**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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| CHARLES R. KOZAK, ESQ.<br><br>Petitioner,<br><br>vs.<br><br>THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CHURCHILL and THOMAS STOCKARD DISTRICT JUDGE, DEPARTMENT I<br><br>Respondents,<br><br>and<br><br>SHAUGHNAN L. HUGHES and JUSTIN M. TOWNSEND, ESQ.<br><br>Real Parties in Interest | Sup. Ct. Case. No.<br><br>Dist. Ct. Case No. 15-10DC-0876 |



# PETITION FOR WRIT OF MANDAMUS

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## NRAP 26.1 CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Attorney of record for Petitioner is Charles R. Kozak, Esq. of Kozak & Associates, LLC. Defendant Elizabeth Howard was represented in the underlying District Court Case #15-10DC-0876 by Charles R. Kozak, Esq. and R. Craig Lusiani, Esq. of the firm formerly known as Kozak Lusiani Law, LLC.

There exists no publicly held company nor other corporation affiliated with the current firm Kozak & Associates, LLC. or the former firm previously known as Kozak Lusiani Law, LLC.

Dated this 11th day of January 2018.

***/s/ Charles R. Kozak***
Charles R. Kozak, Esq.
Petitioner appearing pro se

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## ROUTING STATEMENT

Since the case involves a $16,500 sanction levied by the District Court against attorney Charles R. Kozak, it would appear that NRAP 17(a)(3) and (4) would be applicable. Therefore, the case should be retained by the Supreme Court.

## STATEMENT OF ISSUES

Whether the District Court erred in sanctioning Petitioner.

## RELIEF SOUGHT

Petitioner seeks an Order reversing the District Court's award of sanctions.

## FACTS OF CASE/POINTS AND AUTHORITIES

NRS 34.170 provides that a Writ of Mandamus "shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law". A Writ of Mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office or to control an abusive, arbitrary or capricious exercise of discretion. State v. Eighth Judicial District Court 116 Nev. 374, 379, 997 P.2d 126, 130 (2000). An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason or one that is contrary to the evidence or established rules of law. Abuse of discretion occurs when the law is misinterpreted, overridden or misapplied. State v. Eighth Judicial District Court 127 Nev. 927, 931-932, 267 P.3d 777, 780 (2011).

"Sanctioned attorneys do not have standing to appeal because they are not parties in the underlying action; therefore, extraordinary writs are a proper avenue for attorneys to seek review of sanctions.... This court reviews sanctions awarding attorney fees for an abuse of discretion." Watson Rounds v. Eight Judicial District Court 358 P.3d 228, 231 (Nev. 2015) (granting law firm's Petition for Writ of Mandamus).

On August 26, 2016, Plaintiff Shaughnan Hughes filed a Motion for Sanctions in #15-10DC-0876 where he argued that Defendant Elizabeth Howard and her attorney Charles Kozak are subject to sanctions for various violations of

NRCP 11. Due to these alleged violations, Hughes argued that he incurred unnecessary attorney fees and sought an award of such fees. A0001 @Vol. 1. Prior to filing his Motion, Hughes failed to first serve it on Howard and afford the 21 day "safe harbor" period mandated by NRCP 11(c)(1)(A).

On September 14, 2016, Howard filed her Verified Opposition to Motion for Sanctions where she made issue that Hughes violated the mandates of NRCP 11(c)(1)(A) by not first serving her a copy of the Motion and awaiting the "21 days" prior to filing it with the Court. A0079 and A0080:19-A0081:28 @Vol. 1.

Following Hughes' Reply, the District Court entered its Order on March 1, 2017 granting, in part, the Motion for Sanctions. According to the Order: "The Court finds that Mr. Hughes substantially complied with the 21-day requirement under NRCP 11 and even if he did not, Ms. Howard was not prejudiced by any failure to strictly comply with the technical requirements of NRCP 11(c)(1)(A) .... although Mr. Kozak states that he had no prior notice of the Motion, the record is clear that Mr. Kozak had prior notice of many of Mr. Hughes' claims of sanctionable conduct. In fact, the issues related to Ms. Howard's counterclaims, discovery, and the early case conference report were raised at the May 17, 2016 hearing." A0099 and A0101:13-A0102:2 @Vol. 1.

