

Attachment #1

**Notice of Entry of Order Granting
Petitioner Las Vegas Review Journal's
Public Records Act Application Pursuant
to Nev. Rev. Stat. 239.001/ Petition for
Writ of Mandamus
November 9, 2017**



1 **NEOJ**
2 MARGARET A MCLEATCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLEATCHIE SHELL LLC**
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Counsel for Petitioner

DISTRICT COURT

CLARK COUNTY NEVADA

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

10 Petitioner,

Dept. No.: XXIV

11 vs.

NOTICE OF ENTRY OF ORDER

12 CLARK COUNTY OFFICE OF THE
13 CORONER/MEDICAL EXAMINER,

14 Respondent.

16 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:

17 PLEASE TAKE NOTICE that on the 9th day of November, 2017, an Order
18 Granting Petitioner LVRJ's Public Records Act Application Pursuant to Nev. Rev. Stat.
19 239.001/ Petition for Writ of Mandamus was entered in the above-captioned action. A copy
20 of the Order is attached hereto as Exhibit 1.

21 Respectfully submitted this 9th day of November, 2017.

22 /s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931

Alina M. Shell, Nevada Bar No. 11711

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2017, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner*, Clark County District Court Case No. A-17-758501-W, to be served electronically using the Odyssey File & Serve electronic filing service system, to all parties with an email address on record.

I hereby further certify that on the 9th day of November, 2017, pursuant to Nev. R. Civ. P. 5(b)(2)(B) I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Mary-Anne Miller and Laura Rehfeldt
Clark County District Attorney's Office
500 S. Grand Central Pkwy., Ste. 5075
Las Vegas, NV 89106
Counsel for Respondent, Clark County Office of the Coroner/Medical Examiner

/s/ Pharan Burchfield
An Employee of MCLEITCHIE SHELL LLC

EXHIBIT 1

Steven D. Grierson

1 **ORDER**

2 MARGARET A MCLEITCHIE, Nevada Bar No. 10931

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Counsel for Petitioner

DISTRICT COURT

CLARK COUNTY NEVADA

9 LAS VEGAS REVIEW-JOURNAL,

10 Petitioner,

11 vs.

12 CLARK COUNTY OFFICE OF THE
13 CORONER/MEDICAL EXAMINER,

14 Respondent.

Case No.: A-17-758501-W

Dept. No.: XXIV

11/8/17

ORDER GRANTING
PETITIONER LVRJ'S PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NEV. REV. STAT.
§ 239.001/ PETITION FOR WRIT
OF MANDAMUS

15
16
17 The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev.
18 Rev. Stat. § 239.001/Petition for Writ of Mandamus, having come on for hearing on
19 September 28, 2017, the Honorable Jim Crockett presiding, Petitioner Las Vegas Review-
20 Journal (the "LVRJ") appearing by and through its counsel, Margaret A. McLetchie and
21 Alina M. Shell, and Respondent Clark County Office of the Coroner/Medical Examiner
22 ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court
23 having read and considered all of the papers and pleadings on file and being fully advised,
24 and good cause appearing therefor, the Court hereby makes the following findings of fact
25 and conclusions of law:

26 ///

27 ///

28 ///

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

1. On April 13, 2017, the LVRJ sent the Coroner's Office a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPRA").

2. The LVRJ's request sought all autopsy reports of autopsies conducted of anyone under the age of 18 from 2012 through the date of the request.

3. The Coroner's Office responded via email on April 13, 2017. It provided a spreadsheet with information consisting of the Coroner case number, name of decedent, date of death, gender, age, race, location of death, and cause and manner of death, but refused to provide "autopsy reports, notes or other documents."

4. In its April 13, 2017 email, the Coroner's Office stated it would not disclose the autopsy reports because they contain medical information and confidential information about a decedent's body. The Coroner's Office relied on Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 ("AGO 82-12") as the basis for non-disclosure.

5. The LVRJ followed up by emailing the Clark County District Attorney's Office on April 13, 2017, requesting legal support for the refusal to provide records.

