6/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze e-mail communication from W. Chris Wicker (counsel for PERS) regarding calculation of judgment. Legal research regarding same. Conference with Mark Hesiak regarding same. Conference with Dennis L. Kennedy regarding same. E-mail communication with Mark Hesiak regarding same. E-mail communication with W. Chris Wicker regarding interest. E-mail communication with Shae Gitter regarding case status and strategy.	T	1.7500	260.0000	455.0000
7/2/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Chris Wicker regarding PERS' position regarding interest.	T	0.2500	260.0000	65.0000

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7/9/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding pre-judgment interest. Conference with Dennis L. Kennedy regarding same. Telephone conference with W. Chris Wicker (counsel for PERS) regarding same. E-mail communication and text messages with Shae Gitter regarding same. Conference with Mark Hesiak regarding same. Draft stipulation to extend trial date.	T	5.2500	260.0000	1,365.0000
7/10/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with W. Chris Wicker (counsel for PERS) regarding stipulation to extend trial date. Revise and edit stipulation to incorporate Chris Wicker's revisions. Continue legal research regarding pre-judgment interest.	T	1.7500	260.0000	455.0000
7/15/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple conferences with Jennifer J. Kennedy regarding Second Stipulation and Order Extending Trial and upcoming Status Check. Review and revise letter to Department 24 regarding same. E-mail communication with W. Chris Wicker (counsel for PERS) regarding same.	T	0.2500	260.0000	65.0000
7/16/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding calculation of interest.	T	1.7500	260.0000	455.0000
7/16/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with Mark Hesiak and	T	0.2500	260.0000	65.0000
7/23/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue legal research regarding pre-judgment and post-judgment interest rates.	T	0.5000	260.0000	130.0000
7/22/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Telephone conference with William Hinsdale and Kirk Jacobson (JW Advisors) regarding calculation of damages and interest. Legal research regarding same. Conference with Mark Hesiak regarding same. E-mail communication with Chris Wicker regarding same.	T	1.5000	260.0000	390.0000
7/24/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding calculation of damages. E-mail communication with W. Chris Wicker (counsel for PERS) regarding same. Review and analyze documents received from	T	1.5000	260.0000	390.0000

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		PERS regarding same.				
7/27/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to draft Plaintiffs' Motion for Pre-judgment and Post-Judgment Interest. Multiple e-mail communications with William Hinsdale (JW Advisors) regarding calculation of damages.	T	1.2500	260.0000	325.0000
7/28/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest. Conference with Mark Hesiak regarding same.	T	3.7500	260.0000	975.0000
7/29/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with William Hinsdale (JW Advisors) regarding calculation of damages. Review and analyze JW Advisors' draft calculation of damages. Multiple conferences with Mark Hesiak regarding same. Continue to draft Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest. Draft exhibits to same. Telephone conference with Jan Wolfley (Legislative Counsel Bureau Research Library).	T	6.7500	260.0000	1,755.0000
7/30/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Mark Hesiak regarding strategy for Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest. Revise and edit same. Revise and edit exhibits for same.	T	1.0000	260.0000	260.0000
7/31/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest. Finalize same. Multiple e-mail communications with W. Chris Wicker (counsel for PERS) regarding damages calculation.	T	3.7500	260.0000	975.0000
8/7/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS' Opposition to Motion for Interest. Conference with Mark Hesiak regarding same.	A108	0.7500	260.0000	195.0000
8/13/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to draft Reply in Support of Motion for Award of Pre-Judgment and Post-Judgment Interest. Multiple e-mail communications with William Hinsdale (JW Advisors) regarding revised interest calculations. Legal research regarding contract formation and theories for	T	7.7500	260.0000	2,015.0000

Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		breach of contract.				
8/12/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze PERS' Opposition to Motion for Award of Pre-Judgment and Post-Judgment Interest. Research regarding PERS.	T	2.0000	260.0000	520.0000
8/5/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Chris Wicker regarding PERS' calculation of back-payments. E-mail and text message communication with Shae Gitter regarding same.	T	0.5000	260.0000	130.0000
8/14/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Reply in Support of Motion for Award of Pre-Judgment and Post-Judgment Interest. Continue legal research regarding contract formation and theories for breach of contract. Multiple conferences with Mark Hesiak regarding strategy for Reply. Conference with Dennis L. Kennedy regarding same. Revise and incorporate Dennis L. Kennedy's revisions to same.	T	6.2500	260.0000	1,625.0000
8/26/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and analyze Notice of Substitution of Counsel. Conference with Mark Hesiak regarding same. Conference with Dennis L. Kennedy regarding same.	T	0.5000	260.0000	130.0000
9/1/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Prepare for hearing on Motion for Pre-Judgment and Post-Judgment Interest. E-mail communication with Chris Wicker regarding same. Lengthy e-mail communication with Shae Gitter regarding hearing and appeal.	T	2.2500	260.0000	585.0000
9/17/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Prepare for and attend status check on settlement documents. Draft combined Order and Judgment.	T	2.2500	260.0000	585.0000
9/16/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Multiple e-mail communications with W. Chris Wicker (counsel for PERS) regarding Order Granting Motion for Interest and form of judgment. Begin to draft Judgment. Multiple conferences with Mark Hesiak regarding same.	T	2.2500	260.0000	585.0000

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Transactions Listing (Wide) Report

Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
9/18/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Conference with Joshua M. Dickey regarding final judgment.	T	0.2500	260.0000	65.0000
9/21/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Mark Hesiak regarding revisions to Order Granting Motion for Pre-Judgment and Post-Judgment Interest and Judgment. Revise and edit same.	T	0.5000	260.0000	130.0000
9/3/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Leave voice mail for for W. Chris Wicker (counsel for PERS) regarding draft Order and Judgment. Conference with Mark Hesiak regarding same. E-mail communication with Chris Wicker regarding same. Telephone conference with Chris Wicker regarding same.	T	0.2500	260.0000	65.0000
9/9/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to draft Order Granting Motion for Pre-Judgment and Post-Judgment Interest.	T	1.2500	260.0000	325.0000
9/11/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Order Granting Motion for Pre-Judgment and Post-Judgment Interest. E-mail communication with Mark Hesiak regarding same. Revise and edit same to incorporate Mark Hesiak's revisions. Conference with Dennis L. Kennedy regarding same.	T	1.5000	260.0000	390.0000
10/1/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with W. Chris Wicker (counsel for PERS) regarding Judgment and request for stay pending appeal. Conference with Dennis L. Kennedy regarding case status and strategy. Conference with Mark Hesiak regarding same. E-mail communication with Shae Gitter regarding PERS' request to stay enforcement pending appeal.	T	1.2500	260.0000	325.0000
10/5/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS E-mail communication with Shae Gitter and Jared Shaefer regarding PERS request to stay enforcement of the judgment pending appeal.	T	0.2500	260.0000	65.0000
10/30/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review PERS' Motion to Retax Costs.	T	0.2500	260.0000	65.0000
10/22/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review and revise Amended Certificate of Service.	T	0.2500	260.0000	65.0000

Bailey Kennedy, LLP

Transactions Listing (Wide) Report

Search Description:
Search for: 10655-001 Search by: Matter ID Stage: WIP Type: Fees

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
10/23/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Review, revise, and edit Memorandum of Costs. Multiple conferences with Amanda L. Stevens regarding same. Review back-up documentation to support Memorandum of Costs. Conference with Mark Hesiak regarding same. Conference with Dennis L. Kennedy regarding same. Legal research regarding expert fees.	T	6.7500	260.0000	1,755.0000
11/6/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Legal research regarding attorney's fees.	T	1.7500	260.0000	455.0000
11/7/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Begin to draft Motion for Attorneys' Fees.	T	3.5000	260.0000	910.0000
11/8/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Continue to draft Motion for Attorneys' Fees.	T	4.7500	260.0000	1,235.0000
11/9/2015	KBS	10655-001 / Gitter, Shae Ellen / NVPERS Revise and edit Motion for Attorneys' Fees. Draft, revise, and edit Declaration of Dennis L. Kennedy. Draft, revise, and edit Declaration for Kelly B. Stout. Continue legal research regarding attorney's fees. Incorporate Dennis L. Kennedy's revisions and comments into Motion for Attorneys' Fees. Finalize Motion for Attorneys' fees and all exhibits for filing.	T	5.7500	260.0000	1,495.0000
		Professional: Kelly B. Stout		273.2500		60,325.0000
		Grand Total		422.7500		96,272.5000

Exhibit 4

Exhibit 4

DECLARATION OF KELLY B. STOUT

I, Kelly B. Stout, declare as follows:

1. I am a resident of Clark County, Nevada, and an associate in the law firm of Bailey❖Kennedy, which is counsel for Plaintiffs Shae E. Gitter and Jared Shafer in the matter Gitter v. Public Employees Retirement System of Nevada, No. A-14-697642-C, which is pending in Department XXIV of the Eighth Judicial District Court of Clark County Nevada (the "Matter").

2. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

3. I make this Declaration in support of Plaintiffs' Motion for Attorneys' Fees (the "Motion").

4. Bailey Kennedy began representing Shae Gitter in May 2012.

5. Previously, the Estate of Kristine Jo Freshman and Mr. Shafer as its Special Administrator had been represented by Mark S. Katz of Katz and Associates. Plaintiffs do not seek any fees in connection with the representation by Katz and Associates.

6. Between May 2012 and December 2013, I had many telephone conferences with Deputy Attorney General Kimberly Okezie, who was representing PERS.

7. PERS, under guidance from counsel at the Office of the Attorney General, refused to provide documents relating to Kristine Jo Freshman's PERS account to Ms. Freshman's Estate; Ms. Freshman's heir, Shae Gitter; or myself as their counsel.

8. The documents relating to Kristine Jo Freshman's PERS account were necessary to determine what, if any, benefits were owed to the Estate of Kristine Jo Freshman, or its heir, Shae Gitter.

9. During my telephone conversations with Ms. Okezie in May and June 2013, she explained that PERS was taking the position that no persons were authorized to access Ms. Freshman's account documents. Consequently, Ms. Okezie explained that PERS would only be permitted to disclose the documents and information only upon court order.

///

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10. On December 12, 2013, I filed a Verified Ex-Parte Petition for Appointment of Special Administrator and Issuance of Letters of Special Administration in Case No. P-09-067265-E (the "Petition") on Plaintiffs' behalf. A true and correct copy of that Petition (and its exhibits) is attached as Exhibit 6.

11. On December 26, 2013, the Court issued an Order approving the Petition and directing PERS to provide Mr. Shafer with copies of all documents related to Kristine Jo Freshman's PERS account.

12. On January 8, 2014, I mailed Ms. Okezie a copy of the Order.

13. On or about January 30, 2014, I received a letter from Sonya J. Hellwinkel, Director of Employer & Production Services, providing copies of the records regarding Kristine Jo Freshman's PERS account.

14. Kristine's PERS records established that she did in fact designate Shae as her secondary survivor beneficiary.

15. Plaintiffs filed their Complaint on March 13, 2014.

16. Plaintiffs propounded three sets of written discovery: 9 requests for admission; 7 requests for production of documents; and 21 interrogatories.

17. The Parties agreed to limit discovery prior to bringing cross-motions for summary judgment on the issue of liability, with the possibility of reopening discovery if necessary.

18. Following the Court's Order granting summary judgment in favor of Shae and against PERS, Mr. Wicker (PERS' counsel) and I were able to come to an agreement regarding the amount of back payments owed to Shae.

19. On July 6, 2015, I asked Mr. Wicker to confirm PERS' position regarding its obligation to pay pre-judgment and post-judgment interest.

20. On July 9, 2015, Mr. Wicker e-mailed me and confirmed that PERS has "never paid interest on benefits, including back benefits."

21. On July 10, 2015, I e-mailed Mr. Wicker and informed him that Plaintiffs would be filing "a motion seeking pre-and post-judgment interest on the unpaid benefits payments under NRS 17.130, NRS 99.040(1)(a), and NRS 99.040(1)(c)." Furthermore, I notified him that Plaintiffs may

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seek fees: "Given that the plain language clearly supports Plaintiffs' position and PERS denies that it is obligated to pay pre- or post- judgment interest, Plaintiffs are reserving their right to seek attorneys' fees."

22. I have been licensed to practice law in Nevada since 2010.

23. Attached to the Motion as Exhibit 5 is a true and correct copy of my Curriculum Vitae (the "CV"), which is updated on a regular basis.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 9th day of November, 2015.

KELLY B. STOUT

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Exhibit 5

Exhibit 5

Kelly B. Stout
Curriculum Vitae

EDUCATION

- B.A., History & Women's Studies, Northwestern University (1999)
- J.D., William S. Boyd School of Law, University of Nevada, Las Vegas (2010), *magna cum laude*
    - Articles Editor, Nevada Law Journal
    - Society of Advocates (Moot Court)
    - Dean's Award (2010)

BAR ADMISSION

- State of Nevada, 2010
- U.S. District Court, District of Nevada, 2010

PROFESSIONAL ASSOCIATIONS

- State Bar of Nevada
- American Bar Association
- Clark County Bar Association
- Southern Nevada Association of Women Attorneys

EMPLOYMENT

- Bailey❖Kennedy (May 2010-present)

OTHER POSITIONS

- Thomas & Mack Community Advisory Board (2011-present)
- Alumni Board of Directors, Society of Advocates (2014-present)
- Clark County Bar Association
    - Executive Committee (2014-present)
    - Co-Chair, New Lawyers Committee (2012-2014)
        - Recipient, Circle of Support Award (2014)
- Adjunct Professor, William S. Boyd School of Law, University of Nevada, Las Vegas (2014-present)
- Board Member, March of Dimes, Nevada Chapter (2015)

PUBLICATIONS

- Contributing Author, *Initial Civil Appeals: Nevada*, PRACTICAL LAW STATE Q&A (2015)
- Contributing Author, *Additional Civil Appeals: Nevada*, PRACTICAL LAW STATE Q&A (2015)
- Co-Author, NEVADA CIVIL PRACTICE MANUAL (5th ed., 2001) (2010 supplement, Ch. 4).
- Associate Editor, NEVADA CIVIL PRACTICE MANUAL (5th ed., 2001) (2011-2013 supplements).
- Sarah Thornton & Kelly B. Stout, *Build Your Reputation and Grow Your Practice: How Strategic Marketing Can Assist Your Business Development*, Nev. Lawyer, Aug. 2012, at 20.

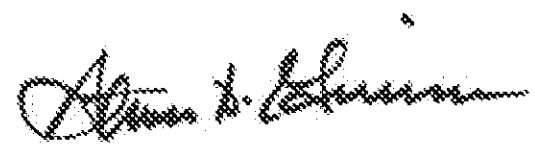
REPRESENTATIVE MATTERS

- Disqualified opposing counsel due to conflict of interest.
- Represented casino corporation in the Nevada Supreme Court on an appeal of favorable judgment in a personal injury action resulting in an order affirming jury verdict.
- Obtained writ of mandamus from the Nevada Supreme Court instructing the district court to vacate order disqualifying client's trial counsel.
- Represented former employees in wrongful discharge action resulting in favorable settlement for the clients.
- Represented seller of a golf course in a jury trial for fraud and breach of contract resulting in favorable settlement for the client.
- Represented large insurance carrier in coverage actions for indemnification/contribution by competing insurance carrier resulting in favorable settlement for the client.
- Represented various health care professionals in disciplinary proceedings in front of administrative agencies.

Exhibit 6

Exhibit 6

Electronically Filed
10/07/2013 03:26:39 PM



CLERK OF THE COURT

PETN
DENNIS L. KENNEDY, Nev. Bar No. 1462
KELLY B. STOUT, Nev. Bar No. 12105
MARK HESIAK, Nev. Bar No. 12397
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KStout@BaileyKennedy.com
MHesiak@BaileyKennedy.com

Attorneys for Petitioners Shae E. Gitter and Jared E. Shafer

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of: KRISTINE JO FRESHMAN, Deceased.	Case No. P-09-067265-E Dept. No. H

PETITION TO REOPEN PROBATE ADMINISTRATION, APPOINTMENT OF ADMINISTRATOR, AND FOR ISSUANCE OF LETTERS OF ADMINISTRATION

Pursuant to NRS 151.240, Petitioners, Shae Gitter ("Shae"), in her capacity as the only child and sole heir to Kristine Jo Freshman ("Ms. Freshman"), and assignee of all rights arising out of the estate of Kristine Jo Freshman (the "Estate"), and Jared Shafer ("Mr. Shafer" or the "Administrator") petition this Court to reopen the Estate, appoint Mr. Shafer as Administrator, and issue letters of administration. At the time of her death, Petitioners believe that Ms. Freshman's Public Employees' Retirement System of Nevada ("PERS") account contained approximately $250,000.00.[1] However, PERS (1) contends that neither the Estate nor Shae are entitled to receive any distribution or refund of contributions from PERS and (2) have refused to permit Shae or the Estate to examine the documents related to Ms. Freshman's PERS account (the "Records") without a court order.

[1] Letter from Rayna Palazzolo, PERS Production Servs. Div., to Shae E. Gitter (Jan. 10, 2010), attached as Ex. 1-B (stating that 50% of employer paid contributions total approximately $112,000.00).

The Administrator closed the Estate in October 2011 and assigned all rights to Shae.[2] At that time, the question of pension benefits was the only outstanding issue, and the Administrator expected that Shae would be able to investigate the existence of pension benefits owed to her or the Estate, and, if benefits were owed to the Estate, reopen the Estate.[3] However, Shae has been refused access to the documents related to her mother's account that would allow her to determine if PERS owes pension benefits to the Estate and/or its heir. PERS has denied requests for the Records made by Shae's counsel, the former Administrator, and the Estate's counsel. PERS maintains that no party – including the Estate or its assignee – is entitled to access the records without a court order.

Accordingly, Shae requests that the Court reopen the Estate, appoint Mr. Shafer as administrator, and issue letters of administration that will allow Mr. Shafer to then petition this court for an Order compelling PERS to provide the Estate with a copy of the Records and administer any pension benefits that he discovers are due to the Estate.

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I. RELEVANT FACTS

1. Ms. Freshman was a kindergarten teacher who taught in Nevada's public school system for more than 20 years.[4]

2. Ms. Freshman was murdered by her husband, Walter Freshman ("Mr. Freshman") on December 6, 2009, in Laughlin, Nevada.[5]

a. On the date of her death, Ms. Freshman was a resident of Clark County, Nevada.[6]

b. Ms. Freshman died intestate.[7]

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[2] Order Approving Rep. & Pet. to Convert to Gen. Admin., for Appt. of Adm'r; for Approval of First and Final Acct.; Pmt. Of Attorney's Fees; and Final Distribution, Oct. 21, 2011 [hereinafter Order re Final Distribution].

[3] Shafer Decl. ¶ 11, attached as Ex. 4.

[4] Gitter Decl. ¶ 3, attached as Ex. 1.

[5] See Guilty Plea Agrmt., *State v. Freshman*, No. 10C261323 (Nev. Dist. Ct. Sept. 20, 2010), attached as Ex. 2.

[6] Certificate of Death, No. 2009017950 (Dec. 11, 2009), attached as Ex. 3.

[7] Verified Ex-Parte Pet. for the Appt. of Sp. Adm'r and Issuance of Letters of Special Admin. 1:26, Dec. 17, 2009.

3. Due to the circumstances of Ms. Freshman's death, the Court appointed Mr. Shafer as Special Administrator on December 17, 2009.[8]

a. Mr. Shafer is a natural person and a resident of Nevada.[9]

b. He has attained the age of majority, he never been convicted of a felony, and never been adjudged disqualified due to a conflict of interest.[10]

4. Shae is Ms. Freshman's only child, only heir, and the only beneficiary of the Estate.[11]

a. Shae turned twenty-four years old on August 31, 2013.[12]

b. Shae currently resides at 4381 Greenhill Drive, Las Vegas, NV 89121.[13]

5. On December 17, 2009, PERS requested a copy of Ms. Freshman's death certificate because "a recent audit of Ms. Freshman's account [had] revealed that there may be benefits available."[14] Shae provided PERS with the death certificate on or about December 29, 2009.[15]

6. Shortly thereafter, PERS' counsel sent Mr. Shafer a letter stating PERS could not pay any benefits to the Estate because a spouse who unlawfully kills a PERS member is ineligible to receive benefits under NRS 286.669,[16] and the murder charges pending against Mr. Freshman had not been fully resolved.[17]

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[8] Order Approving Ex-Parte Pet. for the Appt. of Sp. Adm'r and Issuance of Letters of Sp. Admin., Dec. 17, 2009 [hereinafter Order Approving Ex-Parte Pet.].

[9] Ex. 4 at ¶ 3.

[10] Ex. 4 at ¶ 4.

[11] Ex. 1 at ¶ 4; Rpt. & Pet'n to Convert to Gen. Admin. For Appt. of Adm'r; for Approval of First and Final Acct.; Pmt. Of Atty's Fees; and Final Distribution 2:14-15, Oct. 7, 2011. Mr. Freshman is Shae's step-father. Ex. 1 at ¶ 6.

[12] Ex. 1 at ¶ 4.

[13] Ex. 1 at ¶ 5.