The Court would go on to find that "Mr. Kozak's delay in addressing the dismissed counterclaims" and "failure to file an early case conference report"

timely warranted Rule 11 sanctions for which "Mr. Kozak shall personally pay attorney's fees incurred by Mr. Hughes". A0103:17-A0104:2 and A0104:9-21 @Vol. 1. Counsel for Hughes was instructed to "submit an affidavit establishing the costs of attorney fees pertinent to the awards" by "no later than March 17, 2017." A0107:1-2 @Vol. 1.

In his March 15, 2017 Affidavit, Justin Townsend, Esq. asserted that he is "an associate attorney at the law firm", he bills at a rate of "$275.00 per hour" and spent "107.55 hours" for which "attorneys' fees in the total amount of $29,576.25" were incurred relating to the sanctioned conduct. A0109 @Vol. 1.

Howard would oppose the Affidavit and move for reconsideration of the Court's March 1st Order. A0120 and A0114 @Vol. 1. The Court would deny reconsideration and find that "Mr. Townsend is awarded attorney fees in the sum of $16,500, which shall be paid by Mr. Kozak." A0188 and A0192 @Vol. 1. The award of sanctions was an abuse of discretion.[1]

NRCP 11 holds:

> ...
>
> (c) **Sanctions**. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below,

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[1] The sanction was first appealed in #72964 but the case was dismissed on October 25, 2017 with the Supreme Court finding counsel Kozak lacked standing to appeal.

impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) **How Initiated.**

(A) **By Motion.** A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

...

(2) **Nature of Sanction; Limitations.** A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

...

(d) **Applicability to Discovery.** Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 16.1, 16.2 and 26 through 37. Sanctions for refusal to make discovery are governed by Rules 26(g) and 37.

According to the "**DRAFTER'S NOTES 2004 AMENDMENT**" under NRCP 11: "The rule is amended to conform to the federal rule, as amended in 1993, in its entirety."

According to the "**ADVISORY COMMITTEE NOTES**" for the 1993 Amendment of FRCP 11: "New subdivision (d) removes from the ambit of this rule all discovery requests, responses, objections, and motions subject to the provisions of Rule 26 through 37." "**Subdivision (d)**. Rules 26(g) and 37 establish certification standards and sanctions that apply to all discovery disclosures, responses, objections, and motions. It is appropriate that Rules 26 through 37, which are specially designed for the discovery process, govern such documents and conduct rather than the more general provisions of Rule 11. Subdivision (d) has been added to accomplish this result."

Discussing subdivisions (b) and (c), the Advisory Committee Notes state: "The rule applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court ..." "Subdivision (b) does not require a formal amendment to pleadings for which evidentiary support is not obtained, but rather calls upon a litigant not thereafter to advocate such claims or defenses." "That summary judgment is rendered against a party does not necessarily mean, for purposes of this certification, that it had no evidentiary support for its position."

"Since the purpose of Rule 11 sanctions is to deter rather than compensate, the rule provides that, if a monetary sanction is imposed, it should ordinarily be paid into court as a penalty. However, under unusual circumstances ... some or all of this payment [can] be made to those injured by the violation.... Any such award to another party, however, should not exceed the expenses and attorneys' fees for the services directly and unavoidably caused by the violation of the certification requirement.... The award should not provide compensation for services that could have been avoided by an earlier disclosure of evidence or an earlier challenge to the groundless claims or defenses." Id.

"Ordinarily the motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely.... Given the 'safe harbor' provisions ... a party cannot delay serving its Rule 11 motion until conclusion of the case (or judicial rejection of the offending contention)." Id.

"Rule 11 motions ... should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 11 motions be prepared ... to intimidate an adversary into withdrawing contentions that are fairly debatable ..." Id.

"The motion for sanctions is not, however, to be filed until at least 21 days (or such other period as the court may set) after being served.... To stress the

seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the revision provides that the 'safe harbor' period begins to run only upon service of the motion. In most cases, however, counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion." Id.

"Whether a violation has occurred and what sanctions, if any, to impose for a violation are matters committed to the discretion of the trial court; accordingly, as under current law, the standard for appellate review of these decisions will be for abuse of discretion." Id.

Citing the Advisory Committee Notes, the Court of Appeals in Barber v. Miller 146 F.3d 707 (9th 1998) reversed the district court's award of Rule 11 sanctions "because the motion for sanctions was not served upon Carlsen 21 days before filing". According to the Opinion, Carlsen initially filed a forty-page Complaint for his client Barber against Imageware. The Complaint alleged eight state law claims and two federal claims, one for patent infringement and the other for RICO. Carlsen conceded that Barber did not own the patent at issue as the Complaint itself alleged that Barber had transferred the patent to another. Shortly after receiving the Complaint, Imageware's attorney telephoned Carlsen, offering

to provide Carlsen with authority indicating that only the owner of a patent has standing to sue for infringement. Carlsen, however, declined to discuss the matter. Id. at 709.