6. The District Attorney's Office, Civil Division, on behalf of the Coroner's Office, responded via email on April 14, 2017, again relying on AGO 82-12 and also relying on Assembly Bill 57, 79th Sess. (Nev. 2017) (a bill then pending consideration in the 2017 session of the Nevada Legislature and proposing changes to Nevada law regarding a coroner's duty to notify next-of-kin of the death of a family member but not addressing public records) as the bases for its refusal to disclose the requested records.

7. The Coroner's Office did not assert any other basis for withholding records within five (5) business days.

8. On May 9, 2017, following a meeting between the Coroner and the LVRJ, the Coroner mailed a second spreadsheet to the LVRJ listing child deaths dating back to 2011 in which the Coroner conducted autopsies.

1 9. On May 23, 2017, counsel for the LVRJ wrote to the Coroner's Office to
2 address concerns with the Coroner's Office's refusal to provide access to any of the
3 requested juvenile autopsy reports.

4 10. On May 26, 2017, the Coroner's Office (via the District Attorney)
5 responded to the May 23, 2017 letter, again relying on the legal analysis in AGO 82-12, and
6 agreed to consider providing redacted versions of autopsies of juveniles if the LVRJ
7 provided a specific list of cases it wished to review.

8 11. In its May 26, 2017 response, the Coroner's Office for the first time also
9 asserted that the records may be protected by Nev. Rev. Stat. § 432B.407 and that privacy
10 interests outweighed public disclosure.

11 12. The LVRJ provided the Coroner's Office with a list of specific cases it
12 wanted reports for via email on May 26, 2017.

13 13. The Coroner's Office responded to the May 26, 2017 email on May 31,
14 2017.

15 14. In its May 31, 2017 response, the Coroner's Office stated that responsive
16 records were "subject to privilege will not be disclosed" and that it would also redact other
17 records. However, it did not assert any specific privilege.

18 15. The Coroner's Office also asked the LVRJ to specify the records it wanted
19 to receive first, which the LVRJ did on June 12, 2017.

20 16. On July 9, 2017, in a response to a further email from the LVRJ inquiring
21 on the status of the records, the Coroner's Office indicated it would not produce any records
22 that pertained to any case that was subsequently handled by a child death review team
23 pursuant to Nev. Rev. Stat. § 432B.407. By that time, the Coroner had determined which
24 cases were not handled by the child death review team and provided a list to the LVRJ.

25 17. On July 11, 2017, the Coroner's Office provided sample files of redacted
26 autopsy reports for other autopsies of juveniles that were not handled by a child death review
27 team. The samples files were heavily redacted; the Coroner's Office asserted that the
28 redacted language consisted of information that was medical, related to the health of the

1 decedent's mother, could be marked with stigmata or considered an invasion of privacy.
2 Statements of diagnosis or opinion that were medical or health related that went to the cause
3 of death were not redacted.

4 18. On July 11, 2017, the Coroner's Office also demanded that the LVRJ
5 commit to payment for further work in redacting files for production, and declined to
6 produce records without payment. The Coroner's Office indicated it would take two persons
7 10-12 hours to redact the records it was willing to produce, and that the LVRJ would have
8 to pay \$45.00 an hour for the two reviewers, one of which would be an attorney. The
9 Coroner's Office contended that conducting a privilege review and redacting autopsy
10 reports required the "extraordinary use of personnel" under Nev. Rev. Stat. § 239.055. The
11 Coroner's Office stated it did not intend to seek fees for the work associated with the
12 previously provided spreadsheets and redacted reports.

13 19. On July 17, 2017, the LVRJ filed its Application Pursuant to Nev. Rev.
14 Sta. § 239.001/Application for Writ of Mandamus/Application for Declaratory and
15 Injunctive Relief ("Application"), and requested expedited consideration pursuant to Nev.
16 Rev. Stat. § 239.011(2).

17 20. On August 17, 2017, the LVRJ submitted a Memorandum in support of its
18 Application. The Coroner's Office submitted its Response on August 30, 2017, and the
19 LVRJ submitted its Reply on September 7, 2017. The LVRJ also submitted a Supplement
20 on September 25, 2017 that included autopsy records the LVRJ had received from White
21 Pine County and Lander County in response to public records requests.