[14] Letter from Carrie E. Harrison, PERS, to Shae E. Gitter (Dec. 17, 2009), attached as Ex. 1-A.

[15] Ex. 1 at ¶ 8.

[16] NRS 286.669 states that "[a]ny person convicted of the murder or voluntary manslaughter of a member of the System is ineligible to receive any benefit conferred by any provision of this chapter by reason of the death of that member. The System may withhold the payment of any benefit otherwise payable under this chapter by reason

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7. Shae received a conflicting letter from PERS on January 10, 2010.[18] After reviewing Ms. Freshman's account, including employment and personal information, PERS determined that Shae may be eligible for survivor benefits; it appeared Shae was entitled to receive "[a] monthly benefit in the approximate amount of $2,900.00 payable for [her] lifetime" or "[a] lump-sum refund of approximately 50% of the employer paid contributions in the approximate amount of $112,000.00."[19]

8. Shae completed and submitted the PERS application for survivor benefits.[20]

9. Subsequently, Mr. Freshman plead guilty to second-degree murder,[21] and this Court determined that Mr. Freshman was a "killer" for all purposes of NRS Chapter 41B[22] and:

a. Terminated Mr. Freshman' right to inherit or receive benefits under any governing instruments (as defined in NRS Chapter 41B) ;[23]

b. Deemed Mr. Freshman to have predeceased Ms. Freshman, and be treated as such, for the purposes of inheriting from Ms. Freshman and receiving any benefits under any governing instrument as defined in NRS Chapter 41B;[24] and

c. Ordered that "***benefits and/or survivorship benefits payable to***, or with respect to the death of Kristine Jo Freshman, deceased, from and/***or under plans maintained by the Nevada Public Employees' Retirement System***"

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of the death of any member from any person charged with the murder or voluntary manslaughter of that member, pending final determination of those charges."

[17] Letter from Christine S. Munro, Senior Deputy Att'y Gen., to Jared E. Shafer, Prof'l Fiduciary Servs. of Nev. (Dec. 21, 2009), attached as Ex. 4-A.

[18] Ex. 1-B.

[19] Ex. 1-B.

[20] Ex. 1 at ¶ 10.

[21] Ex. 2 at 1:16-18.

[22] Order Terminating All Rights of Walter Freshman (I) In and to Estate,; (II) Under Governing Instruments; and (III) to Survivorship Rights, All Pursuant to NRS Chapter 41B ¶ 1, Dec. 10, 2010.

[23] *Id.* at ¶¶ 2-3.

[24] *Id.* at ¶ 4.

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were "to be paid or transferred to the beneficiaries set forth in the applicable governing instrument (as defined in NRS Chapter 41B)."[25]

10. On May 11, 2011, the Administrator's counsel informed PERS that Mr. Freshman had accepted a plea of second-degree murder and had been adjudicated a killer for the purposes of NRS 41B.[26] He then requested PERS determine whether benefits were owed to Mr. Freshman or the Estate.[27]

11. On June 10, 2011, PERS denied Shae's application for survivor benefits because it interpreted Chapter 286 as disqualifying Mr. Freshman as beneficiary, but not authorizing payment to any other individual, whether or not designated as a secondary beneficiary.[28]

12. On August 25, 2011, Mr. Shafer contacted PERS for the second time. He re-sent the Court's Order terminating Mr. Freshman's right to benefits, and repeated his request for information regarding Ms. Freshman's PERS account.[29]

13. Receiving no response, Mr. Shafer sent the documents and request again on August 26, 2011 and sent an e-mail on August 30, 2011.[30]

14. On August 30, 2011, PERS finally responded and informed Mr. Shaffer's staff that PERS required more time to evaluate the matter and an opportunity to confer with its counsel.[31]

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[25] *Id.* at ¶ 6.

[26] Letter from Mark E. Katz, Esq., Katz & Assocs., to Christine S. Munroe, Senior Deputy Att'y Gen. (May 11, 2011), attached as Ex. 4-B.

[27] *Id.* at 1.

[28] Letter from Brian Snyder, PERS Director of Emp'er & Produc. Servs., to Shae E. Gitter (June 10, 2011), attached as Ex. 1-C.

[29] Fax from Jared E. Shafer, Prof'l Fiduciary Servs. of Nev., to Brian Snyder, PERS Director of Emp'er & Prod. Servs. (Aug. 25, 2011), attached as Ex. 4-C.

[30] Ex. 4 at ¶ 10; Ex. 4-C; E-mail chain between Amty Viggiano Deitrick, Prof'l Fiduciary Servs. of Nev., to Brian Snyder, PERS Director of Emp'er & Prod. Servs. (Aug. 30, 2011 – July 19, 2012), attached as Ex. 5-A.

[31] Ex. 5-A at Aug. 30, 2011.

15. Mr. Shafer's office phoned PERS on September 6, 2011,[32] but Mr. Shae and Mr. Shafer did not receive any further communication regarding PERS' final position until almost a year later.

16. By October 2011, the Estate had been in administration for almost two years, and the possibility of pension benefits was the only unresolved issue.[33] Accordingly, the Administrator determined that it was appropriate to assign the Estate's right to benefits, if any, to its only heir – Shae – and allow her to pursue benefits in her individual capacity and on behalf of the Estate.[34]

17. The Court closed the Estate and discharged the Administrator on October 21, 2011.[35] In that Order, the Court approved the Administrator's actions on behalf of the Estate and authorized payment of fees incurred during the administration.[36] Additionally, the Order authorized the Administrator to distribute "the rest, remainder, and residue of the Estate . . . without limitation" to Shae.[37]

18. Notwithstanding this distribution, PERS has refused to allow Shae access to the Records.

a. On May 9, 2012, Shae's counsel requested copies of documents related to Ms. Freshman's PERS account, including the account balance, member contributions, and designation of beneficiaries.[38]

b. On July 17, 2012, Mr. Shafer's office repeated its request for information or documents related to Ms. Freshman's PERS account.[39]

---

[32] *See* Ex. 4-C.

[33] Ex. 4 at ¶ 11.

[34] *Id.*

[35] Order re Final Distribution.

[36] *Id.* at ¶¶ A-M.

[37] *Id.* at ¶ O; *see* Receipt [for Distrib. of Assets], Nov. 14, 2011.

[38] Letter from Kelly B. Stout, Esq., Bailey Kennedy, to Kimberly Okezie, Esq., Deputy Att'y Gen. (May 9, 2012), attached as Ex. 6-A.

[39] Ex. 5-A at July 17, 2012.

c. On June 3, 2013, counsel for the Estate made a final request for documents and provided a written release from Shae, as representative of the Estate.[40] PERS denied all requests.[41]

19. While PERS informed Mr. Shafer's counsel that "there are no contributions ***to be paid*** from the account of Ms. Freshman," it did not provide copies of documents that would establish what contributions were made.[42]

20. PERS takes the position that once it has determined that there are no benefits owed, the party contesting the decision is not allowed access to the relevant documents.[43]

21. Citing NRS 286.110 and 286.117, PERS' counsel denied the Estate access to the Records because (1) Shae is not a court-appointed representative of the Estate, and (2) the Estate is closed.[44] However, PERS' counsel has represented that it would comply with a valid court order.[45]

Accordingly, Shae and the Estate petition the Court to reopen the Estate, appoint Jared Shafer as Administrator, and issue letters of administration. After the Estate has been reopened and an Administrator has been appointed, the Administrator will seek an order compelling PERS to release the Records and, if necessary, administer any assets discovered.

II. SHAE GITTER IS A PROPER PARTY TO PETITION TO REOPEN THE ESTATE AND NOMINATE AN ADMINISTRATOR.

As the sole heir, Shae is a proper party to petition the court to reopen the Estate. NRS 151.240. Likewise, Shae has priority to serve or nominate an administrator. NRS 139.040.

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[40] Letter from Kelly B. Stout, Esq., Bailey Kennedy, to Kimberly Okezie, Esq., Deputy Att'y Gen. (June 3, 2012), attached as Ex. 6-B.

[41] Letter from Kimberly Okezie, Esq., Deputy Att'y Gen., to Kelly B. Stout, Esq., Bailey Kennedy (June 1, 2012), attached as Ex. 6-C; Letter from Kimberly Okezie, Esq., Deputy Att'y Gen., to Mark E. Katz, Esq., Katz & Assocs. (June 1, 2013), attached as Ex. 6-D; Ex. 5-A at July 19, 2012.

[42] Ex. 6-D at 2.

[43] Ex. 5-A at July 19, 2012 (quoting Kimberly Okezie); Stout Decl. ¶ 9, attached as Ex. 6.

[44] Ex. 6 at ¶ 9; Ex. 6-E.

[45] Ex. 6 at ¶ 9.

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LAS VEGAS, NEVADA 89148
PHONE (702) 562-8820

Shae nominates Jared E. Shafer, Professional Fiduciary Services of Nevada, as administrator of the Estate. NRS 139.050.

Mr. Shafer is qualified to serve as Administrator. NRS 139.010. He has attained the age of majority, he has never been convicted of a felony, and never been adjudged disqualified due to a conflict of interest.[46] Mr. Shafer has consented to serve.[47]

Shae further requests that Mr. Shafer be permitted to serve without posting bond or establishing a blocked account. Both are unnecessary because the Estate's known assets have already been distributed during the previous administration.

III. THE COURT MAY REOPEN THE ESTATE OF KRISTINE JO FRESHMAN BECAUSE IT IS NECESSARY TO OBTAIN ACCESS TO DOCUMENTS THAT MAY IDENTIFY AN ADDITIONAL ASSET OF THE ESTATE, WHICH IS A PROPER PURPOSE OF ADMINISTRATION.

Chapter 151 provides that the final settlement of an estate does not prevent [t]he subsequent issuance of letters if it becomes necessary or proper for any cause that letters should again be issued." NRS 151.240(1)(b). Similarly, an estate may be re-opened "for the purpose of administering other property which has been discovered." NRS 151.240(1)(a). Here, Shae requests letters in order to obtain access to documents relating to the deceased's pension plan in order to determine if the Estate or the deceased's designated beneficiaries are entitled to a distribution or refund. Preservation of the Estate's assets is indisputably a proper function of Administration. Additionally, the Estate has an interest in ensuring that Ms. Freshman's pension benefits are properly distributed in accordance with her wishes as evidenced by any specific designation.

Essentially, PERS requires that claimants who are denied benefits trust that the determination was correct while denying access to the only documents that could prove it wrong. For example, PERS reading of NRS 286.117[48] prohibits disclosure of pension documents to the

---

[46] Ex. 4 at ¶ 4.

[47] Shafer Consent, attached as Ex. 7.

[48] In support of its position, PERS cites to NRS 286.117, which provides that certain documents related to the administration of PERS are public documents. Petitioners do not dispute that the Records are confidential and properly protected from public inspection. Rather, Petitioners maintain that they should be permitted access to the specific documents that are the subject of this Petitioner.

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LAS VEGAS, NEVADA 89148
PHONE (702) 562-8820

spouse, children, and siblings of a deceased member unless PERS determines that the individual is a beneficiary. PERS concluded that Shae is not entitled to any distribution, benefit, or refund, whether as heir to the Estate or as a designated beneficiary, and cites its unilateral determination as grounds for refusing to disclose the factual basis of its conclusions.

Shae cannot assess the propriety of PERS' findings without access to the Records, and PERS will not permit inspection of the documents without reopening the Estate and obtaining a court order. Therefore, it is necessary to re-open the Estate and appoint an Administrator who will seek such an order and determine whether pension benefits are owed to the Estate or any other person.

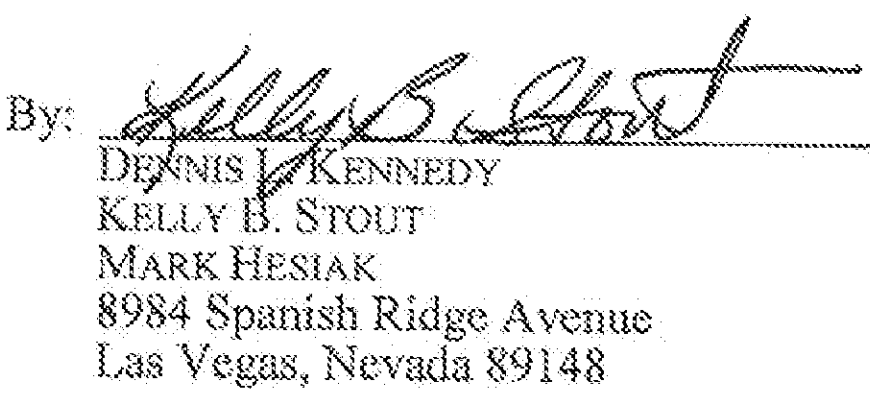
IV. CONCLUSION & PRAYER FOR RELIEF

Based on the foregoing, Shae requests that the Court;

1. Reopen the Estate of Kristine Jo Freshman;
2. Appoint Jared E. Shafer as Administrator; and
3. Issue letters of administration to Jared Shafer.

DATED this 7th day of October, 2013.

BAILEY ❖ KENNEDY

By: 

DENNIS L. KENNEDY
KELLY B. STOUT
MARK HESIAK
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Petitioners Shae E. Gitter and Jared E. Shafer

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148
PHONE (702) 562-8820

Exhibit 1

Exhibit 1

DECLARATION OF SHAE E. GITTER

I, Shae E. Gitter, declare as follows:

1. I am a resident of Clark County, Nevada and I am making this declaration in support of my VERIFIED PETITION TO REOPEN PROBATE ADMINISTRATION, APPOINTMENT OF ADMINISTRATOR, AND FOR ISSUANCE OF LETTERS OF ADMINISTRATION in the matter entitled *In the Matter of Kristine Freshman, Deceased*, No. P-09-067265-E, previously before the Eighth Judicial District Court of Clark County, Nevada.

2. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

3. My mother, Kristine Jo Freshman, was a kindergarten teacher who taught in Nevada's public school system for more than 20 years.

4. I am the only child, sole heir, and only beneficiary to the estate of my mother, Kristine Jo Freshman.

5. I am currently 24 years of age and reside at 4381 Greenhill Drive, Las Vegas, Nevada, 89121.

6. Walter Freshman is my step-father.

7. I received a letter dated December 17, 2009 from Nevada PERS requesting a copy of my mother's death certificate and informing me that their audit of her PERS account showed benefits may be available. A true and correct copy of that letter is attached as Exhibit 1-A.

8. I provided a copy of the death certificate to Nevada PERS on or about December 29, 2009, in response to that request.

9. I received a letter dated January 10, 2010 from Rayna Palazzolo, PERS Production Services Division, regarding my eligibility for survivor benefits. A true and correct copy of that letter is attached as Exhibit 1-B.

10. I replied by submitting a completed PERS application for survivor benefits.

BAILEY ❖ KENNEDY
[illegible]
LAS VEGAS, NEVADA [illegible]
PHONE (702) 562-8820
FAX (702) 562-8821

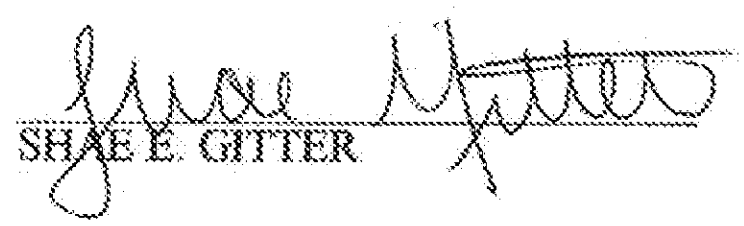
11. Brian Snyder, PERS Director of Employer & Production Services, informed me that my application was denied in a letter dated June 10, 2011. A true and correct copy of that letter is attached as Exhibit 1-C.

12. To date, I have been unable to secure a copy of my mother's designation of survivor beneficiaries or any other documentation from PERS justifying its denial of benefits.

13. PERS' steadfast refusal to provide access to documents related to my mother's PERS account prompts my petition.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 3rd day of October, 2013.



SHAE E. GITTER

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148
PHONE (702) 562-8820
FAX (702) 562-8821

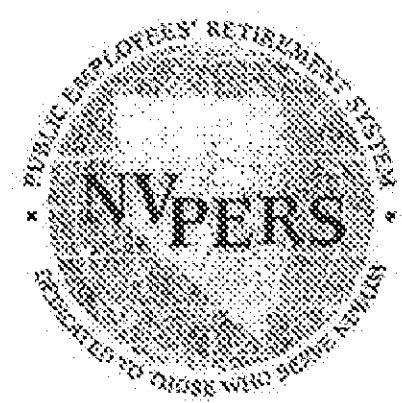
Exhibit 1-A

Exhibit 1-A

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

James Green
David F. Rallas
Bart Mangino
David Olson
Charles A. Silvestri



Executive Staff

Dana R. Bilyeu
Executive Officer

Tina M. Lenz
Operations Officer

Ken Lambert
Investment Officer

December 17, 2009

Shae Gitter
1818 Oasis Court
Laughlin NV 89029

RECEIVED
DEC 29 2009
LVE PERS

Dear Shae:

We have been notified of the death of Kristine Freshman, please accept our sincere condolences. Please forward a photocopy of the death certificate at your earliest convenience.

A recent audit of Ms. Freshman's account has revealed that there may be benefits available. Once we receive the death certificate we will make a final determination of eligibility for benefits.

Should you require further assistance, please contact us and ask to speak with a Counseling Services representative.

Sincerely,

Carrie Elena Harrison

Carrie E Harrison
Production Services Division

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697

Toll Free: 1-866-473-7768 Website: www.nvpers.org

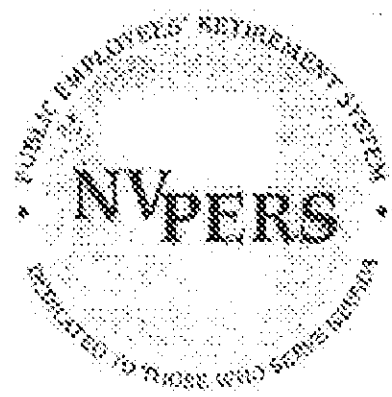
Exhibit 1-B

Exhibit 1-B

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

James Geyer
Bert T. Mudgett
David Olsen
Paul C. Page
Charles A. Silvestri



Executive Staff

Dana K. Bilyeu
Executive Officer

Tina M. Lenz
Operations Officer

Ken Lembke
Investment Officer

January 10, 2010

Shae Ellen Gitter
1818 Oasis Court
Laughlin, NV 89029

RE: Kristine Freshman
SSN: XXX-XX-1686

Dear Ms. Gitter:

We have been notified of the death of Kristine Freshman, please accept our sincere condolences. We have reviewed the account and determined that eligibility may exist for survivor benefits. Based on employment and personal information provided to date, it appears that you may be entitled to receive:

1. A monthly benefit in the approximate amount of $2,900.00 payable for your lifetime. An application for survivor beneficiary benefits is enclosed. If you wish to receive a monthly benefit, please complete, sign in the presence of a notary public, and return the form to our office together with the appropriate documentation listed in our instruction sheet.

OR

2. A lump-sum refund of approximately 50% of the employer paid contributions in the approximate amount of $112,000.00. There may be a tax liability on all or a portion of this amount. If you wish to receive a refund of mandated contributions, please sign and return the enclosed refund request form only.

Once we have received the complete documents based on your benefit selection, we will make a final determination of your eligibility to receive a survivor benefit.

Should you require further assistance, please contact us and ask to speak with a Counseling Services representative.

Sincerely,

Rayna Palazzolo
Production Services Division

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 878-6934

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 384-0697

Toll Free: 1-866-473-7768 Website: www.nvpers.org

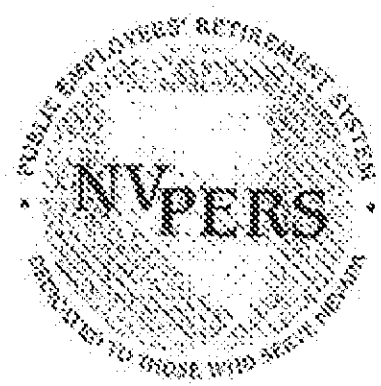
Exhibit 1-C

Exhibit 1-C

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

Chris Collins
James Green
Bart T. Mangino
David Olson
Charles A. Silvestri



Executive Staff

Dana R. Bilyeu
Executive Officer

Tina M. Lenz
Operations Officer

Ken Lambert
Investment Officer

June 10, 2011

Shae Ellen Gitter
1818 Oasis Court
Laughlin, NV 89029

Dear Ms. Gitter:

We have received your application for Survivor Benefits regarding your mother, Kristine Freshman, who passed away as an active member of the Public Employees' Retirement System (System). The Retirement Act, chapter 286 of the Nevada Revised Statutes, governs any benefits or funds available as a result of membership in the System.

NRS 286.671 et. seq., governs the System regarding benefits for survivors. In the case of a member who was married at the time of death, the member's spouse and minor children are the persons eligible to receive benefits.

NRS 286.669 provides that if the spouse is convicted of the murder or voluntary manslaughter of a member of the System, the spouse is ineligible to receive any benefit conferred by any provision of the Retirement Act by reason of death of that member. Neither this provision, nor any other provision in the Retirement Act, makes any other person eligible to receive such benefit. Based upon the previously mentioned statutes, the System is unable to pay benefits pursuant to your application.