Subsequently, Imageware's attorneys requested by letter that Carlsen dismiss the Complaint with prejudice, citing a lack of federal jurisdiction and a Mutual General Release between Barber and Imageware that allegedly barred most of the claims. The letter added: "Please allow this letter to serve a formal notice pursuant to Federal Rule of Civil Procedure 11(c) that, unless the Complaint is dismissed with prejudice forthwith, my clients reserve the right to seek appropriate sanctions, including all fees and costs incurred in defending this matter." Id. at 709.

Carlsen responded to the letter by demanding that Imageware "'stop threatening sanctions.'" Imageware replied back to Carlsen and gave notice that it intended to seek Rule 11 sanctions. Id. at 709.

Imageware then filed a Motion to Dismiss which cited authority that only an owner of a patent has standing to sue for infringement. The Motion argued that this proposition of law is so well settled that sanctions should be imposed. Instead of opposing the Motion, Carlsen filed an Amended Complaint which eliminated the RICO claim but added four new state law claims. With the Amended Complaint, Carlsen would now seek federal jurisdiction over twelve state claims

on the basis of a single claim for the infringement of a patent Barber did not own. Id. at 709.

At a hearing, the district court commented on Carlsen's "'tactical bad faith'" and suggested that the suit was a nuisance one brought to extract settlement. Id. at 709.

On October 16, 1995, the district court granted Imageware's Motion to Dismiss, citing the same lack of standing Imageware had argued since the beginning of the litigation. At the time of dismissal, Imageware, a small company, had incurred $26,488.15 in legal expenses and allegedly lost much of its venture capital financing as a result of the lawsuit. Id. at 709.

On December 19, 1995, Imageware informed Carlsen by letter that it would be seeking sanctions. Id. at 709.

On January 19, 1996, Imageware moved the district court for an award of sanctions and served Carlsen with its Motion the same day. Id. at 709.

After hearing on April 8, 1996, the district court awarded Imageware $2,500 in sanctions against Carlsen. Carlsen appealed the award. Id. at 709.

In reversing the award of sanctions, the Ninth Circuit opined: "There is no doubt that Carlsen's patent claim, upon which federal jurisdiction was founded, was not 'warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law.' See Fed.R.Civ.P. 11(b)(2). It

is also abundantly clear that Imageware gave Carlsen repeated notice of that deficiency. Unfortunately, for Imageware, however, it did not follow the procedure required by Rule 11(c)(1)(A) for an award of sanctions upon its motion. By the time Imageware filed its motion, the offending complaint had long since been dismissed." Id. at 709.

In rendering its Opinion, the Ninth Circuit noted that Carlsen was not first served with the Motion for sanctions and afforded his 21 day "safe harbor" period prior to the Motion being filed. Furthermore, it was noted: "The district court observed that Imageware had given multiple warnings to Carlsen about the defects of his claim. Those warnings were not motions, however, and the Rule requires service of a motion.... As the Advisory Committee stated: 'To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the revision provides that the safe harbor period begins to run only upon service of the motion.'" In this regard, the Ninth opined: "It would therefore wrench both the language and purpose of the amendment to the Rule to permit an informal warning to substitute for service of a motion." Id. at 710.

The Ninth went on to note: "The district court stated that observance of the Rule in this case would have been futile, because the offending complaint had already been dismissed. Moreover, the motion was both served and filed on a day that preceded by more than 21 days the deadline for filing papers for the scheduled

motion hearing. According to the district court, 'Defendants missed complying with the safe harbor provision only by filing their motion with the court too early, not by serving it on Plaintiff too late.'" The district court's analogy in this regard was likewise rejected on appeal. Id. at 710-711.

In Radcliff v. Rainbow Construction Co. 254 F.3d 772 (9th 2001), a $75,000 award of Rule 11 sanctions was reversed. According to the Opinion, the district court concluded that sanctions were warranted due to its finding that in alleging a conspiracy between Rainbow and the District Attorney's Office, plaintiffs failed to identify allegations that were "'likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.'" Id. at 788.