22 21. The Court held a hearing on the LVRJ's Application on September 28,
23 2017.

24 II.

25 CONCLUSIONS OF LAW

26 22. The purpose of the NPRA is to foster democratic principles by ensuring
27 easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1) ("The purpose
28 of this chapter is to foster democratic principles by providing members of the public with

1 access to inspect and copy public books and records to the extent permitted by law”); *see*
2 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011)
3 (holding that “the provisions of the NPRA are designed to promote government transparency
4 and accountability”).

5 23. To fulfill that goal, the NPRA must be construed and interpreted liberally;
6 government records are presumed public records subject to the Act, and any limitation on the
7 public’s access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2)
8 and 239.001(3); *see also Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting that the Nevada
9 legislature intended the provisions of the NPRA to be “liberally construed to maximize the
10 public’s right of access”).

11 24. The Nevada Legislature has made it clear that—unless they are explicitly
12 confidential—public records must be made available to the public for inspection or copying.
13 Nev. Rev. Stat. § 239.010(1); *see also Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,
14 266 P.3d 623, 627 (2011).

15 **A. The Coroner’s Office Has Not Met Its Burden in Withholding or Redacting**
16 **Records.**

17 25. The NPRA “considers all records to be public documents available for
18 inspection unless otherwise explicitly made confidential by statute or by a balancing of
19 public interests against privacy or law enforcement justification for nondisclosure.” *Reno*
20 *Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010).

21 26. If a statute explicitly makes a record confidential or privileged, the public
22 entity need not produce it. *Id.*

23 28. If a governmental entity seeks to withhold a document that is not explicitly
24 made confidential by statute, it must prove by a preponderance of the evidence that the
25 records are confidential or privileged, and must also prove by a preponderance of the
26 evidence that the interest in nondisclosure outweighs the strong presumption in favor of
27 public access. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also Donrey of*
28 *Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990).

1 29. In balancing those interests, “the scales must reflect the fundamental right
2 of a citizen to have access to the public records as contrasted with the incidental right of the
3 agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of*
4 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.
5 27, 359 P.2d 413, 421–22 (1961)).

6 30. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court
7 hereby finds that the Coroner’s Office has not established by a preponderance of the evidence
8 that the withheld records are confidential or privileged such that withholding the autopsy
9 records pertaining to cases that were subsequently handled by a child death review team
10 pursuant to Nev. Rev. Stat. § 432B.407(6) in their entirety is justified, nor has it established
11 by a preponderance of the evidence that any interest in nondisclosure outweighs the strong
12 presumption in favor of public access.

13 31. Further, with regard to the proposed redactions to the autopsy reports the
14 Coroner’s Office was willing to disclose, the Court finds that the Coroner’s Office has not
15 established by a preponderance of the evidence that the redacted material is privileged or
16 confidential.

17 *The Coroner’s Office Did Not Comply With the NPRA’s Mandate to Provide*
18 *Legal Authority in Support of Its Decision to Withhold or Redact Records*
19 *Within Five Days.*

20 32. The NPRA provides that a governmental entity must provide timely and
21 specific notice if it is denying a request because the entity determines the documents sought
22 are confidential. Nev. Rev. Stat. § 239.0107(1)(d) states that, within five (5) business days
23 of receiving a request,

24 [i]f the governmental entity must deny the person’s request because the
25 public book or record, or a part thereof, is confidential, provide to the
26 person, in writing: (1) Notice of that fact; and (2) A citation to the specific
27 statute or other legal authority that makes the public book or record, or a
28 part thereof, confidential.

1 33. The Coroner's Office cannot rely on privileges, statutes, or other
2 authorities that it failed to assert within five (5) business days to meet its burden of
3 establishing that privilege attaches to any of the requested records.