If you have any questions or concerns, please contact me at (775) 687-4200 extension 230.

Sincerely,

Brian Snyder, Director
Employer & Production Services

bsnyder@nvpers.org

775-687-4200 x 230

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-6697

Toll Free: 1-866-473-7788 Website: www.nvpers.org

Exhibit 2

Exhibit 2

ORIGINAL

GMEM
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781
NOREEN NYIKOS
Chief Deputy District Attorney
Nevada Bar #008213
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
SEP 2 0 2010
BY KEITH REED, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- WALTER EUGENE FRESHMAN, #1541338 Defendant.	CASE NO: 10C261323 DEPT NO: VI

10C261323
GPA
Guilty Plea Agreement
642501

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **MURDER IN THE SECOND DEGREE (Category A Felony - NRS 200.010, 200.030)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State has agreed to retain the right to argue at rendition of sentence.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than TEN (10) years to Life in Prison or a definite term of TEN (10) years and a maximum term of not more than TWENTY-FIVE (25) years. I understand that the law requires me to pay

P:\WPDOCS\INDICTLYING\LDS\031802.doc

an Administrative Assessment Fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offense(s) to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for any expenses related to my extradition, if any.

I understand that I am not eligible for probation for the offense to which I am pleading guilty.

I also understand that I must submit to blood and/or saliva tests under the Direction of the Division of Parole and Probation to determine genetic markers and/or secretor status.

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I also understand that information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.

I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

I understand that if the State of Nevada has agreed to recommend or stipulate a particular sentence or has agreed not to present argument regarding the sentence, or agreed not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor when the offense could have been treated as a felony, such agreement is contingent upon my appearance in court on the initial sentencing date (and any subsequent dates if the sentencing is continued). I understand that if I fail to appear for the scheduled sentencing date or I commit a new criminal offense prior to sentencing the State of Nevada would regain the full right to argue for any lawful sentence.

I understand if the offense(s) to which I am pleading guilty to was committed while I

was incarcerated on another charge or while I was on probation or parole that I am not eligible for credit for time served toward the instant offense(s).

I understand that as a consequence of my plea of guilty, if I am not a citizen of the United States, I may, in addition to other consequences provided for by federal law, be removed, deported, excluded from entry into the United States or denied naturalization.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, then the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional

or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

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My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 20 day of September, 2010.

WALTER EUGENE FRESHMAN
Defendant

AGREED TO BY:

NOREEN NYIKOS
Chief Deputy District Attorney
Nevada Bar #008213

CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

4. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement.

b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily.

c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the defendant as certified in paragraphs 1 and 2 above.

Dated: This 29 day of September, 2010.

ATTORNEY FOR DEFENDANT

ckb

Exhibit 3

Exhibit 3

STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES
DIVISION OF HEALTH — VITAL STATISTICS

CERTIFICATE OF DEATH

2009017950
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK

DECEDENT

1a. DECEASED NAME (FIRST,MIDDLE,LAST,SUFFIX): Kristine Jo FRESHMAN
2. DATE OF DEATH (Mo/Day/Year): December 08, 2009
3a. COUNTY OF DEATH: Clark
3b. CITY, TOWN, OR LOCATION OF DEATH: Laughlin
3c. HOSPITAL OR OTHER INSTITUTION -Name(If not either, give street and number): 1818 Oasis Court
3d. If Hosp. or Inst. indicate DOA,OP,Emer, Rm, Inpatient(Specify): Home
4. SEX: Female
5. RACE (Specify): White
6. Hispanic Origin? Specify No - Non-Hispanic
7a. AGE-Last birthday (Years): 57
7b. UNDER 1 YEAR MOS DAYS
7c. UNDER 1 DAY HOURS MINS
8. DATE OF BIRTH (Mo/Day/Yr): February 12, 1952
9a. STATE OF BIRTH (If not U.S.A., name country): Colorado
9b. CITIZEN OF WHAT COUNTRY: United States
10. EDUCATION: 18
11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify): Married
12. SURVIVING SPOUSE (If wife, give maiden name): Walter FRESHMAN

IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS

13. SOCIAL SECURITY NUMBER: 522-82-1686
14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired): Teacher
14b. KIND OF BUSINESS OR INDUSTRY: Education
Ever in US Armed Forces? No
15a. RESIDENCE - STATE: Nevada
15b. COUNTY: Clark
15c. CITY, TOWN OR LOCATION: Laughlin
15d. STREET AND NUMBER: 1818 Oasis Court
15e. INSIDE CITY LIMITS (Specify Yes or No): Yes

PARENTS

16. FATHER - NAME (First Middle Last Suffix): Allen W MACE
17. MOTHER - NAME (First Middle Last Suffix): Shirley M CROMER

DISPOSITION

18a. INFORMANT- NAME (Type or Print): Shirley MACE
18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip): P.O. Box 400 Saratoga, Wyoming 82331
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify): Cremation
19b. CEMETERY OR CREMATORY - NAME: Hites Crematory
19c. LOCATION City or Town State: Henderson Nevada 89011
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such): JAMES LEE
SIGNATURE AUTHENTICATED
20b. FUNERAL DIRECTOR LICENSE: 89
20c. NAME AND ADDRESS OF FACILITY: Hites Funeral Home
433 W Sunset Road Henderson NV 89011

TRADE CALL

TRADE CALL - NAME AND ADDRESS

CERTIFIER

To Be Completed by Attending Physician

21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)
21b. DATE SIGNED (Mo/Day/Yr)
21c. HOUR OF DEATH
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)

To Be Completed by Coroner/Medical Examiner

22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)
ALANE OLSON M.D.
SIGNATURE AUTHENTICATED
22b. DATE SIGNED (Mo/Day/Yr): December 11, 2009
22c. HOUR OF DEATH: 18:30
22d. PRONOUNCED DEAD (Mo/Day/Yr): December 08, 2009
22e. PRONOUNCED DEAD AT (Hour): 16:30
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print): Alane Olson M.D. 1704 Pinto Lane Las Vegas, NV 89106
23b. LICENSE NUMBER: 9452

REGISTRAR

24a. REGISTRAR (Signature): NINETTE HARRINGTON
SIGNATURE AUTHENTICATED
24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr): December 11, 2009
24c. DEATH DUE TO COMMUNICABLE DISEASE: YES ☐ NO ☒

CAUSE OF DEATH

CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE (a) STATING THE UNDERLYING CAUSE LAST

25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)
PART I
(a) Gunshot wound of the head — Interval between onset and death
DUE TO, OR AS A CONSEQUENCE OF: — Interval between onset and death
(b) — Interval between onset and death
DUE TO, OR AS A CONSEQUENCE OF: — Interval between onset and death
(c) — Interval between onset and death
DUE TO, OR AS A CONSEQUENCE OF: — Interval between onset and death
(d)

PART II
26. AUTOPSY (Specify Yes or No): Yes
27. WAS CASE REFERRED TO CORONER (Specify Yes or No): Yes
28a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST. (Specify): Homicide
28b. DATE OF INJURY (Mo/Day/Yr): December 08, 2009
28c. HOUR OF INJURY: 1532
28d. DESCRIBE HOW INJURY OCCURRED: Assault
28e. INJURY AT WORK (Specify Yes or No): No
28f. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify): Home
28g. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE: 1818 Oasis Court Laughlin Nevada

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED SEAL OF THE SOUTHERN NEVADA HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.
Registrar of Vital Statistics
By:

Date Issued: DEC 11 2009

Exhibit 4

Exhibit 4

DECLARATION OF JARED E. SHAFER

I, Jared E. Shafer, declare as follows:

1. I was the Administrator of the Estate of Kristine Jo Freshman, deceased, in the matter entitled *In the Matter of Kristine Freshman, Deceased*, No. P-09-067265-E, previously before the Eighth Judicial District Court of Clark County, Nevada. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

2. I make this declaration in support of Petitioners' VERIFIED PETITION TO REOPEN PROBATE ADMINISTRATION, APPOINTMENT OF ADMINISTRATOR, FOR ISSUANCE OF LETTERS OF ADMINISTRATION.

3. I am a natural person and a resident of Nevada.

4. I have attained the age of majority, never been convicted of a felony, and never been adjudged disqualified due to a conflict of interest.

5. On December 17, 2009, I was appointed as Special Administrator, due to the circumstances of Ms. Freshman's death.

6. I forwarded a copy of this Court's Order Approving Ex-Parte Petition for the Appointment of Special Administrator and Issuance of Letters of Special Administrator to PERS on or about December 17, 2009. The court order directed PERS to immediately provide me, in my capacity as Administrator, with any and all benefits payable from Ms. Freshman's PERS retirement to account for and disperse the funds appropriately.

7. In a letter dated December 21, 2009, Christine Munro, a deputy to the Attorney General, informed me that PERS deemed Walter Freshman the only statutory beneficiary and summarily rejected any request for payment to the Estate. This response from the Office of the Attorney General was bereft of any supporting documentation from Ms. Freshman's PERS account. A true and correct copy of that letter is attached as Exhibit 4-A.

8. On May 11, 2011, Mark Katz, counsel for the Administrator, contacted the Nevada Attorney General inquiring about survivor benefits. I was a recipient of that letter. A true and correct copy of that letter is attached as Exhibit 4-B.

BAILEY ❖ KENNEDY
[illegible]
Las Vegas, Nevada [illegible]
PHONE (702) 562-8820
FAX (702) 562-8821

9. On August 25, 2011, I contacted PERS and requested information detailing any benefits payable and instructions for obtaining such payment for the Estate or Shae Gitter. A true and correct copy of my fax simile to PERS is attached as Exhibit 4-C.

10. Receiving no response to my August 25, 2011 request for information, I resent my request on August 26, 2011, and August 30, 2011.

11. As of October 2011, the possibility of PERS retirement benefits was the only unresolved issue in administering the Estate of Ms. Freshman. I determined that it was appropriate to assign the Estate's right to benefits, if any, to its only heir – Shae Gitter – and allow her to pursue benefits in her individual capacity and on behalf of the Estate.

12. On October 21, 2011, the Court closed the Estate, and I was discharged accordingly.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 3rd day of Oct, 2013.

JARED E. SHAFER

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148
PHONE (702) 562-8820
FAX (702) 562-8821

Exhibit 4-A

Exhibit 4-A

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

December 21, 2009

SENT VIA FACSIMILE and US MAIL

Jared E. Schafer
Professional Fiduciary Services of Nevada, Inc.
PO Box 50790
Henderson, NV 89016

Re: Kristine Jo Freshman and PERS Survivor Benefits

Dear Mr. Schafer:

I am a Senior Deputy Attorney General and I represent the Public Employees' Retirement System of Nevada (hereafter "PERS" or the "System"). The System received a copy of the Order Approving Ex-Parte Petition for the Appointment of Special Administrator and Issuance of Letters of Special Administrator on December 21, 2009. The Order states in relevant part:

> Any and all retirement benefits that are immediately payable from the Pubic Employees' Retirement System of Nevada to the Decedent, the Decedent's estate, or Walter Freshman, or payable from the Public Employees' Retirement System of Nevada to the Decedent, the Decedent's estate, or Walter Freshman with respect to the death of the Decedent shall be paid to and collected by Jared Schafer and deposited into a blocked account and Jared Schafer shall not make any payments or other disbursements therefrom until further order of this court . . . .

Telephone 775-688-1818 • Fax 775-688-1822 • www.ag.state.nv.us • E-mail aginfo@ag.state.nv.us

The System is governed by Chapter 286 of the Nevada Revised Statute. NRS Chapter 286 is the only authority on how PERS benefits are calculated and distributed. Chapter 286 controls how benefits are paid and when they are paid, including survivor benefits.

More specifically, NRS 286.669 governs the disposition of PERS benefits when a member is unlawfully killed by a spouse. The legislature, by enacting this statute, has given PERS specific duties and obligations to carry out, if and when this kind of unfortunate situation arises.

It is the System's understanding that the deceased, Ms. Freshman, was married at the time of her death and was killed by her husband. See Copy of Certificate of Death and Las Vegas Review Journal article, dated December 11, 2009, attached hereto. At the time of her death, Kristine Freshman was married to Walter Freshman.

Pursuant to Chapter 286, spouses, defined as surviving husbands or wives of deceased members, see NRS 286.671, are entitled to benefit payments in the event of the death of a member. *See* NRS 286.674–6766.

However, NRS 286.669 states:

> Any person convicted of the murder or voluntary manslaughter of a member of the System is ineligible to receive any benefit conferred by any provision of this chapter by reason of the death of that member. The System may withhold the payment of any benefit otherwise payable under this chapter by reason of the death of any member from any person charged with the murder or voluntary manslaughter of that member, pending final determination of those charges.

NRS 286.669 provides that persons convicted of the murder of a member are ineligible to receive benefit payments and the System may withhold such benefit payments otherwise payable from such persons "pending final determination of those charges." *See* NRS 286.669. PERS is required to apply the terms and conditions of NRS 286.669 and withhold any surviving spouse benefit from Mr. Freshman, until the charge of murder with a deadly weapon against him is determined by the courts.

As such, PERS will not pay to Mr. Freshman any spousal survivor benefits if his conviction is upheld by the Nevada Supreme Court. As he is the only statutory beneficiary, there is no benefit or money that could legally be paid to Ms. Freshman's estate at this time.

I hope this information is helpful. Should you have any questions please do not hesitate to contact me at (775) 850-4101.

Yours truly,

CATHERINE CORTEZ MASTO
Attorney General

By: Christine S. Munro
CHRISTINE S. MUNRO
Senior Deputy Attorney General
(775) 850-4101

Enclosure(s)

cc: Tina Leiss, Operations Officer, PERS

CSM:ks

Exhibit 4-B

Exhibit 4-B

KATZ & ASSOCIATES
ATTORNEYS AT LAW

MAY 16 2011

May 11, 2011

Nevada Attorney General
5420 Kietzke Lane
Suite 202
Reno, NV 89511
Attn: Christine S. Munro, Esq.
Senior Deputy Attorney General

Re: Kristine Jo Freshman, Deceased and PERS Survivor Benefits

Dear Ms. Munro:

This firm represents Mr. Jared Schafer, the Special Administrator of the Estate of Kristine Jo Freshman, deceased (the "*Estate*"). You may recall that Mr. Schafer made a request with respect to all of the benefits to which Mrs. Freshman and/or her heirs are entitled with respect to her death.

In response to Mr. Shafer's request, you sent him your December 21, 2009 letter (the "*Letter*"), a copy of which is enclosed for your convenience. The Letter states that:

> "PERS will not pay to Mr. Freshman any spousal survivor benefits if his conviction is upheld by the Nevada Supreme Court. As he is the only beneficiary, there is no benefit or money that could legally be paid to Ms. Freshman's estate at this time."

Enclosed you will find the "filed stamped" Petition and the associated "filed stamped" Order issued by the Court, and in which the Court declared Mr. Freshman to be a "killer" within the scope of NRS 41B. Attached to the Petition as **Exhibit 1** is the Plea Agreement Mr. Freshman entered into with the District Attorney in which he pled guilty to Murder in the Second Degree and waived his rights to appeal his conviction (See paragraph No. 6 under Waiver of Rights on page 3). Attached to the Petition as **Exhibit 2** is a printout of the Court Minutes showing that the Court accepted Mr. Freshman's guilty plea.

Based on the above, please: (a) take any and all action necessary to ensure the forfeiture of all of Mr. Freshman's rights with respect to, or otherwise arising from, the death of Mrs. Kristine Jo Freshman, deceased; and (b) again inquire as to whether there are any benefits or other assets that are recoverable by the Estate and/or any other person with respect to the death of Kristine Jo Freshman, deceased.

8965 S. EASTERN AVENUE, SUITE 360 • LAS VEGAS, NV 89123 • (702) 989-9455 • (702) 989-9499 (FAX)

Should you have any questions, please do not hesitate to contact us at 702-989-9455 or Mr. Schafer's office at 702-456-5152. Thank you in advance for your assistance in this matter.

Sincerely,
KATZ & ASSOCIATES

Mark S. Katz, Esq.

MSK/eg

Enclosures as stated

cc: Mr. Jared E. Schafer

Exhibit 4-C

Exhibit 4-C

PO Box 50790
Henderson, NV 89016
Phone: 702.456.5152
Fax: 702.459.5152
office@pfsn.com

PFSN, Inc.
Professional Fiduciary Services of Nevada, Inc.

Emailed 8/26/11
Re-sent 8/30/11
Moved 9/6/11

Fax

To: Brian Snyder
NV PERS

From: **Jared E. Shafer**

Fax: 775-687-6131 **Date:** August 25, 2011

Phone: 775-687-4200 x230 **# of Pages:** 5 **(includes this cover)**

Re: Estate of Kristine Freshman **CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

NS 9/8

Mr. Snyder,

Following please find a copy of the Order terminating Walter Freshman's rights to inherit from the above-referenced decedent, or to receive any benefits resulting from her death, including any retirement and/or survivor benefits available from NV PERS.

At your earliest convenience, please provide our office the detail of any benefits payable, to whom they are now payable (likely Ms. Freshman's daughter Shae or the Estate), and the forms and instructions needed to claim the benefits.

We are in the process of closing this Estate. The information from PERS is the last piece required. Your prompt attention to this request would be greatly appreciated. Please contact me or my Assistant, Amy Deittrick, by phone to discuss this matter.

Jared E. Shafer

Please see that this facsimile is delivered immediately upon receipt. If there is any problem with this transmission, please call (702) 456-5152.

The information contained in this facsimile message is privileged and confidential; it is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient (or the employee or agent responsible to deliver it to the intended recipient), you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please immediately notify us by telephone and return the original message to us at the above address via the US Postal Service. We will be happy to reimburse you for any costs. Thank you.

Exhibit 5

Exhibit 5

DECLARATION OF AMY VIGGIANO DEITTRICK

I, Amy Viggiano Deittrick, declare as follows:

1. I am a resident of Clark County, Nevada, and an employee of Professional Fiduciary Services of Nevada, Inc.

2. I am making this declaration in support of Petitioners' VERIFIED PETITION TO REOPEN PROBATE ADMINISTRATION, APPOINTMENT OF ADMINISTRATOR, AND FOR ISSUANCE OF LETTERS OF ADMINISTRATION regarding the matter entitled *In the Matter of Kristine Freshman, Deceased*, No. P-09-067265-E, previously before the Eighth Judicial District Court of Clark County, Nevada.

3. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following. Except for those matters stated herein on information and belief, I have personal knowledge of the matters stated in this declaration. As for those matters stated herein on information and belief, I am informed and believe such matters to be true.

4. On August 30, 2011, I sent an e-mail to Brian Snyder, PERS Director of Employer & Production Services, requesting a response to Jared Shafer's facsimiles dated August 24 and 26, 2011. A true and correct copy of my e-mail exchange with Mr. Snyder is attached as Exhibit 5-A

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 03RD day of OCTOBER, 2013.

AMY V. DEITTRICK

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148
PHONE: (702) 562-8820
FAX: (702) 562-8821

Exhibit 5-A

Exhibit 5-A

Redacted

From: Brian Snyder [mailto:bsnyder@nvpers.org]
Sent: Thursday, July 19, 2012 2:05 PM
To: Amy Viggiano Deittrick
Subject: RE: Freshman, Kristine

Hello Amy,
Listed below is the response from our attorney.
Thank you

Brian Snyder, Director
Employer & Production Services
Public Employees' Retirement System of Nevada
693 West Nye Lane
Carson City, NV 89703
(775) 687-4200 extension 230

Hi Brian,

If I recall correctly, this is the Estate's Attorney. However, I read NRS 286.117 to allow information to "... a beneficiary after the death of the employee on whose account benefits are received." As it is PERS position that there are no benefits to be received, NRS 286.117 does not allow for the information to be reviewed.

Thanks,

Kimberly Okezie

Deputy Attorney General
(775) 684-1270

From: Amy Viggiano Deittrick [mailto:amy@pfsn.com]
Sent: Tuesday, July 17, 2012 11:37 AM
To: Brian Snyder
Subject: RE: Freshman, Kristine
Importance: High

Brian,

Please recall this issue. Although we have received NV PERS' determination that nothing is payable to Kristine Freshman's daughter, our attorney is requesting the following information:

"In particular, I'm interested in any documents that show contributions (from either the employer or the employee), the account "balance" (or whatever would show what Walter Freshman would have been entitled to if he had not been the cause of her death), and her designation of beneficiaries."

Please advise as to the quickest way for me to obtain this information. I look forward to and appreciate your prompt response.

Thank you,

Amy

Amy Viggiano Deittrick
AVID Business Services
in support of Professional Fiduciary Services of Nevada, Inc.
PO Box 50790
Henderson, NV 89016
702.456.5152 Office
702.459.5152 FAX
702.595.7282 Cell
amy@pfsn.com

From: Brian Snyder [mailto:bsnyder@nvpers.org]
Sent: Tuesday, August 30, 2011 3:19 PM
To: Amy Viggiano Deittrick
Subject: RE: Freshman, Kristine

Hello Amy,
I have forwarded your attachments to our attorney for review. She will probably be the one that will respond, but I will give you an update by tomorrow.
Thank you

Brian Snyder, Director
Employer & Production Services
Public Employees' Retirement System of Nevada
693 West Nye Lane
Carson City, NV 89703
(775) 687-4200 extension 230

From: Amy Viggiano Deittrick [mailto:amy@pfsn.com]
Sent: Tuesday, August 30, 2011 11:41 AM
To: Brian Snyder
Subject: Freshman, Kristine
Importance: High

Brian,

Have you had a chance to review this request which I faxed to you on 08/25 and emailed to you on 08/26? Please contact me once you do.