Opining that the district court abused its discretion when awarding the amount, the Ninth Circuit cited: "Rule 11(c)(1)(A) provides strict procedural requirements for the parties to follow when they move for sanctions under Rule 11." To be in compliance, Rainbow was required to serve its Rule 11 Motion on plaintiffs and await 21 days "before filing the motion with the court." However, "Rainbow did not follow this procedure. Rainbow filed its Rule 11 motion along with a motion for summary judgment with the court on August 18, 1998. Rainbow did not serve the plaintiffs with the motion in advance of filing and thus did not comply with the twenty-one-day advance service provision. Having not followed

this procedure, Rainbow was not entitled to obtain an award from the plaintiffs." Id. at 788-789.

The Opinion would go on to note: "The district court concluded that, even though the defendants did not give twenty-one-day advance service to the plaintiffs, a 'literal application of the safe harbor provision' was unnecessary in this case. The court decided that because Rainbow had filed a Rule 11 motion in response to plaintiff's first amended complaint, and three months had passed between the motion and the court's order concerning sanctions, the plaintiffs and their attorneys had been given adequate notice and opportunity to withdraw the challenged allegation. As a result, the court ruled that Rule 11(c)(1)(A)'s 'safe harbor' provision had been satisfied, notwithstanding the lack of advance service on the plaintiffs." The district court's analogy in this regard was firmly rejected on appeal. The Ninth Circuit would conclude: "Because Rainbow did not follow the mandatory service procedure of Rule 11(c)(1)(A), we reverse the award of sanctions." Id. at 789.

The case MetLife Bank, N.A. v. Riley 2010 WL 4024898 (D.Nev. Oct. 13, 2010) also underscores that the procedure for requesting Rule 11 sanctions requires strict compliance. According to the Opinion, plaintiff filed its Complaint on March 2, 2010. On July 16, 2010, following initial discovery and an informal warning to plaintiff of their intention to file a Motion for sanctions, defendants sent

a notice letter with an attached Motion for Rule 11 sanctions to plaintiff via email and U.S. mail. The Motion was not signed and did not include the two Declarations mentioned therein. Defendants marked the Motion sent to plaintiff "draft" in the signature line on the last page. In response to the Motion, plaintiff sent defendants an email on July 29, 2010 where defendants were notified that the safe harbor provision of Rule 11 is not satisfied by serving an unsigned, draft Motion which did not include the Declarations mentioned. Defendants disagreed, arguing that Rule 11 simply requires service of the proposed Motion on opposing counsel twenty-one days prior to filing with the court. Id. at *1.

On August 20, 2010, defendants filed their finalized Rule 11 Motion with the Court. In denying the Motion for sanctions, the Court cited: "The Ninth Circuit 'enforce[s] this safe harbor provision strictly.' *Holgate v. Baldwin*, 425 F.3d 671, 677 (9th Cir. 2005). Failure to abide by Rule 11's safe harbor provision precludes sanctions. See Fed.R.Civ.P. 11(c); *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 826 (9th Cir. 2009) ..." The safe harbor requirement is only met when the party is served with "a filing-ready motion", citing "*Truesdell v. So.Cal. Permanente Med. Grp.*, 293 F.3d 1146, 1151 (9th Cir. 2002)". Id. at *2-3.[2]

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[2] The Nevada Supreme Court has consistently stated that federal cases interpreting Federal Rules of Civil Procedure are strong persuasive authority because the Nevada Rules of Civil Procedure are based in large part upon their Federal

In the matter at hand, not only did the District Court err by sanctioning counsel Kozak in contravention of the "21 day" service mandate but it also erred by awarding sanctions for "discovery" conduct which is expressly exempted under NRCP 11(d). A0099 @Vol. 1.

Even when acts are sanctionable, "'[a] district court may only impose sanctions that are reasonably proportionate to the litigant's misconduct.... Proportionate sanctions are those which are "roughly proportionate to sanctions imposed in similar situations or for analogous levels of culpability.'" Emerson v. Eighth Judicial District Court 127 Nev. 672, 681, 263 P.3d 224, 230 (2011). Here, a $19,330 sanction against attorney Phillip Emerson was upheld for his improper statements to the jury which resulted in a new trial. The amount was based on various costs and attorney fees incurred during the original trial along with the cost of an expert witness who testified. Id. at 767, 226.