4 ***The Attorney General Opinion Does Not Justify Non-Disclosure.***

5 34. In its April 13, 2017 response to the LVRJ's records request, the Coroner's
6 Office relied on a 1982 Attorney General Opinion, 1982 Nev. Op. Atty. Gen. No. 12 as a
7 basis for its refusal to produce the requested autopsy reports.

8 35. The Court finds that, consistent with Nevada Supreme Court precedent,
9 Attorney General Opinions are not binding legal authority. *See Univ. & Cmty. Coll. Sys. of*
10 *Nevada v. DR Partners*, 117 Nev. 195, 203, 18 P.3d 1042, 1048 (2001) (citing *Goldman v.*
11 *Bryan*, 106 Nev. 30, 42, 787 P.2d 372, 380 (1990)); accord *Redl v. Secretary of State*, 120
12 Nev. 75, 80, 85 P.3d 797, 800 (2004).

13 36. Because it is not binding legal authority, the legal analysis contained in
14 AGO 82-12 does not satisfy the Coroner's Office's burden of establishing that the records
15 are confidential and that the interest in non-disclosure outweighs the presumption in favor
16 of access.

17 ***Nevada Assembly Bill 57 Does Not Justify Non-Disclosure.***

18 44. The Coroner's Office also cites to Assembly Bill 57, a bill adopted during
19 the 2017 legislative session which made changes to Nevada laws pertaining to next-of-kin
20 notifications as evidence that the privacy interest in autopsy reports outweighs the public's
21 right of access.

22 45. The Court finds that Assembly Bill 57 (which had not been passed by
23 Nevada Legislature at the time the Coroner's Office cited it in its April 14, 2017 email) is
24 not "legal authority" as required by Nev. Rev. Stat. § 239.0107(d)(1).

25 46. Moreover, the Court finds that Assembly Bill 57 does not demonstrate a
26 legislative intent to undermine or negate the NPRA's mandates regarding producing public
27 records. Thus, the Coroner's Office cannot rely on Assembly Bill 57 to meet its burden of
28

1 establishing that the records are confidential and that the interest in non-disclosure
2 outweighs the presumption in favor of access.

3 *Nev. Rev. Stat. § 432B.407 Does Not Justify Non-Disclosure.*

4 37. On July 9, 2017, in a response to a further email from the LVRJ inquiring
5 on the status of the records, the Coroner's Office indicated it would not produce any records
6 that pertained to any case that was subsequently handled by a child death review team
7 pursuant to Nev. Rev. Stat. § 432B.403, *et. seq.* The Coroner's Office specifically cited Nev.
8 Rev. Stat. § 432B.407, a statute which pertains to information acquired by child death
9 review teams, as a basis for refusing to produce the records.

10 38. In addition to not being timely cited, Nev. Rev. Stat. § 432B.407 does not
11 satisfy the Coroner's Office's burden of establishing that any interest in nondisclosure
12 outweighs the public's interest in the records.

13 39. Pursuant to Nev. Rev. Stat. § 432B.403, the State can organize child death
14 review teams to review the records of selected cases of children under the age of 18 to assess
15 and analyze the deaths, make recommendations for changes to law and policy, support the
16 safety of children, and a prevent future deaths.

17 40. Under Nev. Rev. Stat. § 432B.407(1), a child death review team may
18 access, inter alia, "any autopsy and coroner's investigative records" relating to the death of
19 a child. Nev. Rev. Stat. § 432B.407(1)(b). Section 432B.407(6) in turn provides that
20 "information acquired by, and the records of, a multidisciplinary team to review the death
21 of a child are confidential, must not be disclosed, and are not subject to subpoena, discovery
22 or introduction into evidence in any civil or criminal proceeding."

23 41. However, the Court finds that nothing in the language of Nev. Rev. Stat. §
24 432B.407(6) indicates that records obtained by child death review teams are automatically
25 confidential simply because the Coroner's Office transmitted those records at some point in
26 time to a child death review team.

27 42. Moreover, to the extent that Nev. Rev. Stat. § 432B.407 renders any
28 records confidential, nothing in the language of Nev. Rev. Stat. § 432B.407 indicates

1 records obtained by a child death review team must be kept confidential in perpetuity.
2 Instead, the records of a child death review team must be kept confidential only during a
3 child death review team's review of a child fatality.