Thank you,

Amy

Amy Viggiano Deittrick
AVID Business Services
in support of Professional Fiduciary Services of Nevada, Inc.
PO Box 50790
Henderson, NV 89016
702-456-5152 Office
702-459-5152 FAX
702-592-7282 Cell

This e-mail, and any attachments thereto, are intended only for use by the addressee named herein, and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby, notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me and destroy the original and any copy of any e-mail or attachment.

Exhibit 6

Exhibit 6

DECLARATION OF KELLY B. STOUT

I, Kelly B. Stout, declare as follows:

1. I am a resident of Clark County, Nevada, and an associate in the law firm of Bailey❖Kennedy, counsel for Petitioners Shae Gitter and Jared Schafer in the matter entitled *In the Matter of Kristine Freshman, Deceased*, No. P-09-067265-E, previously before the Eighth Judicial District Court of Clark County, Nevada. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

2. I make this declaration in support of Petitioners' VERIFIED PETITION TO REOPEN PROBATE ADMINISTRATION, APPOINTMENT OF ADMINISTRATOR, AND FOR ISSUANCE OF LETTERS OF ADMINISTRATION.

3. Based on personal knowledge, information provided to me by my clients in this matter, and third-party witnesses, I am informed and believe that:

a. Public Employees' Retirement System of Nevada ("PERS") is in sole possession of documents related to Kristine Jo Freshman's ("Ms. Freshman") PERS account;

b. PERS, under guidance from counsel at the Office of the Attorney General (OAG), has withheld these documents from Ms. Freshman's estate, Ms. Freshman's heir, Shae Gitter, and their counsel;

c. These documents are necessary to determine what, if any, benefits are owed to the Estate of Kristine Freshman, or its heir, Shae Gitter.

4. On May 9, 2012, I spoke with Deputy Attorney General Kimberly Okezie, and requested copies of documents related to Ms. Freshman's PERS account, including the account balance, member contributions, and designation of beneficiaries. Following my conversation with Ms. Okezie, I sent her a written request for such documents. A true and correct copy of my letter to Ms. Okezie is attached as Exhibit 6-A.

5. Ms. Okezie denied my request in a letter dated June 1, 2012. A true and correct copy of that letter is attached as Exhibit 6-D.

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148
PHONE (702) 562-8820
FAX (702) 562-8821

6. Similarly, on June 1, 2012, Ms. Okezie denied a similar request from Mark S. Katz, Esq., who was, at that time, representing the Estate of Kristine Freshman. Exhibit 6-C is a true and correct copy of the letter Mr. Katz provided to me in the case file when I began representing the Estate.

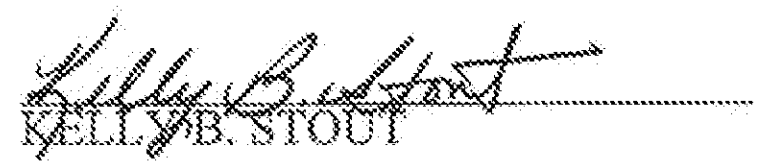
7. On June 3, 2013, I again requested copies of the abovementioned documents and enclosed a release signed by Shae, as representative of the Estate. A true and correct copy of this second letter to Ms. Okezie is attached as Exhibit 6-B.

8. Ms. Okezie denied my request a second time on June 6, 2013. A true and correct copy of that letter is attached as Exhibit 6-E.

9. During my telephone conversations with Ms. Okezie in May and June 2013, she explained that PERS takes the position that under the facts of this case, there are no persons authorized to access Ms. Freshman's account documents and the Estate is closed. Therefore, Ms. Okezie explained that PERS is permitted to disclose this documents and information only upon court order.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 7th day of October, 2013.



KELLY B. STOUT

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148
PHONE (702) 562-8820
FAX (702) 562-8821

Exhibit 6-A

Exhibit 6-A

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
T: 702.562.8820
F: 702.562.8821

BAILEY ❖ KENNEDY
ATTORNEYS AT LAW

KELLY B. STOUT
Direct Dial
702.853.0759
KStout@BaileyKennedy.com

May 9, 2012

Via Electronic Mail: kokezie@ag.nv.gov

Kimberley Okezie
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Re: NVPERS Account of Kristine Freshman, SS # XXX-XX-1686

Dear Ms. Okezie:

Thank you very much for taking the time to speak with me this morning. As I promised during our call, I am sending you some of the documents that I think might help you answer my questions. I have also summarized the facts for you, below.

I was recently retained by Shae Gitter, the only child of Kristine Freshman. Ms. Freshman had been a Clark County elementary school teacher for more than twenty years at the time of her death, and was a member of NVPERS. Shea is currently a junior at UNLV and has not been able to recover any benefits from her mother's account. She has asked me to inquire as to whether there are any benefits available to her or Ms. Freshman's estate.

As you know, Ms. Freshman was killed by her husband, Walter Freshman, on December 6, 2009. Mr. Freshman entered into a plea agreement on September 20, 2010, in which he pled guilty to murder in the second degree, Case No. 10C261323, filed in the Eighth Judicial District Court of Clark County, Nevada. As part of his plea agreement, Mr. Freshman waived the right to appeal the conviction unless challenging the legality of the proceeding on constitutional grounds or otherwise provided for in NRS 174.035(3). The court accepted his plea the same day.

In November 2010, a petition was filed to terminate Mr. Freshman's rights in and to the estate of Kristine Freshman. The court granted the unopposed petition on December 10, 2010. The Order declared Mr. Freshman a "killer," as defined in NRS Chapter 41B, and that Mr. Freshman is deemed to have predeceased Ms. Freshman for all purposes of inheriting from Ms. Freshman or receiving benefits under any governing instrument. For your convenience, I have attached a copy of the Petition, the Petition's exhibits which include the relevant documents from the criminal action against Mr. Freshman, and the Order granting the petition.

Shea has told me that the attorney who was handling her mother's estate, Mark Katz, and the estate's Special Administrator, Jared E. Schafer, have previously been in contact with both

NVPERS and your office. The last she heard, there was a meeting scheduled in September 2011, between NVPERS, the Office of the Attorney General, and some other individuals. Shea is not aware of what has happened since then. I would appreciate it if you could look into the matter and provide me with an update on her mother's account and what, if anything, Shea must do to obtain whatever benefits are available.

Finally, Shea does not have copies of any documents related to her mother's account. If you could provide me with copies of any documents that you have regarding the account balance, her mother's contributions, designation of beneficiaries, or any other information, I would greatly appreciate it.

Please feel free to call me if you have any questions. Thank you again for looking into this matter for Shea.

Sincerely,

/s/ Kelly B. Stout

Kelly B. Stout

KBS/cs

Encs: Death Certificate for Kristine Freshman, dated December 11, 2009
Petition To Terminate All Rights of Walter E. Freshman, with exhibits, filed Nov. 4, 2010
Order Terminating All Rights of Walter E. Freshman, filed December 10, 2010

Exhibit 6-B

Exhibit 6-B

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone 702.562.8820
Facsimile 702.562.8821
www.BaileyKennedy.com

BAILEY ❖ KENNEDY
ATTORNEYS AT LAW

Kelly B. Stout
Direct Dial
702.853.0759
KStout@BaileyKennedy.com

June 3, 2013

Kimberley Okezie
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Re: NVPERS Account of Kristine Freshman, SS # XXX-XX-1686

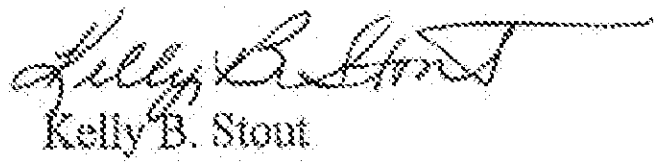
Dear Ms. Okezie:

This letter serves as a follow-up to your June 1, 2012 response to my request for the documents related to the NVPERS account of Kristine Freshman, the deceased mother of my Client Shea Gitter. In response to my request, you stated that such records were confidential under NRS 286.110 and NRS 286.117.

Since our last correspondence, we have been retained by Ms. Gitter[1] to represent the Estate of Kristine Freshman. As the Estate's representative, Ms. Gitter has executed the waiver required by NRS 286.117 to allow Bailey❖Kennedy to copy and review all records of Kristine Freshman's NVPERS account (a copy of which is attached hereto as Exhibit B). Therefore, I request copies of all records relating to the NVPERS account of Kristine Freshman.

In the event you again decline to produce these records, please provide the authority under which you are denying this request.

Sincerely,



Kelly B. Stout

KBS/kjr

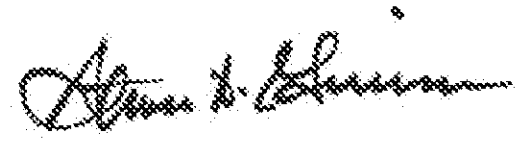
---

[1] Pursuant to the attached Order, Ms. Gitter is the sole representative of the Estate. *See* Order Approving Report and Pet. to Convert to General Administration, for Appointment of Administrator; for Approval of First and Final Account; Payment of Attorney's Fees; and Final Distribution, attached hereto as Exhibit A.

EXHIBIT A

EXHIBIT A

Electronically Filed
10/21/2011 12:11:21 PM



CLERK OF THE COURT

ORDR
Mark S. Katz, Esq.
Nevada Bar No. 6371
8965 S. Eastern Avenue, #360
Las Vegas, NV 89123
(702) 989-9455
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of KRISTINE JO FRESHMAN, Deceased.	CASE NO.: P-09-067265-E DEPT. H

ORDER APPROVING REPORT AND PETITION TO CONVERT TO GENERAL ADMINISTRATION, FOR APPOINTMENT OF ADMINISTRATOR; FOR APPROVAL OF FIRST AND FINAL ACCOUNT; PAYMENT OF ATTORNEY'S FEES; AND FINAL DISTRIBUTION

Date: October 21, 2011
Time: 9:30 a.m.

This Court, having considered the **REPORT AND PETITION TO CONVERT TO GENERAL ADMINISTRATION, FOR APPOINTMENT OF ADMINISTRATOR; FOR APPROVAL OF FIRST AND FINAL ACCOUNT; PAYMENT OF ATTORNEY'S FEES; AND FINAL DISTRIBUTION** (the "***Petition***") submitted by JARED E. SHAFER, the Special Administrator of the Estate of Kristine Jo Freshman, deceased (the "***Estate***"), which came on for hearing on this 21st day of October, 2011, at the hour of 9:30 a.m., and no person having appeared to contest or object to the Petition, hereby finds that all notices of this hearing have been duly given as required by law and that all the facts and matters set forth in the Petition are true and correct.

BASED ON THE FOREGOING, this Court hereby orders as follows:

A. The Report filed by Jared E. Shafer is hereby accepted;

Dispositions
☐ - Voluntary Dismissal
☐ - Transferred (before/during trial)
☐ - Involuntary (statutory) Dismissal
☐ - Judgment on Arbitration Award
☐ - Stipulated Dismissal
☐ - Stipulated Judgment
☒ - Summary Judgment
☐ - Non-Jury (bench) Trial
☐ - Jury Trial
Final Dispositions
☐ - Time Limit Expired
☐ - Dismissed (with/without prejudice)
☐ - Judgment Satisfied/Paid

B. The administration of the Estate is hereby converted to a general administration;

C. Jared E. Shafer is hereby appointed as the Administrator of the Estate and Letters of Administration shall be issued to Jared E. Shafer, to serve without bond, upon his taking the oaths required by law;

D. That the First and Final Account as set forth in the Petition is hereby settled, allowed, and approved as filed;

E. All the acts and transactions of the Petitioner in his capacity as Special Administrator of the Estate as disclosed in the First and Final Account are hereby confirmed and approved;

F. That Petitioner has used reasonable diligence in performing his duties and in the administration of the Estate;

G. Petitioner is hereby authorized to pay himself $2,544.30 for all the general services provided by Petitioner as Special Administrator and administration in this matter;

H. Petitioner is authorized to pay himself the sum of $3,639.00 for all the extraordinary services provided by Petitioner on the Estate's behalf;

I. Petitioner is authorized to pay the sum of $4,993.88 to AVID Business Services to satisfy the outstanding invoices and statements for the bookkeeping and accounting services provided to the Estate;

J. SHAE GITTER is personally responsible for the debt underlying loan with Ford Motor Credit, which is Loan No. 441589518;

K. Petitioner is authorized to pay the sum of $20,544.00 to KATZ & ASSOCIATES for all the ordinary and extraordinary services rendered to, and all costs that

have been advanced on behalf of, the Estate, which will be satisfied, in part, by the $593.00 retainer that is presently held by KATZ & ASSOCIATES in this matter;

L. Petitioner is authorized to pay KATZ & ASSOCIATES up to an additional $2,500.00 for services that may be rendered to the Estate after the date of this Petition;

M. Petitioner is authorized to reimburse KATZ & ASSOCIATES up to an additional $500.00 for costs that may be advanced on behalf of the Estate after the date of this Petition;

N. SHAE GITTER is personally responsible to pay all amounts owed by the Estate to Petitioner, AVID Business Services, and KATZ & ASSOCIATES that are in excess of the Estate's available cash;

O. Petitioner is authorized and directed to distribute to SHAE GITTER the rest, remainder, and residue of the Estate, including, without limitation, the Estate's interest in the 2008 Ford F150 V.I.N. 1FTPW12518KC49693, and the real property commonly known as 1818 Oasis Court, Laughlin, Nevada 89029, which is APN 264-21-712-046 and is legally described as follows:

> LOT THIRTY-EIGHT (38) IN BLOCK TWO (2) OF VILLA BONITA II- UNIT 2, as shown by Map thereof on File in Book 38 of Plats, Page 30, in the Office of the County Recorder of Clark County, Nevada

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P. That the Estate shall be closed without any further accounting, *provided however*, that a decree of discharge shall be filed.

DATED this 21st day of October, 2011.

DISTRICT COURT JUDGE

Prepared and Submitted by:
KATZ & ASSOCIATES

Mark S. Katz, Esq.
Nevada Bar No. 6371
8965 S. Eastern Avenue, Suite 360
Las Vegas, Nevada 89123
Attorneys for Petitioner

EXHIBIT B

EXHIBIT B

AUTHORIZATION TO REVIEW RECORDS PURSUANT TO NRS 286.117

I, Shae Gitter, as the court-appointed representative of the Estate of Kristine Freshman, hereby authorize Bailey Kennedy, LLP to review and copy all records kept by the Nevada Public Employee's Retirement System on behalf of and relating to Kristine Freshman.

SHAE GITTER, REPRESENTATIVE OF
THE ESTATE OF KRISTINE FRESHMAN

Exhibit 6-C

Exhibit 6-C

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

June 1, 2012

Via United States Mail

Mark S. Katz, Esq.
Attorney for Jared Schafer
8965 S. Eastern Ave., Suite 380
Las Vegas, Nevada 89123

Re: Kristine Jo Freshman and PERS Survivor Benefits

Dear Mr. Katz:

I am a Deputy Attorney General and I represent the Public Employees' Retirement System of Nevada ("PERS" or the "System"). I am in receipt of an email dated May 8, 2012 from Amy Viggiano Deittrick, in support of Professional Fiduciary Services of Nevada, Inc., regarding the PERS account of Kristine Jo Freshman. The email request information as to whether there are benefits or contributions available pursuant to Ms. Freshman's membership in PERS.

The Retirement Act, chapter 286 of the Nevada Revised Statutes ("NRS"), governs any benefit or funds available as a result of membership in the System. NRS 286.671 et. seq., governs the System regarding benefits for survivors. In the case of a member who was married at the time of death, the member's spouse and minor children are the persons eligible to receive benefits.

NRS 286.669 provides that if the spouse is convicted of the murder or voluntary manslaughter of a member of the System, the spouse is ineligible to receive any benefit conferred by any provision of the Retirement Act by reason of death of that member. Neither this provision, nor any other provision in the Retirement Act, makes any other person eligible to receive such benefit.

Telephone 775-684-1100 • Fax 775-684-1108 • www.ag.state.nv.us • E-mail aginfo@ag.state.nv.us

Additionally, there are no contributions to be paid from the account of Ms. Freshman.

Thank you for your time regarding this matter. If you have any further questions, please contact me.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: _____
KIMBERLY A. OKEZIE
Deputy Attorney General
Bureau of Government Affairs
(775) 684-1270

KAO:smg
Cc: Tina Leiss, Operations Officer, PERS

Exhibit 6-D

Exhibit 6-D

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

June 1, 2012

Via United States Mail

Kelly B. Stout, Esq.
Attorney for Shae Gitter
8984 Spanish Ridge Ave
Las Vegas, Nevada 89148

Re: Kristine Jo Freshman and PERS Survivor Benefits

Dear Ms. Stout:

I am a Deputy Attorney General and I represent the Public Employees' Retirement System of Nevada ("PERS" or the "System"). I am in receipt of your letter dated May 9, 2012 regarding the PERS account of Kristine Jo Freshman. You have inquired as to whether there are any benefits available to Shae Gitter or Ms. Freshman's estate.

The Retirement Act, chapter 286 of the Nevada Revised Statutes ("NRS"), governs any benefit or funds available as a result of membership in the System. NRS 286.671 et. seq., governs the System regarding benefits for survivors. In the case of a member who was married at the time of death, the member's spouse and minor children are the persons eligible to receive benefits.

NRS 286.669 provides that if the spouse is convicted of the murder or voluntary manslaughter of a member of the System, the spouse is ineligible to receive any benefit conferred by any provision of the Retirement Act by reason of death of that member. Neither this provision, nor any other provision in the Retirement Act, makes any other person eligible to receive such benefit. Thus, the System is unable to pay benefits to Ms. Gitter.

Telephone 775-684-1100 • Fax 775-684-1108 • www.ag.state.nv.us • E-mail aginfo@ag.state.nv.us

Enclosed please find a letter from PERS dated June 10, 2011 (the "Letter"). The Letter provided Ms. Gitter the aforementioned information pursuant to her application for benefits.

Information regarding the availability of benefits to Ms. Freshman's estate is confidential pursuant to NRS 286.110 and NRS 286.117.

Thank you for your time regarding this matter. If you have further questions, please contact me.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:
KIMBERLY A. OKEZIE
Deputy Attorney General
Bureau of Government Affairs
(775) 684-1270

KAO:smg
Cc: Tina Leiss, Operations Officer, PERS

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

Chris Collins
James Green
Dan T. Mangino
David Olsen
Charles A. Silvestri

Executive Staff

Dana R. Bilyeu
Executive Officer

Tina M. Latz
Operations Officer

Ken Lambert
Investment Officer

June 10, 2011

Shae Ellen Gitter
1818 Oasis Court
Laughlin, NV 89029

Dear Ms. Gitter:

We have received your application for Survivor Benefits regarding your mother, Kristine Freshman, who passed away as an active member of the Public Employees' Retirement System (System). The Retirement Act, chapter 286 of the Nevada Revised Statutes, governs any benefits or funds available as a result of membership in the System.

NRS 286.671 et. seq., governs the System regarding benefits for survivors. In the case of a member who was married at the time of death, the member's spouse and minor children are the persons eligible to receive benefits.

NRS 286.669 provides that if the spouse is convicted of the murder or voluntary manslaughter of a member of the System, the spouse is ineligible to receive any benefit conferred by any provision of the Retirement Act by reason of death of that member. Neither this provision, nor any other provision in the Retirement Act, makes any other person eligible to receive such benefit. Based upon the previously mentioned statutes, the System is unable to pay benefits pursuant to your application.

If you have any questions or concerns, please contact me at (775) 687-4200 extension 230.

Sincerely,

Brian Snyder, Director
Employer & Production Services

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697

Toll Free: 1-866-439-7360 Website: www.nvpers.org

Exhibit 6-E

Exhibit 6-E

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

June 6, 2013

Via United States Mail

Kelly B. Stout, Esq.
Attorney for Shae Gitter
8984 Spanish Ridge Ave
Las Vegas, Nevada 89148

Re: Records of Kristine Jo Freshman

Dear Ms. Stout:

I am a Deputy Attorney General and I represent the Public Employees' Retirement System of Nevada ("PERS" or the "System"). I am in receipt of your letter, and attachments, dated June 3, 2013 regarding the PERS account of Kristine Jo Freshman. You have requested information from the file of Kristine Freshman pursuant to a waiver executed by Shea Gitter.

It does not appear from the documentation you provided that Ms. Gitter is a court appointed representative of the estate of Kristine Freshman. Additionally, the court order indicates closure of the estate pursuant to a decree of discharge.

Pursuant to NRS 286.110 and NRS 286.117, the records that have been requested are confidential. Please provide any current documentation you may have that would allow the records to be provided pursuant to the aforementioned statutes.

Telephone 775-684-1100 • Fax 775-684-1108 • www.ag.state.nv.us • E-mail aginfo@ag.state.nv.us

Thank you for your time regarding this matter. If you have further questions, please contact me.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:
KIMBERLY A. OKEZIE
Deputy Attorney General
Bureau of Government Affairs
(775) 684-1270

KAO:smg
Cc: Tina Leiss, Operations Officer, PERS

Exhibit 7

Exhibit 7

CONSENT TO SERVE AS ADMINISTRATOR

I, JARED E. SHAFER, am over the age of majority, I have never been convicted of a felony, and I am otherwise qualified to act as the Administrator of the estate of Kristine Jo Freshman, deceased, and I hereby consent to act as the Administrator thereof.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 3rd day of Oct, 2013.

JARED E. SHAFER

BAILEY ❖ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Phone (702) 562-8820
Fax (702) 562-8821

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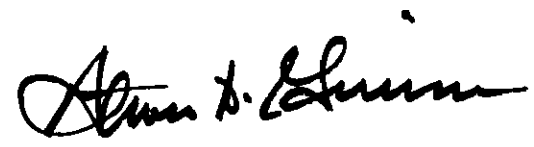

CLERK OF THE COURT

NOTC
W. CHRIS WICKER
Nevada State Bar No. 1037
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511
Telephone: (775) 688-3000
Facsimile: (775) 688-3088

Chris Nielsen, Esq.
Nevada Bar No. 8206
PUBLIC EMPLOYEES RETIREMENT SYSTEM
693 W. Nye Lane
Carson City, NV 89703
Telephone: (775) 687-4200

Attorneys for the Public Employees' Retirement System of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman Plaintiffs, vs. PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA, a public entity and Component unit of the State of Nevada, Defendant. _____/	Case No. A-14-697642-C Dept. No. XXIV **NOTICE OF APPEAL**

Notice is hereby given that PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA, above-named Defendant, hereby appeals to the Supreme Court of Nevada from the Order Granting Plaintiff's Motion for Partial Summary Judgment and Denying Defendants' Motion for Summary Judgment entered on January 29, 2015, and the Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment entered in the above-referenced case on the 16th day of October, 2015.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 13th day of November, 2015.

WOODBURN AND WEDGE

By: */s/ W. Chris Wicker*
W. Chris Wicker, Esq.
Nevada Bar No. 1037

Chris Nielsen, Esq.
Nevada Bar No. 8206
PUBLIC EMPLOYEES RETIREMENT SYSTEM

Attorneys for Public Employees' Retirement System of Nevada

WOODBURN AND WEDGE
6100 Neil Road, Ste. 500
Reno, Nevada 89511
Tel: (775) 688-3000

CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge, and that on this 13th day of November, 2015, I caused to be sent via electronic mail, through the Court's filing system, a true and correct copy of the foregoing NOTICE OF APPEAL, addressed as follows

Dennis L. Kennedy
Kelly B. Stout
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148

Jennifer Chisel
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, NV 89701

By: /s/ Kelly N. Weaver
Kelly N. Weaver

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CLERK OF THE COURT

OPPM
DENNIS L. KENNEDY
Nevada Bar No. 1462
KELLY B. STOUT
Nevada Bar No. 12105
MARK HESIAK
Nevada Bar No. 12397
BAILEY❖KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
DKennedy@BaileyKennedy.com
KStout@BaileyKennedy.com
MHesiak@BaileyKennedy.com

Attorneys for Plaintiffs
SHAE E. GITTER, and JARED SHAFER
as Special Administrator of the Estate of
Kristine Jo Freshman

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DISTRICT COURT

CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman, Plaintiffs, vs. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA, a public entity and component unit of the State of Nevada, Defendant.	Case No. A-14-697642-C Dept. No. XXIV

PLAINTIFFS' OPPOSITION TO PERS' MOTION TO RETAX COSTS

Defendant Public Employees' Retirement System of Nevada's ("PERS") Motion to Retax Costs ("Motion") raises only one objection to the fee that Plaintiffs Shae E. Gitter ("Shae") and Jared Shafer (jointly "Plaintiffs") paid to JW Advisors for the work performed by Plaintiffs' expert, Kirk Jacobson ("Mr. Jacobson") and his associate, William Hinsdale ("Mr. Hinsdale"). The objection is without merit and the Motion should be denied.

/ / /

PERS does not argue that the calculation of PERS benefits does not require expert testimony, nor does PERS argue that the amount of fees sought ($5,000.00) is an unreasonable charge for performing the tasks related to the calculation of fees and interest. PERS argues only that Plaintiffs should be permitted to recover their expert fees because Mr. Jacobson and his associate are not qualified to calculate PERS benefits and did not testify. (Mot. 4:23-24.) Neither argument is valid, and PERS' Motion must be denied. Plaintiffs are entitled to recover the full $5000.00 fee paid to their expert witness pursuant to sections 5 and/or 17 of NRS 18.005.[1]

A. PERS Has Failed to Raise Any Cogent Argument Regarding the Qualifications of Plaintiffs' Expert.

As a preliminary matter, the Court need not address PERS' arguments regarding the qualifications of Mr. Jacobson or his associate because PERS has failed to offer any "meaningful analysis or citation to salient authority." FDIC v. Rhodes, 130 Nev. Adv. Op. 88, 336 P.3d 961, 968 (2014). When a party's argument consists of a bare conclusory statement, without cogent argument, the Court may reject it out of hand. Id. ("In the absence of a cogent argument about the dismissal of the contract-based claims, we do not address that issue."); Deja Vu Showgirls v. Dep't of Tax., 130 Nev. Adv. Op. 73, 334 P.3d 392, 397 n.6 (2014) ("We reject appellants' assertion that initiating administrative proceedings for their as-applied constitutional challenge to NLET before the Department would have been futile because they offer no cogent argument."); Weddell v. H2O, Inc., 128 Nev. Adv. Op. 9, 271 P.3d 743, 752 n.11 (2012) ("Because Weddell fails to provide this court with any cogent argument or persuasive legal authority in support of this allegation, this argument lacks merit."); Berry v. Feil, 131 Nev. Adv. Op. 37, 357 P.3d 344, 346 n.2 (Nev. App. 2015) ("Given his failure to provide cogent arguments on this point, we do not address this assignment of error.").

/ / /

/ / /

[1] NRS 18.005 states: "For the purposes of NRS 18.010 to 18.150, inclusive, the term 'costs' means: . . . 5. [r]easonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee. . . . 17. [a]ny other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research."

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LAS VEGAS, NEVADA 89148-1302
702.562.8820

PERS' Motion asserts that Plaintiffs have failed to establish the qualifications of Mr. Jacobson and his associate, Mr. Hinsdale, but provides no factual or legal support for its assertion. PERS' objection to Mr. Jacobson's qualifications consists of two sentences:

> Mr. Jacobson's CV provides no information that he could be qualified as an expert in the analysis of the PERS calculation of benefits under NRS Chapter 286. Rather, his expertise appears to be fraud investigations and business disputes, none of which were relevant to this case.

(Mot. 4:14-15.) Similarly, PERS' objection to the charges attributable to work performed by Mr. Jacobson's associate, Mr. Hinsdale, is also limited to two conclusory sentences:

> The primary charges are logged by William Hinsdale at $180 per hour which represents $4,185 of the requested amount. There is no evidence whatsoever that Mr. Hinsdale could be certified as an expert in the analysis of the PERS formulas for the calculation of benefits.

(Id. at 4:9-12.)

PERS' Motion does not address the legal standard for evaluating expert qualifications or make any effort to justify its contention that an expert may not charge for tasks performed by his staff that were necessary in forming his opinion. Furthermore, PERS does not address Mr. Jacobson's qualifications, explain the specific tasks involved in the calculation of PERS benefits, explain why Mr. Jacobson is not qualified to perform this calculation, or offer any explanation of what qualifications **would** make someone eligible to calculate PERS benefits. Consequently, PERS' objections regarding the qualifications of Plaintiffs' expert should be disregarded.

1. Plaintiffs' Expert Is Qualified to Calculate Pension Benefits.

Notwithstanding PERS' failure to provide cogent argument, its contentions are legally flawed. Plaintiffs' Memorandum of Costs includes Mr. Jacobson's Curriculum Vitae, which establishes that he is qualified to perform financial analysis and computation.

"In determining whether a person is properly qualified, a district court should consider the following factors: (1) formal schooling and academic degrees, (2) licensure, (3) employment experience, and (4) practical experience and specialized training." Hallmark v. Eldridge, 124 Nev. 492, 499, 189 P.3d 646, 650-51 (2008).

/ / /

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702.562.8820

Mr. Jacobson is a certified public accountant and a member of the American Institute of Certified Public Accountants (AICPA). (Mem. of Costs at Ex. 26.) In addition to being qualified to perform ordinary accounting, Mr. Jacobson is further qualified in the sub-specialty of forensic accounting. (Id. (Mr. Jacobson "is also a member of the Association of Certified Fraud Examiners (ACFE) and is a certified fraud examiner (CFE). . . . Mr. Jacobson is also a member of the Forensic and Valuation Section of the AICPA and is certified in financial forensics (CFF) and is accredited in business valuations (ABV).")

While Mr. Jacobson's work focuses primarily on the sub-specialty of forensic accounting, he is qualified to perform all general accounting tasks, including preparation of tax documents which, like PERS benefits, are governed by statute and require Mr. Jacobson to read and interpret statutes. In the absence of any explanation of the specific tasks or skills involved in calculating PERS benefits, the Court may reasonably find that Mr. Jacobson is qualified to perform the requisite financial analysis, compute unpaid benefits, and provide an opinion regarding the amount of PERS benefits owed to Shae—an amount which PERS does not dispute.

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LAS VEGAS, NEVADA 89148-1302
702.562.8820

2. <u>Expert Fees May Include Charges for Staff Who Assist the Expert in His Analysis and Forming His Opinion.</u>

Plaintiffs' expert fees include charges for its expert, Mr. Jacobson, and his associate, Mr. Hinsdale. The invoice for Mr. Jacobson's services indicates that he charged for 4.5 hours of time, which was spent supervising and reviewing Mr. Hinsdale's work. (Mem. of Costs at Ex. 26.) Conversely, Mr. Hinsdale provided "[l]itigation support services including analyses and calculations; telephone conferences, file documentation, etc." (Id.) PERS' contention that Plaintiffs must establish that Mr. Hinsdale "could be certified as an expert in the analysis of the PERS formulas for the calculation of benefits" (Mot. 4:11-12) is wrong.

Expert witnesses can and should delegate tasks to members of their staff who are capable of performing tasks at a lower rate. See e.g., Artistic Carton Co. v. Thelamco, Inc., No. 1:06-CV-316, 2008 WL 2622806, at *5 (N.D. Ind. June 30, 2008) (reducing expert fee for work that could have been completed by a staff member at a lower hourly rate). C.f., LVMPD v. Yeghiazarian, 129 Nev. Adv. Op. 81, 312 P.3d 503, 510 (2013) (the term "'reasonable attorney's' fee . . . refer[s] to a

reasonable fee for the work product of an attorney. Thus, the fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor contributes to the work product for which an attorney bills her client."' (quoting Missouri v. Jenkins, 491 U.S. 274, 285 (1989)). Again, PERS does not object to the results of the work.

B. <u>A Party May Recover Expert Fees for an Expert that Does Not Testify at Trial.</u>

Additionally, PERS alleges that Plaintiffs' cannot recover expert fees for an expert that does not testify at trial. (Mot. 4:20-27.) This is also wrong. The Nevada Supreme Court has stated that "calling [a] witness[ ] at trial [is] not a prerequisite to an award of [expert] witness fees as costs." Bergmann v. Boyce, 109 Nev. 670, 680, 856 P.2d 560, 566 (1993).

PERS cites two cases in support of its position, but its reliance is misplaced. PERS relies on Maxwell v. Amaral (Mot. 4:25-27), in which the court did not allow the prevailing party to recover fees for a written medical report under NRS 18.110(2) because the Court determined that "[a] written report is not a 'witness' within the purview of [NRS 18.110(2)]." 79 Nev. 323, 329, 383 P.2d 365, 368 (1963). However, Maxwell was decided prior to the passage of NRS 18.005(5), which defines "costs" to include fees for expert witnesses. Similarly, PERS relies on Mays v. Todaro (Mot. 4:24-25), in which the court approved an award of $250.00 for an expert witness who was sworn and testified at trial. 97 Nev. 195, 199, 626 P.2d 260, 263 (1981). Nonetheless, in Mays, the Court was not asked to determine whether trial testimony was a prerequisite to the recovery of expert fees.

The controlling—and current—case on this issue is Bergmann v. Boyce, in which the court affirmed the district court's order awarding expert witness fees for a witness that the plaintiff did not call at trial and concluded that "calling [a] witness[ ] at trial [is] not a prerequisite to an award of witness fees as costs." 109 Nev. 670, 679, 856 P.2d 560, 566 (1993). Accordingly, PERS' position is clearly wrong.

Here, Plaintiffs seek to recover the fees for their expert witnesses pursuant to NRS 18.110(1), which allows them to recover "costs." NRS 18.005 provides that "costs" includes fees for expert witnesses and "[a]ny other reasonable and necessary expense incurred in connection with the action." NRS 18.005(5), (17). "The determination of which expenses are allowable as costs is within the sound discretion of the trial court." Bergmann, 109 Nev. at 679, 856 P.2d at 565-66. The

BAILEY ❖ KENNEDY
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LAS VEGAS, NEVADA 89148-1302
702.562.8820

Declaration of Kelly B. Stout, in support of Plaintiffs' Memorandum of Costs, explains that Mr. Jacobson's services were provided in lieu of additional discovery, which would likely have cost each Party significantly more than $5000.00. Accordingly, Plaintiffs are justified in seeking recovery of the fees paid to their expert.

As PERS' position is unsupported by Nevada law, Plaintiffs are entitled to recover the $5000.00 in fees paid to JW Advisors for the services provided by their expert witness, Mr. Jacobson.

DATED this 19th day of November, 2015.

BAILEY❖KENNEDY

By: /s/ Dennis L. Kennedy
DENNIS L. KENNEDY
KELLY B. STOUT
MARK HESIAK

Attorneys for Plaintiffs
SHAE E. GITTER, and JARED SHAFER
as Special Administrator of the Estate of
Kristine Jo Freshman

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 19th day of November, 2015, service of the foregoing PLAINTIFFS' OPPOSITION TO PERS' MOTION TO RETAX COSTS was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

W. CHRIS WICKER
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
cwicker@woodburnandwedge.com

CHRIS NIELSEN
693 West Nye Lane
Carson City, Nevada 89703
cnielsen@nvpers.org

Attorneys for Defendant
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF NEVADA

/s/ Josephine Baltazar
An Employee of BAILEY❖KENNEDY

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

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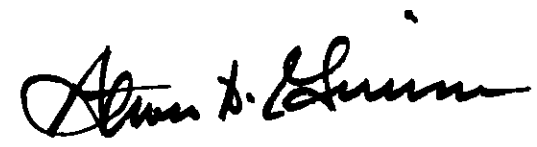

CLERK OF THE COURT

OPPS
W. CHRIS WICKER
Nevada State Bar No. 1037
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511
Telephone: (775) 688-3000
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CHRIS NIELSEN
Nevada State Bar No. 8206
Public Employees Retirement System
693 W. Nye Lane
Carson City, Nevada 89703
Telephone: (775) 687-4200

Attorneys for the Public Employees' Retirement System

DISTRICT COURT

CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman	Case No. A-14-697642-C Dept. No. XXIV
Plaintiffs,	
vs.	
PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA, a public entity and Component unit of the State of Nevada,	
Defendant.	

OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES

Defendant, PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA ("PERS"), by and through their attorneys, W. CHRIS WICKER of WOODBURN AND WEDGE and CHRIS NIELSEN of THE PUBLIC EMPLOYEES RETIREMENT SYSTEM, hereby opposes Plaintiffs' Motion for Attorneys' Fees. This Opposition is based upon NRCP 54, NRS 7.085 and NRS 18.010 and is asserted on the grounds that Plaintiffs' motion was not timely filed, and that even if timely filed, Plaintiffs are not entitled to attorney's fees.

INTRODUCTION

Plaintiffs have moved for an award of attorney's fees under the assumption that by virtue of having succeeded in obtaining a recovery in this litigation, PERS has maintained a defense that was not well-grounded in fact or law, or unreasonably and vexatiously extended this litigation. To the contrary, PERS' defense in this matter was based on the well-founded legal argument that based on NRS 286 et seq., the statutes governing PERS (hereinafter "Retirement Act"), Plaintiffs were not entitled to the benefits sought by way of this litigation.

Unlike most other public entities, PERS must act as fiduciary as to both the trust fund and its members and retirees. *See,* NRS 286.220. That requires PERS to carefully follow its statutory obligations found in Chapter 286 and only spend money from the fund as authorized by law. NRS 286.220(4). Plaintiffs do not deny that Chapter 286 leads to the position taken by PERS in this case. It is only by going outside of Chapter 286, which has its own "slayer" statute (NRS 286.669), that the Court found in favor of Plaintiffs. PERS must act with great care before authorizing expenditures in unusual situations such as this. It would have been irresponsible for PERS to assume NRS 41B.200 overruled Chapter 286, unless the Supreme Court affirms this ruling. PERS has appealed so a determination will be made. Thus, it is actually frivolous for Plaintiffs to assert that PERS defense was frivolous or vexatious.

Plaintiffs have also sought fees pursuant to NRS 7.085 and thus seek to hold PERS' attorneys personally liable for Plaintiffs' attorneys' fees. It is worth noting that prior to counsel becoming involved, the Attorney General's Office reached the same conclusion as PERS and current counsel did. *See,* **Exhibit 5**, which is a letter, dated June 1, 2012, attached hereto. Undersigned counsel believes PERS defense is well grounded in the law and reasonably asserted. *See,* Declaration of W. Chris Wicker attached hereto as **Exhibit 1**. As further discussed below, simply because Plaintiffs prevailed in the Trial Court, does not suggest that PERS defense was frivolous and that PERS counsel pursued this defense in bad faith.

BACKGROUND

Kristine Jo Freshman was an employee of the Clark County School District, and a member of PERS. (Or. Granting MSJ at 2). In August 2007, Ms. Freshman completed a

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Survivor Beneficiary Designation, identifying Plaintiffs as Ms. Freshman's survivor beneficiary. (Or. Granting MSJ at 2). On December 6, 2009, while employed by the Clark County School District, Kristine Jo Freshman was killed by her husband Walter E. Freshman. (Or. Granting MSJ at 2). Kristine Jo Freshman was survived by her daughter, Plaintiff Shae E. Gitter. On December 17, 2009, PERS sent Plaintiffs a letter, informing her that an audit of Ms. Freshman's account revealed there may be benefits available. A true and correct copy of the December 17, 2009 PERS letter is attached hereto as **Exhibit 2**. The following month, Plaintiffs received another letter from PERS explaining that Plaintiffs may be entitled to survivor benefits based on Ms. Freshman's PERS membership. A true and correct copy of the January 10, 2010 PERS letter is attached hereto as **Exhibit 3**.

On September 10, 2010, Walter E. Freshman pleaded guilty to second-degree murder for killing his wife, Ms. Freshman. (Or. Granting MSJ at 2). On or about April 25, 2011, Plaintiffs submitted an Application for Survivor Benefits to PERS. (Or. Granting MSJ at 2). On June 10, 2011, PERS provided Plaintiffs with a letter stating that under PERS statutes, when a member is married at the time of death, only the member's spouse and minor children are eligible to receive benefits. A true and correct copy of the June 10, 2011 PERS letter is attached hereto as **Exhibit 4**. PERS relied on statutes providing that in the event of the death of a currently employed PERS member who has a spouse, the spouse is entitled to specified benefits earned by that member. *See,* NRS 286.674, 286.676, 286.6766. PERS statutes also provide that member may designate in writing a survivor beneficiary and additional payees. NRS 286.6767(1). However, payments can only be made to a survivor beneficiary "if the member is unmarried on the date of the member's death". NRS 286.6767(1). Accordingly, PERS determined that under the Retirement Act Plaintiffs were not entitled to survivor benefits because Ms. Freshman was married at the time of her death, and Plaintiffs were not a minor child at that time. **Exhibit 4**.

Plaintiffs, through their newly retained counsel of Bailey Kennedy, contacted the Office of the Attorney General in May 2012, requesting documents related to Ms. Freshman's PERS account and membership. A true and correct copy of the May 9, 2012 Bailey Kennedy letter is

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attached hereto as **Exhibit 6**. Deputy Attorney General Kimberly A. Okezie responded, reiterating that under the Retirement Act, Plaintiffs were not entitled to the payment of benefits, and explaining that information regarding Ms. Freshman's estate was confidential pursuant to NRS 286.110 and NRS 286.117. **Exhibit 5**. In pertinent part NRS 286.110(3) states, "The official correspondence and records, other than the files of individual members or retired employees…are public records and are available for public inspection." NRS 286.117 further provides:

> All records maintained for a member, retired employee or beneficiary may be reviewed and copied only by the System, the member, the member's public employer or spouse, or the retired employee or the retired employee's spouse, or pursuant to a court order, or by a beneficiary after the death of the employee on whose account benefits are received. Any member, retired employee or beneficiary may submit a written waiver to the System authorizing the representative of the member, retired employee or beneficiary to review or copy all such records.