4 43. Thus, the Coroner's Office's reliance on Nev. Rev. Stat. § 432B.407 does
5 not meet its burden of establishing that the records are confidential and that the interest in
6 non-disclosure outweighs the presumption in favor of access.

7 *HIPAA Does Not Justify Non-Disclosure.*

8 44. In addition to its reliance on Nev. Rev. Stat. § 432B.407, the Coroner's
9 Office in its September 7, 2017 Response also pointed to privacy protections for medical
10 data under the Health Insurance Portability and Privacy Act (HIPAA) and NRS Chapter
11 629, as persuasive authority for its position that the requested records should be kept
12 confidential.

13 47. However, in addition to that fact that the Coroner's Office failed to timely
14 cite HIPAA as a basis for withholding or redacting the requested records, the Coroner's
15 Office, it is not a covered entity under HIPAA.

16 48. Pursuant to 45 C.F.R. § 160.103, a covered entity is defined as: (1) a health
17 plan; (2) a "health care clearinghouse;" or (3) "[a] health care provider who transmits any
18 health information in electronic form in connection with a transaction covered by
19 [HIPAA]." Moreover, 42 C.F.R. § 160.102 specifically states that HIPAA only applies to
20 those three categories of health care entities. Thus, by its plain language, HIPAA is not
21 intended to apply to autopsy records, and cannot be used by the Coroner's Office to withhold
22 the requested records.

23 49. Accordingly, both because the Coroner's Office did not timely assert any
24 legal or statutory authority to meet its burden in withholding the records, and because it has
25 not met its burden in withholding or redacting the requested records, the Court finds that the
26 Coroner's Office must disclose the requested records to the LVRJ in unredacted form.

27 ///

B. The NPRA Does Not Permit Government Entities to Charge to Redact or Withhold Records or to Conduct a Privilege Review.

50. The fees provisions relevant to public records requests are those set forth in Nev. Rev. Stat. §§ 239.052 and 239.055(1).

51. The Coroner's Office relied on Nev. Rev. Stat. § 239.055(1) for fees for "extraordinary use." That statute provides that "... if a request for a copy of a public record would require a governmental entity to make extraordinary use of its personnel or technological resources, the governmental entity may, in addition to any other fee authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such extraordinary use...." In its Responding Brief, even the Coroner's Office acknowledged that in 2013, the Nevada Legislature modified Nev. Rev. Stat. § 39.055 to limit fees for the "extraordinary use of personnel" to 50 cents per page.

52. The Court finds that Nev. Rev. Stat. § 239.055(1) does not allow governmental entities to charge a fee for privilege review or to redact or withhold records. Interpreting Nev. Rev. Stat. § 239.055 to limit public access by requiring requesters to pay public entities to charge for undertaking a review for responsive documents, confidentiality, and redactions would be inconsistent with the plain terms of the statute and with the mandate to liberally construe the NPRA. *See* Nev. Rev. Stat. § 239.001(3).

53. Further, allowing a public entity to charge a requester for legal fees associated with reviewing for confidentiality is impermissible because "[t]he public official or agency bears the burden of establishing the existence of privilege based upon confidentiality." *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

54. Moreover, the Court finds that no provision within the NPRA allows a governmental entity to charge a requester for a privilege review. Rather, the NPRA provides that a governmental entity may charge for providing a copy of a record, (Nev. Rev. Stat. § 239.052(1)), for providing a transcript of an administrative proceeding, (Nev. Rev. Stat. § 239.053), for information from a geographic information system (Nev. Rev. Stat. §

1 239.054), or for the "extraordinary use" of personnel or technology. Nev. Rev. Stat. §
2 239.055. A privilege review does not fall within any of these provisions.

3 55. The Court therefore finds that the Coroner's Office cannot charge the
4 LVRJ a fee under Nev. Rev. Stat. § 239.055(1) to conduct a review of the requested records.

5 56. Pursuant to Nev. Rev. Stat. § 239.052(1) "a governmental entity may charge
6 a fee for providing a copy of a public record." However, that fee may not exceed the "actual
7 cost to the governmental entity to provide a copy of the public records ..." *Id.*

8 57. The LVRJ indicated it wished to receive electronic copies of the requested
9 records. The LVRJ is not requesting hard copies, and the NPRPA does not permit a per page
10 fee to be charged for electronic copies. Thus, because the only cost for electronic copies is
11 that of the medium (a CD), the Court finds that the Coroner's Office may not charge any
12 additional fee besides the cost of the CD.

13 III.

14 ORDER

15 58. Based on the foregoing findings of fact and conclusions of law, the Court
16 hereby orders as follows:

17 59. The Coroner's Office shall produce autopsy reports of autopsies conducted
18 of anyone under the age of 18 conducted from 2012 through April 13, 2017 to the LVRJ in
19 unredacted form.

20 60. The Coroner's Office shall make the records available to the LVRJ
21 expeditiously and on a rolling basis. The Coroner's Office must provide all the requested
22 records to the LVRJ by no later than December 28, 2017.

23 61. At the hearing, the Coroner's Office stated it would be able to produce CDs
24 with electronic copies of the requested records at a cost of \$15.00 per CD, and the LVRJ
25 stated it was willing to pay such a fee or provide its own CD. In producing the requested
26 records, the Coroner's Office may charge the LVRJ a fee of up to \$15.00 per CD consistent
27 with Nev. Rev. Stat. § 239.052(1). No additional fees shall be permitted.

28 ///


A75B501 - ORDER GRANTING
PETITIONER LVRT'S PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NRS 239.001
PETITION FOR WRIT OF
MANDAMUS

ORDER

It is so ORDERED this 8 day of July, 2017.


DISTRICT COURT JUDGE

Prepared and submitted by:


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IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

No. 74604

Electronically Filed
Dec 27 2017 02:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CLARK COUNTY OFFICE OF THE)
CORONER/ MEDICAL EXAMINER)
Appellant,)
vs.)
LAS VEGAS REVIEW JOURNAL)
Appellee.)

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2014

1. Judicial District Eighth Department XXIV
County Clark Judge Honorable Jim Crockett
District Ct. Case No. A-17-758501

2. Attorney filing this docketing statement:

Attorney Laura C. Rehfeldt Telephone (702) 455-4761
Firm Clark County District Attorney's Office – Civil Division
Address 500 South Grand Central Pkwy., 5th Fl., Las Vegas, NV 89155-2215
Client(s) Clark County Office of the Coroner/Medical Examiner

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Margaret A. McLetchie & Alina M. Shell Telephone (702) 728-5300
Firm McLetchie Shell, LLC
Address 701 E. Bridger Avenue, Ste. 520, Las Vegas, NV 89101
Client(s) Las Vegas Review Journal

Attorney _____ Telephone _____
Firm _____
Address _____
Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Granting of Respondent's Writ of Mandamus</u> |
| | <input type="checkbox"/> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

On or about November 28, 2017 the Las Vegas Review Journal filed a Motion for Fees and Costs in District Court Case A-17-758501-W. That motion is currently being briefed and is scheduled for argument on January 11, 2018.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This appeal involves a Nevada Public Records Law issue and review of a district court order granting the media access to autopsy reports of children.

On April 13, 2017, the Respondent – Las Vegas Review Journal made a records request to Appellant - Coroner for autopsy reports of juvenile deaths dating back to January 1, 2012. Appellant promptly denied access to these reports based on the legal analysis in Attorney General Opinion 82-12, which opined that autopsy reports contain information treated confidential by law and should be confidential based on the application of the balancing test which weighs private interests against public access. Appellant provided public data to the Respondent in the form of a detailed spreadsheet listing the names of all of the children

who had died in Clark County since January 2012, along with their age, date of death, location of death, race, gender and, most importantly, cause and manner of death. Later on, when it was determined that the purpose of the Respondent's request was to obtain information on deaths of children, who are protected under NRS Chapter 432B, the Appellant denied access based on NRS 432B.407(6) which states that information and records accessed by the child death review team are confidential and not subject to disclosure.