Having determined that Plaintiffs were not entitled to survivor benefits, it followed that under NRS 286.110(3) and NRS 286.117 Plaintiffs were not entitled to Ms. Freshman's confidential PERS member records. Once PERS determined that Plaintiff Gitter was not a beneficiary, PERS statutorily was prohibited from disclosing Ms. Freshman's PERS account information absent a court order. Plaintiffs eventually did obtain a court order, and PERS complied with that order, providing Plaintiffs with the requested information.

ARGUMENT

"Nevada follows the American rule that attorney fees may not be awarded absent a statute, rule, or contract authorizing such award." *Thomas v. City of North Las Vegas*, 122 Nev. 82, 90 (2006) (citing *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1356, 971 P.2d 383, 388 (1998); *Consumers League v. Southwest Gas*, 94 Nev. 153, 156, 576 P.2d 737, 738 (1978)). NRCP 54(d)(2)(B) provides that a claim for attorney's fees must be made by motion no later than 20 days after notice of entry of judgment is served. The motion must specify the statute, rule or other grounds entitling the movant to an award, state the amount sought or a fair estimate of it, and be supported by counsel's affidavit swearing the fees were actually and necessarily incurred and were reasonable. NRCP 54(d)(2)(B). Here, Plaintiffs are not entitled

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to recover attorney's fees both because her motion for fees was untimely, and because there is no applicable statute or other grounds which supports an award of fees. However, assuming that an award of attorney's fees is appropriate in some amount, any such award must be limited to fees that are reasonable and justified. *See Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

1. <u>Plaintiffs' Motion Must be Denied Because it Was Untimely Filed.</u>

NRCP 54(d)(2)(B) provides: "[u]nless a statute provides otherwise, the motion [for attorney fees] must be filed no later than 20 days after notice of entry of judgment is served....The time for filing the motion may not be extended by the court after it has expired." This 20 day period can be tolled only by the timely filing of a motion that tolls NRAP 4(a)'s deadline to file an appeal. *Barbara Ann Hollier Trust v. Shack*, 131 Nev. Adv. Op. 59, 356 P.3d 1085, 1090 (2015), *reh'g denied* (Sept. 28, 2015).

In the case at hand, Plaintiffs did not timely file her Motion for Attorney's Fees. Accordingly, her motion may not be considered by this Court. The Notice of Entry of Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment was filed and served on October 16, 2015. Pursuant to NRCP 54(d)(2)(B), any motion to recover attorney's fees must have been filed by November 5, 2015. Plaintiffs' motion was not filed until November 9, 2015. The additional time allowed after electronic service is not applicable here, because the party served with the notice of entry was not the Party required to file the Motion for Fees. NRCP 6(e). Plaintiffs' failure to timely file her motion cannot be cured, and Plaintiffs' motion must therefore be denied. NRCP 54(a)(2)(B)

2. <u>Plaintiffs' Motion Must be Denied Because it Has No Valid Statutory Basis.</u>

Plaintiffs' motion should be denied not only because it was not timely filed, but also because Plaintiffs do not have a valid statutory basis for a claim for attorney's fees. Plaintiffs seek their fees pursuant to NRS 7.085 and NRS 18.010(2)(b). However, Plaintiffs are not entitled to fees under either statute.

Plaintiffs argue "[i]t is evident from the Court's rulings that PERS's defenses against Plaintiff's claims were patently unreasonable." Motion, p. 10, lns. 6-8. If that was actually the

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standard, then virtually every unsuccessful defense would be deemed frivolous and subject to fees. Plaintiffs never actually argue why PERS defense was unreasonable except restating their case and that the Court ruled in their favor.

A. PERS' Defense Does Not Give Rise to Attorney's Fees Under NRS 7.085.

NRS 7.085 allows for an award of attorney's fees to be paid by an opposing attorney when that attorney has maintained or defended an action not well-grounded in fact or warranted by law, or to unreasonably or vexatiously extend a civil action. In full, NRS 7.085 provides:

> 1. If a court finds that an attorney has:
>
> (a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or
>
> (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.
>
> 2. The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS 7.085 is related to NRCP 11 which provides for the sanctioning of an attorney or party upon the filing of a pleading or paper for an improper purpose, to assert claims or defenses which are not warranted by law, or to make factual contentions having no evidentiary support. NRCP 11(b). Under NRS 7.085 and NRCP 11, attorney's fees may be imposed for frivolous actions or defenses. *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993).

"A frivolous claim is one that is 'both baseless and made without a reasonable and competent inquiry.'" *Id.* (quoting *Townsend v. Holman Consulting Corp.* 929 F.2d 1358, 1362 (9th Cir. 1990)). A determination of whether a claim is frivolous requires a two-pronged

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analysis: (1) whether the pleading is "well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law" and (2) "whether the attorney made a reasonable and competent inquiry." *Id.* The trial court must examine "the actual circumstances surrounding the case" to determine whether claims or defenses had reasonable grounds. *Id.*

The mere fact that a party ultimately does not prevail on its claims or defenses "is not in itself a sufficient justification for the assessment of fees." *U.S. ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1058 (10th Cir. 2004) (quoting *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412, 421, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). If that were the case, the American rule, that attorney fees may not be awarded absent a statute, rule, or contract authorizing such award, would be completely undermined.

In the present matter, an award of attorney's fees under NRS 7.085 is not merited because the defense maintained by PERS was well-grounded in existing law. In essence, this case boiled down to whether Nevada's Slayer Statute, NRS Chapter 41B, applied to the Retirement Act. Plaintiffs asserted that under Nevada's Slayer Statute, Walter E. Freshman was deemed have predeceased Ms. Freshman, thereby making Ms. Freshman's survivor beneficiary designation of Plaintiff Gitter effective. PERS, relying on Retirement Act statutes, argued that NRS Chapter 41B was not applicable to a determination of benefits due to Plaintiff Gitter.

PERS' position was based on a reasonable reading of the Retirement Act. For example, the purpose of the Slayer Statute, enacted by the Nevada legislature in 1999, is to prevent a killer from profiting from his or her wrongful actions. NRS 41B.200. However, the Retirement Act contains a statute similar to NRS 41B.200, providing that a "person convicted of the murder or voluntary manslaughter of a member of the System is ineligible to receive any" benefit arising from the death of that member. NRS 286.669. The PERS statute predates NRS 41B.200 by 22 years, having been enacted in 1979.

Recognizing that the legislature did not repeal NRS 286.669, amend Chapter 286 so that its language mirrored that of Chapter 41B, or include a specific reference to PERS in the scope

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of Chapter 41B upon the enactment of NRS Chapter 41B, the argument that the Slayer Statutes did not apply to the Retirement Act was well-grounded, even if not ultimately successful. After all, the Retirement Act contains its own statutes, similar to those found in the Slayer Statutes.

The reasonable nature of PERS' defense is further bolstered by rules of statutory construction. For example, the Nevada Supreme Court has explained that when the legislature enacts new legislation, "[i]t is presumed that in enacting a statute the legislature acts with full knowledge of existing statutes relating to the same subject." *City of Boulder City v. General Sales Drivers*, 101 Nev. 117, 118-19, 694 P.2d 498, 500 (1985). Additionally, "it is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally." *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 60, 63 P.3d 1147, 1150 (2003). It stood to reason then, that the Retirement Act provisions which predated the Slayer Statutes, and which applied specifically to the distribution of PERS benefits would take preference over the Slayer Statutes.

The fact that the legislature did not alter, amend, or repeal NRS 286.669 upon the passage of Chapter 41B, coupled with the rule of statutory construction that specific provisions apply over general provisions, demonstrate at the very least that PERS' defense was not frivolous, baseless, unreasonable, or intended to vexatiously extend the litigation, but was well grounded in a reasonable reading of relevant Nevada Statute as it pertained to the payment of PERS benefits. Accordingly, even though PERS was not successful in its defense, no grounds exist for awarding attorney's fees under NRS 7.085.

B. PERS' Defense Does Not Give Rise to Attorney's Fees Under NRS 18.010.

Similar to NRS 7.085, in order to punish and deter frivolous or vexatious claims or defenses, a district court *may* award attorney's fees under NRS 18.010(2)(b) to a prevailing party when it finds that claims or defenses were "brought without reasonable ground to harass the prevailing party." *See Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009). A frivolous or baseless claim or defense is one that is "[not] well grounded in fact [or is not] warranted by existing law or a good faith argument for the

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extension, modification or reversal of existing law." *Simonian v. Univ. & Cmty. Coll. Sys.*, 122 Nev. 187, 128 P.3d 1057, 1063 (2006).

The decision to award attorney's fees under NRS 18.010(2)(b) is within the sound discretion of district courts. *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993). However, fees should be awarded under 18.010(2)(b) only in "appropriate situations." 18.010(2)(b). "Determining whether attorney fees should be awarded under NRS 18.010(2)(b) requires the court to inquire into the actual circumstances of the case rather than a hypothetical set of facts favoring Plaintiffs' averments." *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 967-68, 194 P.3d 96, 106-07 (2008) (internal quotations omitted).

An award of attorney's fees is appropriate only where there is "evidence in the record supporting the proposition that the [defense] was brought without reasonable grounds or to harass the other party." *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005). For example, where the district court did not set forth any basis for the award of attorney's fees in its findings, and a review of the record did not clearly indicate that the defense imposed was "without reasonable ground or to harass the prevailing party," the Nevada Supreme Court found that attorney's fees should not be awarded. *Trident Const. Corp. v. W. Elec., Inc.*, 105 Nev. 423, 429, 776 P.2d 1239, 1243 (1989).

Here, an award of attorney's fees under NRS 18.010(2)(b) is not merited for the same reason an award of fees under NRS 7.085 is not merited, namely, because the defense maintained by PERS was well-grounded. As explained above, PERS' position that Nevada's Slayer Statute did not apply to the Retirement Act, if ultimately unprevailing, unquestionably had a basis in both statute and general rules of statutory construction. As a result, PERS' decision not to distribute Ms. Freshman's PERS benefits to Plaintiffs, and to subsequently defend this lawsuit was reasonable and well-grounded in existing law.

Furthermore, there is nothing in this Court's Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment indicating that PERS' defense was brought without reasonable ground or to harass Plaintiffs. The findings of fact in that order outline Plaintiffs' entitlement to survivor benefits, but do not include any findings which

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suggest harassing or vexatious conduct by PERS or which could support an award of attorney's fees. The record is devoid of any such evidence. Plaintiffs are not entitled to attorney's fees merely because she prevailed on her claims. Accordingly, her motion must be denied.

C. *PERS Defense of the Prejudge Interest Claim was Reasonable*

In addition to arguing that PERS was unreasonable in maintaining a defense against Plaintiff's case in chief, Plaintiff asserts that PERS was unreasonable in its position that Plaintiff was not entitled to an award of interest. Although ultimately unsuccessful before this court, PERS' position was reasonable based on Nevada statute. Acceptable uses of PERS funds are outlined by statute. NRS 286.220(4). The payment of pre-judgment and post-judgment interest is not one of the explicitly outlined uses of PERS funds permitted by the Retirement Act.

However, even if PERS agreed in principle to the payment of interest, the parties disagreed as to the legal basis for an interest award. PERS argued that an award of interest, if any, would be governed under NRS 17.130, while Plaintiff argued interest should be awarded pursuant to NRS 99.040(1)(a). Where no rate of interest is provided for in a contract or by another law, NRS 17.130 provides for interest from the time of service of the summons and complaint until satisfied. On the other hand, NRS 99.040(1)(a) provides for an award of interest "[w]hen there is no express contract writing fixing a different rate of interest…[u]pon contracts, express or implied, other than book accounts." PERS argued that interest should not be awarded pursuant to 99.040(1)(a) because no contract existed between Plaintiff and PERS. Any obligation of PERS to pay benefits was statutorily based.

Although in the end this Court awarded interest under 99.040(1)(a), PERS' positions related to the award of interest were not frivolous or unreasonable, but were founded in Nevada statute. Clearly, even if PERS had conceded that NRS 17.130 applied, Plaintiffs would still have filed their motion because PERS does not believe that NRS 99.040(1)(a) is applicable. Accordingly, this Court should not award attorney's fees incurred that related to Plaintiff's request for interest.

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3. **If an Award of Fees Has a Statutory Basis, Only Reasonable Fees May be Awarded.**

PERS contends that Plaintiffs are not entitled to an award of attorney's fees. However, assuming that an award of fees is appropriate, this Court must determine the reasonable value of the attorney services provided. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The general factors to be considered in making such a determination are: (1) the qualities of the advocate: his ability, training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

The party seeking attorney's fees must support its fee request with affidavits or other evidence supporting the *Brunzell* factors. *Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005). The trier of fact must consider each factor in light of the evidence provided, and no one element should predominate. *Id.* at 350, 455 P.2d at 33; *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1143 (2015). Any fee award must be supported by substantial evidence. *Logan*, 131 Nev. Adv. Op. 31, 350 P.3d at 1143; *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005) (the court must provide "sufficient reasoning and findings in support of its ultimate determination").

A. Fees Incurred Related to Obtaining Ms. Freshman's PERS Account Information Should Not be Awarded.

Plaintiffs have requested an award of attorney's fees under NRS 7.085 and NRS 18.010(2)(b). Each statute provides courts with the ability to award attorney's fees against a defendant who unreasonably or vexatiously maintains a defense not well-grounded in fact or law, or for purposes of harassing the prevailing party. NRS 7.085(1); 18.010(2)(b). Because the award of attorney's fees under those statutes is based on vexatious or unreasonable defenses maintained by a defendant in the course of litigation, any award of attorney's fees based on

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those statutes must be limited to fees incurred during the course of litigation in which the untenable defenses were maintained.

Here, Plaintiffs seek attorney's fees incurred in connection with requesting Ms. Freshman's PERS records and in opening the probate of Ms. Freshman's estate to obtain a court order to acquire those records. Those fees were incurred prior to this litigation, do not relate to PERS' defense during the course of this litigation, and therefore may not be awarded under NRS 7.085 or NRS 18.010(2)(b).

It is worth noting that under NRS 286.110(3) and NRS 286.117 the files of individual PERS members are confidential and may only be obtained by the member, the member's spouse, the member's surviving beneficiary, or pursuant to a court order. Plaintiffs have not been determined to be a surviving beneficiary and was therefore required by statute to obtain a court order in order to obtain Ms. Freshman's PERS account information. Plaintiffs' efforts to open a probate proceeding took place prior to this litigation and were therefore not expended due to PERS' defense in this subsequently filed litigation.

The time records of counsel disclose the time spent on the probate efforts which are not a part of this action. Leonicio Gil spent 51.95 hours at $190 per hour for a total of $9,870.50 from June 14, 2013 through December 12, 2013 on the probate. Mark Hesiak charged 5.75 hours at $190 per hour from January 21, 2013 through October 23, 2013, for a total of $1,092.50 on the probate. Kelly Stout spent 35 hours at $200 per hour for a total of $7,000 on the probate. Her time entries of July 10, 2012 through July 20, 2012, June 24, 2013, July 1, 2013, July 2, 2013, July 11, 2013, August 1, 2013 through September 6, 2013, and September 23, 2013 through January 2, 2014 reflect probate work. *See,* Exhibit 3 attached to Plaintiffs' motion. Thus the total of $17,963 should be deducted if a fee award is allowed.

B. *Fees Not Supported by Brunzell Factors Should Not be Awarded.*

The party seeking attorney's fees must support its fee request with affidavits or other evidence supporting the *Brunzell* factors. *Miller*, 121 Nev. at 623-24, 119 P.3d at 730. Any fee award must be supported by substantial evidence. *Logan*, 131 Nev. Adv. Op. 31, 350 P.3d at 1143.

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Under *Brunzell*, where attorney's fees awards are permitted, they are limited to the reasonable value of the attorney services provided. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. The Nevada Supreme Court has concluded that reasonable attorney's fees include "charges for persons such as paralegals and law clerks," on the theory that reasonable attorney's fees include the reasonable work product of the attorney. *LVMPD v. Yeghiazarian*, 129 Nev. Adv. Op. 81, 312 P.3d 503, 510 (2013). However, fees charged for paralegals and law clerks are also subject to the *Brunzell* factors to "evaluate whether … the office staff's hourly rates were reasonable under the circumstances." *Id.*

Here, Plaintiffs have requested certain attorney's fees and paralegal fees for which insufficient evidence has been presented to support the *Brunzell* factors. First, although Plaintiffs have provided the curriculum vitae and a supporting declaration for both Dennis L. Kennedy and Kelly B. Stout, Plaintiffs have provided no such support for the four other attorneys for which Plaintiffs seek an award of fees. As it pertains to fees incurred by Joshua M. Dickey, Mark Hesiak, Leon Gil, and Amanda L. Stevens, Plaintiffs' motion only identifies whether each attorney is a partner or an associate, along with the number of hours billed by each attorney and their applicable billing rates. (Mot. for Atty. Fees at 7). The Declaration of Dennis L. Kennedy provides slightly more information, stating how long certain attorney have been licensed to practice, along with a very cursory explanation of the work performed by that attorney - for example, "assisted with various tasks throughout the course of this Matter." (Dennis L. Kennedy Declr. at ¶ 10.d).

Additionally, Plaintiffs' motion and the Declaration of Dennis L. Kennedy make blanket statements that the amount of time spent by legal counsel was reasonable and necessary given the scope of representation. (Mot. for Atty. Fees at 8; Dennis L. Kennedy Declr. at ¶ 11). However, Plaintiffs has not disclosed the training, education, experience, professional standing or skill of Joshua M. Dickey, Mark Hesiak, Leon Gil, and Amanda L. Stevens. Similarly, Plaintiffs do not address the difficulty, intricacy, importance, and skill required to perform the tasks assigned to these attorneys.

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Even less evidence is presented to support an award of paralegal fees. Plaintiffs' motion and the Declaration of Dennis L. Kennedy identify only the billing rates and hours billed by two paralegals, Bonnie O'Laughlin and Linda Thomas. Plaintiffs have not disclosed the training, education, experience, professional standing or skill of these paralegals. Similarly, Plaintiffs do not address the difficulty, intricacy, importance, and skill required to perform the tasks assigned to the paralegals nor do Plaintiffs support the reasonability of $150 per hour for paralegals.

Plaintiffs have not provided support for an award of the $98.75 in fees billed by Joshua M. Dickey, the $8,217.50 in fees billed by Mark Hesiak, the $13,737.50 in fees billed by Leon Gil, the $4,000.00 in fees billed by Amanda L. Stevens, the $1,050.00 in fees billed by Bonnie O'Laughlin, or the $43.75 in fees billed by Linda Thomas, as required by *Brunzell*. Accordingly, Plaintiffs are not entitled to an award of those fees.

CONCLUSION

Plaintiffs are not entitled to recover attorney's fees. Her motion for fees was untimely, and there is no applicable statute or other grounds which supports an award of fees. Accordingly, Plaintiffs' motion must be denied. Assuming that an award of attorney's fees is appropriate in some amount, said award must be limited to those fees that are reasonable and justified based on the evidence provided by Plaintiffs. The amounts of $17,963 for the probate work and/or the $27,147.50 for the unsupported charges should be deducted.

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 2nd day of December, 2015.

WOODBURN AND WEDGE

By: */s/ W. Chris Wicker*
W. Chris Wicker, Esq.
Nevada Bar No. 1037

Chris Nielsen, Esq.
Nevada Bar No. 8206
PUBLIC EMPLOYEES RETIREMENT SYSTEM

Attorneys for Public Employees' Retirement System of Nevada

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CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge, and that on this 2nd day of December, 2015, I caused to be sent via electronic mail, through the Court's filing system, a true and correct copy of the foregoing OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, addressed as follows

Dennis L. Kennedy
Kelly B. Stout
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148

Chris Nielsen
Public Employees Retirement System
693 W. Nye Lane
Carson City, Nevada 89703

By: /s/ Kelly N. Weaver
Kelly N. Weaver

EXHIBITS TO OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES

Exhibit 1: Declaration of W. Chris Wicker, dated December 2, 2015
Exhibit 2: PERS letter, dated December 17, 2009
Exhibit 3: PERS letter, dated January 10, 2010
Exhibit 4: PERS letter, dated June 10, 2011
Exhibit 5: Response letter to Bailey Kennedy, June 1, 2012
Exhibit 6: Bailey Kennedy letter, dated May 9, 2012

EXHIBIT 1

EXHIBIT 1

W. CHRIS WICKER
Nevada State Bar No. 1037
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511
Telephone: (775) 688-3000
Facsimile: (775) 688-3088

CHRIS NIELSEN
Nevada State Bar No. 8206
Public Employees Retirement System
693 W. Nye Lane
Carson City, Nevada 89703
Telephone: (775) 687-4200

Attorneys for the Public Employees' Retirement System

DISTRICT COURT

CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman	Case No. A-14-697642-C Dept. No. XXIV
Plaintiffs,	
vs.	
PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA, a public entity and Component unit of the State of Nevada,	
Defendant.	

DECLARATION OF W. CHRIS WICKER IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES

I, W. CHRIS WICKER, declare as follows:

1. I am an attorney with Woodburn and Wedge, whom represents Defendant, PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA ("PERS"), in the above-entitled action.

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge.

3. I have represented PERS in various litigation matters as far back as 1998.

4. My experience in representing PERS is that PERS tries to determine what is required by the PERS statute and acts accordingly. PERS has no reward or incentive to not pay benefits allowed by law. In my experience PERS does its best to determine what benefits are allowed by law. However, if a final decision of the Courts determines that PERS has incorrectly interpreted the statutes, then PERS complies.

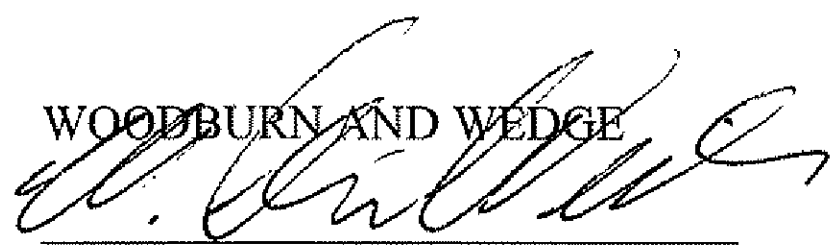
5. In this case, PERS followed the direction of its governing statute, Chapter 286, but if the Supreme Court determines that one particular substantive statute outside of Chapter 286 overrules a specific provisions of the PERS Act, then PERS will comply.

6. In no instance has any defense or statutory interpretation been asserted frivolously, unreasonably or in bad faith in this case.

I declare under penalty of perjury under the laws of the State of Nevada that the above statements are true and correct.

DATED this 2 day of December, 2015.

WOODBURN AND WEDGE

By: 

W. Chris Wicker

WOODBURN AND WEDGE
6100 Neil Road, Ste. 500
Reno, Nevada 89511
Tel: (775) 688-3000

EXHIBIT 2

EXHIBIT 2

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

James Green
David F. Rallas
Bart Mangino
David Olsen
Charles A. Silvestri

NVPERS

Executive Staff

Dana R. Bilyeu
Executive Officer

Tina M. Lenz
Operations Officer

Ken Lambert
Investment Officer

December 17, 2009

Shae Gitter
1818 Oasis Court
Laughlin NV 89029

RECEIVED
DEC 29 2009
LVE PERS

Dear Shae:

We have been notified of the death of Kristine Freshman, please accept our sincere condolences. Please forward a photocopy of the death certificate at your earliest convenience.

A recent audit of Ms. Freshman's account has revealed that there may be benefits available. Once we receive the death certificate we will make a final determination of eligibility for benefits.

Should you require further assistance, please contact us and ask to speak with a Counseling Services representative.

Sincerely,

Carrie E Harrison
Production Services Division

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697

Toll Free: 1-866-473-7768 Website: www.nvpers.org

EXHIBIT 3

EXHIBIT 3

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

James Guyer
Bart T. Mastrogeo
David Olsen
Paul C. Page
Charles A. Silvestri

NVPERS

Executive Staff

Dana K. Bilyeu
Executive Officer

Tina M. Lelas
Operations Officer

Ken Lambert
Investment Officer

January 10, 2010

Shae Ellen Gitter
1818 Oasis Court
Laughlin, NV 89029

RE: Kristine Freshman
SSN: XXX-XX-1686

Dear Ms. Gitter:

We have been notified of the death of Kristine Freshman, please accept our sincere condolences. We have reviewed the account and determined that eligibility may exist for survivor benefits. Based on employment and personal information provided to date, it appears that you may be entitled to receive:

1. A monthly benefit in the approximate amount of $2,900.00 payable for your lifetime. An application for survivor beneficiary benefits is enclosed. If you wish to receive a monthly benefit, please complete, sign in the presence of a notary public, and return the form to our office together with the appropriate documentation listed in our instruction sheet.

OR

2. A lump-sum refund of approximately 50% of the employer paid contributions in the approximate amount of $112,000.00. There may be a tax liability on all or a portion of this amount. If you wish to receive a refund of mandated contributions, please sign and return the enclosed refund request form only.

Once we have received the complete documents based on your benefit selection, we will make a final determination of your eligibility to receive a survivor benefit.

Should you require further assistance, please contact us and ask to speak with a Counseling Services representative.

Sincerely,

Rayna Palazzolo
Production Services Division

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Las Vegas, NV 89119
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Fax: (702) 678-6934

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EXHIBIT 4

EXHIBIT 4

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

Chris Collins
James Green
Bart T. Mangino
David Olson
Charles A. Silvestri

NVPERS

Executive Staff

Dana R. Bilyeu
Executive Officer

Tina M. Lelas
Operations Officer

Ken Lambert
Investment Officer

June 10, 2011

Shae Ellen Gitter
1818 Oasis Court
Laughlin, NV 89029

Dear Ms. Gitter:

We have received your application for Survivor Benefits regarding your mother, Kristine Freshman, who passed away as an active member of the Public Employees' Retirement System (System). The Retirement Act, chapter 286 of the Nevada Revised Statutes, governs any benefits or funds available as a result of membership in the System.

NRS 286.671 et. seq., governs the System regarding benefits for survivors. In the case of a member who was married at the time of death, the member's spouse and minor children are the persons eligible to receive benefits.

NRS 286.669 provides that if the spouse is convicted of the murder or voluntary manslaughter of a member of the System, the spouse is ineligible to receive any benefit conferred by any provision of the Retirement Act by reason of death of that member. Neither this provision, nor any other provision in the Retirement Act, makes any other person eligible to receive such benefit. Based upon the previously mentioned statutes, the System is unable to pay benefits pursuant to your application.

If you have any questions or concerns, please contact me at (775) 687-4200 extension 230.

Sincerely,

Brian Snyder, Director
Employer & Production Services

bsnyder@nvpers.org

775-687-4200 x 230

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

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EXHIBIT 5

EXHIBIT 5

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

June 1, 2012

Via United States Mail

Kelly B. Stout, Esq.
Attorney for Shae Gitter
8984 Spanish Ridge Ave
Las Vegas, Nevada 89148

Re: Kristine Jo Freshman and PERS Survivor Benefits

Dear Ms. Stout:

I am a Deputy Attorney General and I represent the Public Employees' Retirement System of Nevada ("PERS" or the "System"). I am in receipt of your letter dated May 9, 2012 regarding the PERS account of Kristine Jo Freshman. You have inquired as to whether there are any benefits available to Shae Gitter or Ms. Freshman's estate.

The Retirement Act, chapter 286 of the Nevada Revised Statutes ("NRS"), governs any benefit or funds available as a result of membership in the System. NRS 286.671 et. seq., governs the System regarding benefits for survivors. In the case of a member who was married at the time of death, the member's spouse and minor children are the persons eligible to receive benefits.

NRS 286.669 provides that if the spouse is convicted of the murder or voluntary manslaughter of a member of the System, the spouse is ineligible to receive any benefit conferred by any provision of the Retirement Act by reason of death of that member. Neither this provision, nor any other provision in the Retirement Act, makes any other person eligible to receive such benefit. Thus, the System is unable to pay benefits to Ms. Gitter.

Telephone 775-684-1100 • Fax 775-684-1108 • www.ag.state.nv.us • E-mail aginfo@ag.state.nv.us

Enclosed please find a letter from PERS dated June 10, 2011 (the "Letter"). The Letter provided Ms. Gitter the aforementioned information pursuant to her application for benefits.

Information regarding the availability of benefits to Ms. Freshman's estate is confidential pursuant to NRS 286.110 and NRS 286.117.

Thank you for your time regarding this matter. If you have further questions, please contact me.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:
KIMBERLY A. OKEZIE
Deputy Attorney General
Bureau of Government Affairs
(775) 684-1270

KAO:smg
Cc: Tina Leiss, Operations Officer, PERS

Retirement Board

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

Chris Collins
James Green
Bart T. Mangino
David Olsen
Charles A. Silvestri

Executive Staff

Dane R. Bilyeu
Executive Officer

Tina M. Laiss
Operations Officer

Ken Lambert
Investment Officer

June 10, 2011

Shae Ellen Gitter
1818 Oasis Court
Laughlin, NV 89029

Dear Ms. Gitter:

We have received your application for Survivor Benefits regarding your mother, Kristine Freshman, who passed away as an active member of the Public Employees' Retirement System (System). The Retirement Act, chapter 286 of the Nevada Revised Statutes, governs any benefits or funds available as a result of membership in the System.

NRS 286.671 et. seq., governs the System regarding benefits for survivors. In the case of a member who was married at the time of death, the member's spouse and minor children are the persons eligible to receive benefits.

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If you have any questions or concerns, please contact me at (775) 687-4200 extension 230.

Sincerely,

Brian Snyder, Director
Employer & Production Services

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Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6938

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Carson City, NV 89703
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7455 W. Washington Avenue, Suite 150
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Fax: (702) 304-0697

Toll Free: 1-866-635-7368 Website: www.nvpers.org

EXHIBIT 6

EXHIBIT 6

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
T: 702.562.8820
F: 702.562.8821

BAILEY ❖ KENNEDY
ATTORNEYS AT LAW

KELLY B. STOUT
Direct Dial
702.853.0759
KStout@BaileyKennedy.com

May 9, 2012

Via Electronic Mail: kokezie@ag.nv.gov

Kimberley Okezie
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Re: NVPERS Account of Kristine Freshman, SS # XXX-XX-1686

Dear Ms. Okezie:

Thank you very much for taking the time to speak with me this morning. As I promised during our call, I am sending you some of the documents that I think might help you answer my questions. I have also summarized the facts for you, below.

I was recently retained by Shae Gitter, the only child of Kristine Freshman. Ms. Freshman had been a Clark County elementary school teacher for more than twenty years at the time of her death, and was a member of NVPERS. Shea is currently a junior at UNLV and has not been able to recover any benefits from her mother's account. She has asked me to inquire as to whether there are any benefits available to her or Ms. Freshman's estate.

As you know, Ms. Freshman was killed by her husband, Walter Freshman, on December 6, 2009. Mr. Freshman entered into a plea agreement on September 20, 2010, in which he pled guilty to murder in the second degree, Case No. 10C261323, filed in the Eighth Judicial District Court of Clark County, Nevada. As part of his plea agreement, Mr. Freshman waived the right to appeal the conviction unless challenging the legality of the proceeding on constitutional grounds or otherwise provided for in NRS 174.035(3). The court accepted his plea the same day.

In November 2010, a petition was filed to terminate Mr. Freshman's rights in and to the estate of Kristine Freshman. The court granted the unopposed petition on December 10, 2010. The Order declared Mr. Freshman a "killer," as defined in NRS Chapter 41B, and that Mr. Freshman is deemed to have predeceased Ms. Freshman for all purposes of inheriting from Ms. Freshman or receiving benefits under any governing instrument. For your convenience, I have attached a copy of the Petition, the Petition's exhibits which include the relevant documents from the criminal action against Mr. Freshman, and the Order granting the petition.

Shea has told me that the attorney who was handling her mother's estate, Mark Katz, and the estate's Special Administrator, Jared E. Schafer, have previously been in contact with both

NVPERS and your office. The last she heard, there was a meeting scheduled in September 2011, between NVPERS, the Office of the Attorney General, and some other individuals. Shea is not aware of what has happened since then. I would appreciate it if you could look into the matter and provide me with an update on her mother's account and what, if anything, Shea must do to obtain whatever benefits are available.

Finally, Shea does not have copies of any documents related to her mother's account. If you could provide me with copies of any documents that you have regarding the account balance, her mother's contributions, designation of beneficiaries, or any other information, I would greatly appreciate it.

Please feel free to call me if you have any questions. Thank you again for looking into this matter for Shea.

Sincerely,

/s/ Kelly B. Stout

Kelly B. Stout

KBS/cs

Encs: Death Certificate for Kristine Freshman, dated December 11, 2009
Petition To Terminate All Rights of Walter E. Freshman, with exhibits, filed Nov. 4, 2010
Order Terminating All Rights of Walter E. Freshman, filed December 10, 2010

Electronically Filed
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CLERK OF THE COURT

RIS
DENNIS L. KENNEDY
Nevada Bar No. 1462
KELLY B. STOUT
Nevada Bar No. 12105
MARK HESIAK
Nevada Bar No. 12397
AMANDA L. STEVENS
Nevada Bar No. 13966
BAILEY❖KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
DKennedy@BaileyKennedy.com
KStout@BaileyKennedy.com
MHesiak@BaileyKennedy.com
AStevens@BaileyKennedy.com

Attorneys for Plaintiffs
SHAE E. GITTER and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman

BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DISTRICT COURT

CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman, Plaintiffs, vs. PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA, a public entity and component unit of the State of Nevada, Defendant.	Case No. A-14-697642-C Dept. No. XXIV

REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

Date of Hearing: January 19, 2016
Time of Hearing: 9:00 a.m.

I. INTRODUCTION.

Plaintiffs Shae E. Gitter ("Shae") and Jared Shafer, as Special Administrator of the Estate of Kristine Jo Freshman (jointly, "Plaintiffs"), have spent almost five years pursuing this matter

because of Defendant Public Employees' Retirement System of Nevada's ("PERS") unreasonable defenses—none of which were supported by law and which needlessly prolonged this case. In its efforts to avoid paying Shae survivor benefits, PERS twice asked this Court to ignore the plain language of statutes and violate well-established canons of statutory construction. Each time, this Court has ruled against PERS.

PERS argues that its defenses were reasonable because it must "carefully follow its statutory obligations found in Chapter 286."[1] However, PERS has cited no authority to support its theory that the Retirement Act exists independently of the statutory provisions, which apply to all other persons. Accordingly, PERS had no bases to take the position it did.

Plaintiffs' Motion for Attorneys' Fees ("Motion") was timely filed and the award of attorneys' fees is permitted by NRS 7.085 and NRS 18.010(2)(b), which allow for attorneys' fees when defenses are not well grounded in fact and unreasonable. Furthermore, Plaintiffs met their burden of showing the fees incurred were necessary and reasonably incurred under the *Brunzell* factors. Therefore, the Court should award Plaintiffs their reasonable attorneys' fees incurred in successfully obtaining survivor benefits and pre- and post- judgment interest in the amount of $96,272.50.

II. ARGUMENT.

A. Plaintiffs' Motion Was Timely Filed.

As a preliminary matter, PERS argues that Plaintiffs' Motion was untimely. (Opp'n 5:18-20.) However, PERS failed to consider the Eighth Judicial District Court's rules on electronic service. A motion for attorneys' fees must be filed no later than 20 days after the notice of entry of judgment ***is served***. NRCP 54(d)(2)(B) (emphasis added). Furthermore, three days are added to the prescribed period when the Order is served on a party by electronic means. NRCP 6(e). Pursuant to Administrative Order 09-12, electronic filing has been mandatory in the Eighth Judicial District Court since February 10, 2010. (Admin. Order 09-12, Aug. 28, 2009.) Consequently, "[a]ll

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[1] NRS 286.010 – 286.816, (the "Retirement Act").

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documents in the E-Filing System ***will be served*** through E-Service." EDCR 8.05(emphasis added). Although a party ***submits*** a document through the E-Filing System, "an E-Filed document accepted by the Clerk will be electronically ***served on all parties*** registered in that case through the E-Filing System." *Id.* (emphasis added). Thus, the Notice of Entry of Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment ("Notice of Entry of Judgment") was served on all parties—including Plaintiffs—on October 16, 2015. After adding three days for service, and accounting for non-judicial days, the Motion was due Monday, November 9, 2015—the day it was filed. (*See infra* n.4.)

Furthermore, the purpose behind the 20-day time period for filing a motion for attorneys' fees is to inform the opposing party of the claim for fees before the time for appeal has elapsed. NRCP 54(d)(2)(B); *Collins v. Murphy*, 113 Nev. 1380, 1385, 951 P.2d 598, 601 (1997); *In re Amend. to Nev. R. Civ. P. 54*, ADKT 426 (July 8, 2008).[2] Thus, a party who loses the case on the merits is given the opportunity to know of the claim for fees before deciding whether to appeal the judgment because "a losing party may decide whether to appeal based on the amount of an award of attorney's fees against it." *Davidsohn v. Steffens*, 112 Nev. 136, 140, 911 P.2d 855, 857 (1996) (finding a motion for attorneys' fees filed more than three months after the judgment was unreasonable when the time for appeal had passed and the opposing party did not appeal.)

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[2] In 1997, the Nevada Supreme Court held that a motion for attorneys' fees based on the entry of a final judgment must be filed before the time to file a notice of appeal has expired. *Collins v. Murphy*, 113 Nev. 1380, 1385, 951 P.2d 598, 601 (1997) ("Because respondents filed their motion to recover attorney's fees after appellants' time to appeal the original judgment had passed, we vacate the order awarding attorney's fees to respondents."), *superseded by rule as stated* in *Leventhal v. Black & LoBello*, 129 Nev. Adv. Op. 50, 305 P.3d 907 (July 11, 2013).

In 2008, the Nevada Supreme Court amended Rule 54 to codify its holding in *Collins v. Murphy*, and imposed a 20-day time period for filing a motion for attorneys' fees. *In re Amend. to Nev. R. Civ. P. 54*, ADKT 426 (July 8, 2008) ("it appears that codification of this court's holding in Collins in the form of a rule will result in broader awareness of the timing requirement for attorney fees motions, as well as more uniform application of the requirement"). However, the effective date of the Court's July 8, 2009 order was in conflict with NRS 2.120(2). *In re Amend. to Nev. R. Civ. P. 54*, ADKT 426 (Feb. 6, 2009). Accordingly, the July 8, 2009 Order was vacated, and the Court issued an Order on February 6, 2009, which properly included the 20-day time period.

See also Fed. R. Civ. P. 54 comments subparagraph B make clear that the purpose of the 14-day time period is to inform the opposing party of the claim for fees "before the time for appeal has elapsed." Nevada courts can look to the Federal Rules when interpreting the NRCP as "Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

Here, PERS was not prejudiced by any perceived delay as PERS had until November 16, 2015, to file an appeal.[3] Thus, PERS had time after Plaintiffs filed their Motion for Attorneys' Fees to determine whether to appeal based on the potential amount of an award of attorneys' fees against it. Furthermore, PERS was not prejudiced since it did file an appeal on November 13, 2015. Therefore, the Court should consider the Motion on its merits.

In sum, Plaintiffs timely filed their Motion for Attorneys' Fees. The Notice of Entry of Judgment was served on all parties registered through the E-Filing System—including Plaintiffs—on October 16, 2015. Accordingly, Plaintiffs' last day to file its Motion was on November 9, 2015, within the 20-day period, with 3 days added for service by electronic means.[4]

B. NRS 7.085 and NRS 18.010(2)(b) Provide a Basis for Awarding Plaintiffs' Attorneys' Fees.

The Court may award attorneys' fees to prevailing parties when an opposing party's "defense is not well-grounded in fact, is not warranted by existing law, or maintained without reasonable grounds." NRS 7.085. Similarly, NRS 18.010(2)(b) provides for the Court to award attorneys' fees "when the court finds that the . . . defense of the opposing party was brought or maintained without reasonable ground." Throughout this litigation, PERS has taken unreasonable positions that are not supported by existing law.

PERS contends that "the defense maintained by PERS was well-grounded in existing law," (Opp'n 7:12-13) because its "position was based on a reasonable reading of the Retirement Act" (Opp'n 7:20). PERS is plainly wrong. PERS' arguments required the Court to ignore the plain language of multiple statues and well-established rules of statutory construction.

Although PERS has repeatedly argued that the Retirement Act is entirely self-contained (*See* Def.'s Mot. for Summ. J. 10:8-9; Def.'s Opp'n to Pls.' Mot. for Summ. J. 2:12-4:1; Def.'s Opp'n to Pls.' Mot. for Pre-J. and Post-J Interest 3:8-4:6), it has provided no authority to support its position.

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[3] PERS had 30 days from the Notice of Entry of Judgment to file its Notice of Appeal. NRAP 4(5).

[4] Plaintiffs were served with the Notice of Entry of Judgment on October 16, 2015. The end of the 20-day period was November 5, 2015. Three additional days for service moved the deadline to November 8, 2015, which was a Sunday. Therefore, "the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day." Accordingly, Plaintiffs' last day to file their Motion was November 9, 2015.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

Unlike some remedial statutes (*e.g.*, NIIA[5]) that expressly preempt other statutory provisions, the Retirement Act does not do so.

1. PERS' Denial of Survivor Benefits Was Without Legal Justification.

In this litigation, PERS admitted "that words in a statute are given 'their plain meaning unless this violates the spirit of the act.'" (Def.'s Mot. for Summ. J. 7:19-21 (quoting *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)). Furthermore, PERS acknowledged that the "'plain meaning rule' provides that where 'a statute is clear on its face, a court may not go beyond the language of the statute to determine the legislature's intent.'" *Id.* at 7:21-23 (quoting *McKay*, 102 Nev. at 648, 730 P.2d at 441). Furthermore, PERS did not identify any ambiguity in the Retirement Act or the Slayer Statutes. Therefore, the Court interpreted both chapters by looking only at the plain meaning.