With respect to the juvenile Coroner cases that did not go through the child review team, the Appellant proposed some redacted reports as samples. The information that was redacted largely included medical and health information of the decedent and the mother of the child. Statements of diagnosis or opinion that were medical or health related that supported the cause of death were not redacted. Ultimately, the redacted reports offered by the Appellant were unacceptable to the Respondent and, on July 17, 2017, the Las Vegas Review Journal filed its Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/Petition for Writ of Mandamus for access to autopsy reports of juvenile deaths dating back to January 2012.

The Respondent's arguments included the following: 1) the Appellant could not rely on the legal analysis in an Attorney General's Opinion as a basis for denial of access to the records under NRS 239.0107; 2) the privilege in NRS 432B.407(6) was not timely asserted and, even so, was only temporary while records were reviewed by the child death team; and 3) the Appellant had not established that the records are confidential and, therefore, must be disclosed under Nevada Public Records Law.

The Appellant argued that the juvenile autopsy cases that went before the child death review team were confidential under NRS 432B.407(6), and that said statute was properly asserted. The Appellant also claimed that the subject matter contained in the autopsy reports is deemed confidential by law. The Appellant further argued that its reliance on the legal analysis in AGO 82-12 was appropriate, including that it was necessary to balance private interests against public access, as years later adopted in the Nevada Supreme Court cases of Donrey of Nev., Inc. v. Bradshaw, 106 Nev.630, 798 P.2d 144 (1990) and Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873, 266 P.3d 623 (2011).

The Appellant's argument that the privacy interests outweighed public access was based on certain grounds including the following:

- 1) The fact that the vast majority of the subject matter of an autopsy report consists of medical and health information and such information is protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and NRS Chapter 629, and therefore law and public policy supports the nondisclosure of these reports to the public;
- 2) The records request pertains to autopsy reports on juveniles and the law closely guards the release of information relating to children (i.e. NRS Chapters 432B, 62H), and therefore public policy dictates nondisclosure of these reports to the public;
- 3) Other laws restrict access to information that may be addressed in autopsy reports, i.e. NRS 440.650(2) and NAC 440.021(b) (limit access to a death certificate to persons with direct interests to avoid unwarranted invasion of privacy), NRS 440.170(2) (birth out of wedlock), NRS 441A.220 (information relating to communicable disease);
- 4) The Nevada Legislature, through AB57, which amended NRS 259.045, intended to protect privacy interests in autopsy reports by enumerating specific individuals to whom the reports may be released; and
- 5) Laws of other jurisdictions respect privacy interests in autopsy reports by limiting dissemination to certain individuals, consistent with the practice of the Coroner, along with the coroners of Elko County and Washoe County.

The district court's legal findings included the following: 1) the Attorney General Opinion is not binding precedent and therefore the Appellant could not rely on its legal analysis; 2) the Appellant could not rely on NRS 432B.407(6) because it does not provide that records reviewed by the child death team are confidential beyond the review period; 3) HIPAA does not justify nondisclosure as the Coroner's Office is not a covered entity under that law and therefore HIPAA does not apply to autopsy records; 4) Nevada Assembly Bill 57, which amended NRS 259.045, does not justify non-disclosure; and 5) the Appellant did not establish that the privacy interests in autopsy reports outweighed public access. Oral argument was

heard by the district court on September 28, 2017 and at the hearing the district court ordered that the autopsy reports be provided by December 28, 2017.

On November 7, 2017, the Board of Clark County Commissioners authorized the Appellant to appeal this case. The Notice of Entry of Order was served on the parties on November 9, 2017, and Appellant filed the Notice of Appeal on November 28, 2017. On December 12, 2017, the district court granted the Appellant's Motion for Stay. On November 29, 2017, Respondent filed a Motion for Attorney's Fees and Costs and said motion is still pending in the district court.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in finding that autopsy reports are not public records under Nevada law.