The language of Nevada's Slayer Statutes is clear and unambiguous: "***[n]otwithstanding any other provision of law***, the provisions of this chapter apply to ***any*** appointment, nomination, power, right, property, interest or benefit that accrues or devolves to a killer of a decedent based upon the death of the decedent." NRS 41B.200(1) (emphasis added). PERS survivor benefits accrue upon the death of the decedent, and the Slayer Statutes apply to PERS survivor benefits. (Order Re Summ. J. 6:7-10.[6]) Construing the Slayer Statutes to exempt PERS survivor benefits would have contradicted the plain language of the Slayer Statutes, and PERS did not offer any argument to support its interpretation.

Next, PERS contends that because the Retirement Act statute predates NRS 41B.200 by 22 years, and the "legislature did not repeal NRS 286.669, amend Chapter 286 so that its language mirrored that of Chapter 41B, or include a specific reference to PERS in the of Chapter 41B upon the enactment of NRS Chapter 41B, the argument that the Slayer Statutes did not apply to the Retirement Act was well-grounded." (Opp'n 7:25-8:2.) But PERS again ignores the plain language

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[5] *See* Nevada Industrial Insurance Act ("NIIA") which explicitly states "the rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive. . . ." NRS 616A.020.

[6] Notc of Entry of Order Granting Pls.' Mot. for Partial Summ. J. and Denying Def.'s Mot. for Summ. J., Jan. 29, 2015.

BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
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of NRS 41B.200(1) and rules of statutory construction.

The Court presumes that "when the legislature enacts a statute . . . it does so 'with full knowledge of existing statutes relating to the same subject." *Nev. Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) (quoting *City of Boulder v. General Sales Drivers,* 101 Nev. 117, 118–19, 694 P.2d 498, 500 (1985)). Since the Legislature was aware of Chapter 286, it could have created an exception for PERS survivor benefits. It did not. Furthermore, the Slayer Statutes explicitly state that they apply "***[n]otwithstanding any other provision of law.***" NRS 41B.200(1) (emphasis added). Accordingly, the Court found that the Slayer Statutes apply to PERS survivor benefits.

PERS now belatedly makes another attempt to bolster its argument, and contends that "it is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally." (Opp'n 8:8-11) (quoting *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 60, 63 P.3d 1147, 1150 (2003).) However, this argument is inapposite. The Slayer Statutes specifically apply to survivor benefits arising out of a public pension plan. NRS 41B.200(2)(b), 41B.080(9)(a).

Moreover, "whenever possible, a court will interpret a rule or statute in harmony with other rules or statutes." *Watson Rounds v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 79, 358 P.3d 228, 232 (2015) (quoting *Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999)).

Statutory interpretation seeks to interpret provisions to supplement rather than preempt one another, resulting in harmonious construction of the statutes. *Mineral Cty. v. State, Bd. of Equalization*, 121 Nev. 533, 536, 119 P.3d 706, 707-08 (2005). The Slayer Statutes plainly express the legislature's intent to avoid forfeiture of benefits that would otherwise accrue to the killer, and provide a means that allow the deceased's other heirs to share in his or her estate and other benefits that accrue based on his or her death. NRS 41B.310. NRS 286.699 does not state who shall be entitled to survivor benefits. Since the policy behind the Retirement Act is to "make government employment more attractive," allowing PERS to deny benefits to one's heirs just because one was killed by a spouse would not make government employment more attractive and would contravene the Retirement Act's public policy. NRS 286.015(c). Statutory interpretation would favor the

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Slayer Statutes to supplement NRS 286.669.

Finally, PERS misconstrues when and how the Court considers the award of attorney fees. Although PERS contends that because the Court's Orders do not specifically state that "PERS defense was brought without reasonable grounds or to harass Plaintiffs" it cannot now award attorneys' fees (Opp'n 9:25-10:2). This is incorrect. Neither NRS 7.085 nor NRS 18.010(2)(b) state when the court must determine that the party's defense was unreasonable. PERS relies on *Trident Construction Corp. v. West Electric, Inc.*, 105 Nev. 423, 429, 776 P.2d 1239, 1243 (1989) for the contention that the district court must set forth any basis for the award of attorney's fees in its findings. (Opp'n 9:13-17.) But, *Trident* does not mandate that the Court's prior orders in this case specifically state that PERS' defense was unreasonable. Instead, the issue is *Trident* arose because the order awarding attorneys' fees did not state the basis for its order and the record was not clear. 105 Nev. at 429, 776 P.2d at 1243. Thus, the *Trident* Court could not "imply the facts supporting the award of attorney fees." *Id.* Here, the records in this case clearly show that PERS' arguments were unreasonable, and the Court can expressly set forth the basis for awarding attorneys' fees in its order regarding the Motion for Attorneys' Fees.

2. PERS Position on Prejudgment Interest Was Unreasonable.

PERS contends its position regarding Plaintiffs' award of interest "was reasonable based on Nevada Statute." (Opp'n 10:7-8.) This is another example of PERS asking the Court to ignore the plain language of a statute and well-established rules of statutory construction. PERS unreasonably maintained that it was not required to pay ***any interest***, and forced Plaintiffs to file another motion (further prolonging the litigation) to receive interest that they were rightly due by statute.

Notwithstanding, the plain language of NRS 17.030 and 99.040, which provide three separate bases for awarding interest, PERS maintained that it was not required to pay any interest at all—either pre-judgment or post-judgment. While PERS argued that the Retirement Act does not authorize payment of interest, it ignores the statutes of general application which plainly require that interest be paid. NRS 17.030; NRS 99.040.

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C. Plaintiffs' Requested Attorney Fees Are Reasonable.

1. *Fees Incurred in Connection with Re-opening Probate*

PERS contends that fees incurred trying to obtain Ms. Freshman's PERS records and to open probate were "prior to this litigation, do not relate to PERS' defense during the course of this litigation and therefore may not be awarded under NRS 7.085 or NRS 18.101(2)(B)." (Opp'n 12:3-7.) Again, PERS cites to no legal authority that shows the statutes should be interpreted this way. However, NRS 18.010(2)(b) states, "[t]he court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations." The policy behind the provision is to protect "overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 18.010(2)(b).

Although the probate fees were incurred prior to commencing this litigation, Plaintiffs were forced to re-open the probate proceedings in order to determine if Shae had a valid claim because PERS unreasonably withheld Ms. Freshman's PERS records ("Records"). Although Plaintiffs requested the Records, PERS denied the request based on its unilateral decision that Shae was not a beneficiary under the Retirement Act. Accordingly, Plaintiffs pursued the matter in the probate case, which allows for an ex parte motion to get the Records instead of filing a premature adversarial proceeding.

The fees Plaintiffs incurred re-opening the probate proceedings could have been avoided if PERS take it a reasonable position and allowed Plaintiffs access to the Records upon their request. Instead, PERS forced Plaintiffs to obtain a court order to obtain the Records, which were necessary to evaluate potential claims. Therefore, the Court should award fees incurred in obtaining the Order for Records.

2. *Plaintiffs Provided Enough Information for the Court to Evaluate Their Request for Attorneys Fee Using the Brunzell Factors.*

PERS cites many cases that discuss the need for Court to consider the *Brunzell* factors to determine the reasonable value of the attorney services provided, but PERS fails to cite a single legal authority for their contention that the evidenced offered by Plaintiffs is insufficient. Because PERS

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fails to cite to a single legal authority in support of their position, this argument should be disregarded. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the court need not consider allegations of error not cogently argued or supported by any pertinent legal authority). However, even if the Court proceeds to evaluate PERS' arguments on the merits, PERS' arguments fail.

First, PERS contends that Dennis L Kennedy's Declaration ("Kennedy Declaration") only provides a "cursory explanation of the work performed" (Opp'n 13:18), but Plaintiffs included their invoices that provide descriptions of all the time billed in this matter (Mot. at Ex 3). These invoices provide details on the work done and the time required to do it, allowing the Court to support an award of attorneys' fees under the *Brunzell* factors. *See generally, Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1143 (2015). Furthermore, besides the time billed by paralegals, PERS did not challenge any of the invoice entries as being unnecessary, duplicate, or unreasonable billing rates.

Secondly, PERS contends has not disclosed the "training, education, experience, professional standing or skill." (Opp'n 13:24-25.) The Kennedy Declaration specifically states each person is an attorney or paralegal and if they are an associate or partner. Additionally, it states how many years the associates have been attorneys. Similarly, the Kennedy Declaration describes the task of done by the paralegals as "document management and discovery-related task" and "preparing the Memorandum of Costs" which are typical paralegal tasks, and a further breakdown of the paralegals' work was included on the invoices. (Mot. at Ex 3.) Moreover, $150 an hour is a reasonable fee charged for a paralegal in Las Vegas. PERS does not cite any authority holding that $150 is unreasonable or that the information provided is insufficient for the Court to support an award of attorneys' fees under the *Brunzell* factors, and therefore PERS' argument should not be considered. *See Edwards*, 122 Nev. at 330 n. 38, 130 P.3d at 1288 n.38.

The Court should grant Plaintiffs' Motion for Attorneys' Fees in its entirety. However, if the Court finds any fees unreasonable, the proper procedure would be to reduce the fees to a reasonable rate, not refuse the fees altogether. *See Branch Banking & Trust Co. v. Jarrett*, No. 3:13-CV-00235-RCJ, 2014 WL 4636049, at *3 (D. Nev. Sept. 16, 2014).

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III. CONCLUSION.

Throughout the course of litigation, PERS has repeatedly taken positions that were unsupported by law, which needlessly extended this case and increased its cost. The fees Plaintiffs seek are expressly permitted by statute because PERS' defenses were frivolous and interposed without reasonable and competent inquiry. PERS flat out ignored the plain language of multiple statutes. Furthermore, Plaintiffs timely filed the Motion, and provided enough support regarding the reasonableness of their fees. Therefore, the $96,272.50 in attorneys' fees that Plaintiffs incurred should be awarded as requested.

DATED this 11th day of January, 2016.

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By: */s/ Dennis L. Kennedy*
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 11th day of January, 2016, service of the foregoing Reply in Support of Motion for Attorneys' Fees was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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DISTRICT COURT

CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman Plaintiffs, vs. PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA, a public entity and Component unit of the State of Nevada, Defendant. _____/	Case No. A-14-697642-C Dept. No. XXVIII **REPLY IN SUPPORT OF MOTION TO RETAX COSTS**

Defendant, PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA ("PERS"), by and through its attorneys, W. CHRIS WICKER of WOODBURN AND WEDGE and CHRIS NIELSEN of THE PUBLIC EMPLOYEES RETIREMENT SYSTEM, hereby files its Reply in Support of Motion to Retax Costs.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff filed a Memorandum of Costs and Disbursements in this matter which included, among other costs, $5,000 in expert witness fees for services performed by JW Advisors. JW Advisors was never disclosed as an expert witness in this case, never produced a report, and never presented testimony by way of deposition, at any hearing, or at trial. Accordingly, PERS moved to have the $5,000 in costs related to alleged expert witness costs removed from Plaintiffs' Memorandum of Costs.

II. ARGUMENT

In response to PERS' motion, Plaintiffs raise two main issues. First, Plaintiffs argue that PERS has failed to raise a persuasive argument that Plaintiffs' purported expert is qualified as an expert in the present matter. Second, Plaintiffs assert they are entitled to expert witness fees despite the fact that their purported expert was not disclosed, did not produce a report, and provided no testimony. Each of Plaintiffs arguments fail as described below.

A. Plaintiffs' Purported Expert Is Not Qualified.

NRS 50.275 provides:

> If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness ***qualified as an expert*** by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.

(Emphasis added.) In order for a witness to testify as an expert, "the district court must first determine that the witness is indeed a qualified expert." *Mulder v. State*, 116 Nev. 1, 13, 992 P.2d 845, 852 (2000).

PERS' Motion to Retax Costs is based in part on the fact that Plaintiffs' purported experts were never qualified as experts, and that there is no evidence that they could be certified as experts in this case. (Mtn. to Retax at 4.) Plaintiffs respond,

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asserting that PERS' argument need not be addressed by this Court because PERS has failed to offer meaningful analysis or authority on the subject.

PERS' position, as set forth in its motion, is straightforward. PERS' motion cites to NRS 18.005(5) which provides for an award of costs for the reasonable fees of expert witnesses, and argues that Plaintiffs' proposed experts were not certified as experts, and there is no evidence that they could be so certified.

In their opposition, Plaintiffs seek to shift the burden of proof, requiring PERS to prove that Plaintiffs' purported experts are not qualified, prior to Plaintiffs providing any proof their witnesses are qualified. Plaintiffs overlook the fact that they bear the burden of having their witnesses qualified as experts in order to recover costs of those purported experts. The truth is, however, that Plaintiffs' witnesses were not qualified as experts, or even disclosed by Plaintiffs as potential experts. Furthermore, as addressed in PERS' motion, Plaintiffs provided no evidence in their Memorandum of Costs and Disbursements to support the contention that Kirk Jacobson or William Hinsdale could be qualified as experts in the analysis of the PERS calculations of benefits and interest.

In their opposition, Plaintiffs fail to provide additional support for their contention that Mr. Jacobson or Mr. Hinsdale could be qualified as experts in this case. Plaintiffs cite case law addressing the factors to be considered when qualifying experts, and cite to Mr. Jacobson's curriculum vitae identifying Mr. Jacobson as an accountant, but make no explanation of how his formal schooling, licensure, employment experience, and practical experience qualify him as an expert in calculating PERS benefits. *See Hallmark v. Eldridge*, 124 Nev. 492, 499, 189 P.3d 646, 650-51 (2008). Instead, Plaintiffs make the conclusory statement that Mr. Jacobson "is qualified to perform all general accounting tasks." (Opp. to Mtn. at 4.)

Additionally, Plaintiffs argue that an expert's fees may properly include charges for staff who assist the expert in forming his analysis and forming his opinion. Plaintiffs explain that Mr. Hinsdale provides litigation support services to purported expert Mr.

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Jacobson. PERS does not deny that experts can delegate tasks to staff, and that where appropriate, fees incurred for work performed by an expert's staff can be recoverable under NRS 18.005(5). However, where no expert has been qualified and there no evidence has been presented to support the qualification of the expert, neither fees incurred as a result of work performed by the purported expert nor fees incurred by a staff member are subject to recovery under NRS 18.005(5). Accordingly, the expert witness fees identified by Plaintiffs should be excluded from an award of costs.

B. The Expert Fees Requested By Plaintiffs Are Not Recoverable Under Nevada Law.

PERS has argued that Plaintiffs cannot recover as costs expert fees for purported experts, who were not identified as experts, provided no expert reports, were not qualified as experts, and presented no expert testimony. Specifically, PERS cited to NRS 18.005(5) and case law stating that the recovery of an expert witness fees as costs are limited to experts who provide testimony. Plaintiffs argue that they are entitled to recover expert witness costs despite the fact that no expert testimony was presented in this case. Plaintiffs seek support of their position in their interpretation of *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993), and their apparent disregard of other relevant Nevada case law.

Plaintiffs claim an entitlement to costs under NRS 18.110(1). The definition of costs includes:

> Reasonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding ***the expert's testimony*** were of such necessity as to require the larger fee.

NRS 18.005(5) (emphasis added). Interpreting NRS 18.005(5), the Nevada Supreme Court in *Mays v. Todaro* explained that a reasonable expert witness fee may be awarded "to a party in whose favor judgment is rendered, if the witness had been sworn and testified." 97 Nev. 195, 199, 626 P.2d 260, 263 (1981).

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Discounting *Mays*, Plaintiffs argue that *Bergmann v. Boyce* is controlling and stands for the position that calling a witness at trial is not a prerequisite to an award of expert witness fees and costs. Plaintiffs' position is based on an inference, however, as the *Bergmann* does not explicitly state that expert costs are recoverable regardless of whether the expert testifies. In *Bergmann*, the court was asked to determine whether witness fees were properly awarded by the district court. 109 Nev. at 679, 856 P.2d at 566. The *Bergmann* court quoted the definition of costs as it relates both to expert witnesses and non-expert witnesses under NRS 18.005(4), (5) and explained that the trial court awarded witness fees and expert witness fees as costs. *Id.* That court further explained that much of the overall fee costs awarded represented fees paid to witnesses not called at trial. *Id.* The court did not discuss which witness were called to testify, whether there were any expert witnesses who did not testify, or whether fees were awarded to any expert witness who did not testify. In finding that the trial court had not abused its discretion, the *Bergmann* court concluded that "calling the witness at trial was not a prerequisite to an award of witness fees as costs." *Id.* at 680, 856 P.2d at 566. Notably, however, the court did not address whether its holding applied to expert witness costs.

More recently in *Frazier v. Drake*, the Nevada Supreme Court recognized there may be inconsistencies between *Mays* and *Bergmann*. 131 Nev.Adv.Op. 64, 357 P.3d 365, 374 n.12 (2015). However, the *Frazier* court did not resolve "the apparent inconsistency between these decisions." *Id.* The *Frazier* court did describe, however, that there is no inconsistency when expert fees of more than $1,500 are sought, explaining that "ordinarily, an expert must testify in order for a party to recover more than $1,500 in costs for that expert's fees under NRS 18.005(5)." *Id.* (citing *Logan v. Abe*, 131 Nev. ___, 350 P.3d 1139, 1144 (2015)).

Additionally, the *Frazier* court explains that for an award of expert witness fees in excess of $1,500 per expert, the fees awarded must not only be reasonable, but the circumstances surrounding each expert's testimony must be of such necessity as to

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require the larger fee." *Id.* at 374. "[T]he importance of the expert's testimony to the party's case plays a key role in assessing the propriety of such an award." *Id.* at 377. An award of expert witness fees in excess of $1,500 per expert "must be supported by an express, careful, and preferably written explanation of the court's analysis of factors pertinent to determining the reasonableness of the requested fees and whether 'the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.'" *Id.* (quoting NRS 18.005(5)). The court then outlines factors which should be considered by courts evaluating requests for expert witness fees in excess of $1,500, including:

> the importance of the expert's testimony to the party's case; the degree to which the expert's opinion aided the trier of fact in deciding the case; whether the expert's reports or testimony were repetitive of other expert witnesses; the extent and nature of the work performed by the expert; whether the expert had to conduct independent investigations or testing; the amount of time the expert spent in court, preparing a report, and preparing for trial; the expert's area of expertise; the expert's education and training; the fee actually charged to the party who retained the expert; the fees traditionally charged by the expert on related matters; comparable experts' fees charged in similar cases; and, if an expert is retained from outside the area where the trial is held, the fees and costs that would have been incurred to hire a comparable expert where the trial was held.

Id. at 377-78.

An application of the factors identified in *Frazier* makes it clear that Plaintiffs are not entitled to an award of expert costs exceeding $1,500. For starters, "an expert must testify in order for a party to recover more than $1,500 in costs for that expert's fees under NRS 18.005(5)." *Id.* at 374 n.12 (citing *Logan v. Abe*, 131 Nev. ___, 350 P.3d 1139, 1144 (2015)). It is undisputed that Plaintiffs' expert did not testify.

Furthermore, the purported expert cannot be said to have played an important role in Plaintiffs' case or to have aided the trier of fact in deciding the case. After all, the expert was not disclosed, provided no report, and gave no testimony in the case. As a result, there is no evidence that the work performed by Plaintiffs' expert was of

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such necessity as to a witness fee larger than $1,500. Finally, there is no evidence tying the expert's area of expertise, education, or training to the subject matter he was purportedly retained to address, namely PERS calculations of benefits and interest.

Not only is an expert fee exceeding $1,500 not warranted under *Frazier*, but the entire expert witness fee requested by Plaintiffs is unwarranted. Although the *Frazier* court addressed principally expert fees which exceed $1,500, that court explained that "before any award of expert witness fees as costs may be made under NRS Chapter 18, the district court must have evidence before it demonstrating 'that the costs were reasonable, necessary, and actually incurred' that goes beyond a mere memorandum of costs". *Id.* at 378.

Here, Plaintiffs have not provided evidence demonstrating that the expert fees incurred were reasonable or necessary. Instead, the lack of evidence regarding the purported expert's qualification as an expert in the calculation of PERS benefits and interest demonstrates that none of the fees incurred were reasonable or necessary. Consequently, even if it can be assumed that *Bergmann* does stand for the position that calling an expert witness to testify is not a prerequisite to an award of expert witness fees and costs, where the expert has not even been disclosed, Plaintiffs have not explained how the expert is qualifies, and the evidence demonstrates that the expert's fees were not necessary, expert fees of less than $1,500 should not be awarded. Accordingly, in this case all the expert witness fees identified by Plaintiffs should be excluded from an award of costs.

III. CONSCLUSION

Plaintiffs have failed to provide evidence demonstrating that its purported expert qualifies as an expert witness. Additionally, there is no evidence that Plaintiffs expert fees were reasonable or necessary. The evidence we do have is that Plaintiffs did not disclose any experts, no expert reports were prepared, and no expert testimony was given. Under these circumstances, Plaintiffs are not entitled to their requested $5,000 in expert witness costs.

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 12th day of January, 2016.

WOODBURN AND WEDGE

By: */s/ W. Chris Wicker*
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CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge, and that on this 12th day of January, 2016. I caused to be sent via electronic mail, through the Court's filing system, a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION TO RETAX COSTS, addressed as follows

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