Whether the district court erred in applying NRS 432B.406(7) and in finding that autopsy records reviewed by the child death team are not confidential beyond the review period.

Whether the district court erred in determining that HIPAA does not justify nondisclosure of autopsy records on grounds the Appellant - Coroner is not a covered entity.

Whether the district court erred in determining that Assembly Bill 57, which amended NRS 259.045, does not justify nondisclosure of autopsy records to Respondent – Las Vegas Review Journal.

Whether the district court erred in determining that the Appellant could not rely on the legal analysis in Attorney General Opinion 82-12 which opines that autopsy records contain information deemed confidential by law, and, in applying the balancing test, the privacy interests in autopsy reports outweighs public access.

Whether the district court erred in applying the balancing test set forth by this Court in Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990), and its progeny, in finding that the privacy interests in autopsy reports do not outweigh public access.

Whether the district court erred in finding that Appellant did not meet its burden in withholding or redacting records.

Whether the district court erred in finding that Appellant did not comply with NRS 239.0107.

Whether the district court committed errors in its conclusions of fact and law in the order noticed on November 9, 2017.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Steven B. Wolfson, Clark County District Attorney vs. The Las Vegas Review Journal, Case No. 70916. Clark County School District vs. The Las Vegas Review Journal, Case No. 73525. These cases are similar to the extent they involve records requests by the media and challenges to the nondisclosure by the public entity.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal presents important questions of public policy and a substantial issue of first impression regarding autopsy records under Nevada Public Records Law. It involves a request for autopsy reports of juveniles and a state law, NRS 432B.407(6), that makes records, such as autopsy reports accessed by a child death review team confidential. This case involves a unique document, an autopsy report, the subject matter of which is largely deemed confidential by law. Additionally, this case involves policy concerns and the application of the balancing test of private interests versus public access as set forth in Donrey and its progeny. The privacy interests in keeping these reports confidential, whether it is in the interests of a grieving family or a law enforcement investigation, must be weighed against the right to public access. This case also involves an interpretation of NRS 259.045, which was amended by the 2017 Nevada Legislature and enumerates specific individuals who may receive the reports.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(10) as it raises as a principal issue a question of first impression involving autopsy records under the Nevada Public Records Law, and, additionally, under NRAP (a) (11) as it raises as a principal issue a question of statewide public importance.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from November 9, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served November 9, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev._____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed _____

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

November 28, 2017

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

NRS 703.376

☐ Other (specify)



(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) allows for appeal of a final judgment of a district court. On November 9, 2017, the district court entered its Order Granting Las Vegas Review Journal's Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/Petition for Writ of Mandamus, ordering the Appellant to disclose all autopsy reports from January 2012 to April 13, 2017, to the Respondent by December 28, 2017. Hence, the district court's order was a final judgment because it disposed of all claims in this case.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Clark County Coroner/Medical Examiner and the Las Vegas Review Journal

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

On July 17, 2017, Respondent - Las Vegas Review Journal filed a Public Records Act Application pursuant to NRS 239.011 / Petition for Writ of Mandamus. The Respondent sought production of autopsy records of juveniles from the time period of January 1, 2012 to April 13, 2017.

Appellant - Coroner argues the records should not be disclosed under state law and the balancing test applied by Donrey and its progeny.

The district court found in favor of the Respondent and ordered that Appellant produce the records requested, pursuant to the order signed on November 8, 2017.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

After the Appellant filed an appeal, the Respondent filed a Motion for Attorney's Fees and Costs. That motion is still pending below.

(b) Specify the parties remaining below:

Clark County Coroner/Medical Examiner and the Las Vegas Review Journal

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The order is independently appealable under NRAP 3A(b)(1).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Clark County Office of the Coroner/

Medical Examiner

Name of appellant

Laura C. Reheldt

Name of counsel of record

December 26, 2017

Date

/s/ Laura C. Rehfeldt

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 26th day of December, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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McLetchie Shell, LLC
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Las Vegas, NV 89101
Attorneys for Appellee
Las Vegas Review Journal

Dated this 26th day of December, 2017

/s/ Afeni Banks

Signature