By comparison, counsel Kozak was sanctioned $16,500 for a belated Case Conference Report and a Motion to Set Aside Dismissal of Counterclaim which was filed well within the "6 months" period of NRCP 60(b) but found belated too. A 0103:21 @Vol. 1.

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counterparts. Executive Management, Ltd. v. Ticor Insurance Company 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

In Rhein Medical v. Koehler 889 F.Supp. 1511 (M.D.Fla. 1995), a $500 fine payable to the Clerk, half to be paid by Rhein and the other half by Rhein's attorney, was found to be an appropriate Rule 11 sanction for filings intended to delay and gain a strategic advantage.

In Myers v. Sessoms & Rogers, P.A. 781 F.Supp.2d 264 (E.D.N.Car. 2011), an attorney was ordered to pay $250 into the court as a Rule 11 sanction for "factual inaccuracies and legal frivolity of the complaint" she filed. As cited therein, only under unusual circumstances should a court direct a monetary sanction be paid to those injured by a Rule 11 violation. Id. at 271-272.

Although the Court in Kuhns v. CoreStates Financial 998 F.Supp. 573 (E.D.Pa. 1998) found the action barred by "res judicata", it found that the filing of the action **did not** warrant Rule 11 sanctions. "[T]he 1993 amendments are viewed to discourage imposition of monetary and other sanctions under the Rule where conduct does not reach the point of clear abuse." Id. at 577.

When attorney fees are awarded for violation of Rule 11, the fees must be "reasonable". "[W]hile it is within the trial court's discretion to determine the reasonable amount of attorney fees under a statute or rule, in exercising that discretion, the court must evaluate the factors set forth in *Brunzell v. Golden Gate National Bank.* Miller v. Wilfong 121 Nev. 619, 623, 119 P.3d 727, 730 (2005). The factors to be evaluated are as follows: "(1) the qualities of the advocate: his

ability, his 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." Additionally, "good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight". Brunzell v. Golden Gate National Bank 85 Nev. 345, 349-350, 455 P.2d 31, 33 (1969).

In Shuette v. Beazer Homes 121 Nev. 837, 124 P.3d 530 (2005), the Supreme Court reversed a Judgment on jury verdict and an award of attorney fees. In discussing attorney fees, the Opinion relates that a trial court "must" conduct its analysis of the amount in light of the factors enumerated in Brunzell. "[T]he result will prove reasonable as long as the court provides sufficient reasoning and findings in support of its ultimate determination." Id. at 865, 549.

When the district court fails to render findings of reasonableness under the Brunzell factors, it has abused its discretion. Argentina Consolidated Mining Co. v. Jolley Urga Wirth Woodbury & Standish 125 Nev. 527, 540, 216 P.3d 779, 788 Fn.2 (2009). A district court that fails to provide analysis or specific findings

regarding the reasonableness of the fees awarded has abused its discretion. Barney v. Mt. Rose Heating & Air Conditioning 124 Nev. 821, 823, 192 P.3d 730, 732 (2008). A mere recital by the district court that it has considered the "required factors" does not "insulate the order from reversal." Harmon v. San Diego County 664 F.2d 770, 772 (9th 1981) (finding district court's Order, which related only number of hours expended and applicable rate of pay per hour, was insufficient in that it did not relate application of required factors). The district court must "demonstrate that it considered the required factors, and the award must be supported by substantial evidence." Logan v. Abe 350 P.3d 1139, 1143 (Nev. 2015). In Songer v. Delucchi 2016 WL 3488644 (unpublished disposition Supreme Court Nevada June 23, 2016), it was concluded "that the district court abused its discretion by failing to adequately address the *Brunzell* factors and by failing to provide sufficient reasoning and findings in support of its decision to award attorney fees.... [T]he record on appeal in this case does not clearly demonstrate that the district court considered the factors or include evidence that clearly supports the amount of fees awarded." Id. at *1 (citing Logan).

"To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence - in addition to the attorney's own affidavits – that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill,

experience and reputation. A rate determined in this way is normally deemed reasonable, and is referred to – for convenience – as the prevailing market rate." Blum v. Stenson 104 S.Ct. 1541, 1547, 465 U.S. 886, 895 fn. 11 (1984). "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation.... The applicant bears the burden of producing satisfactory evidence that the requested rate is in line with prevailing market rates.... Satisfactory evidence at a minimum is more than the affidavit of the attorney performing the work." Norman v. Housing Authority 836 F.2d 1292, 1299 (11th 1988). "[F]ee counsel bears the burden in the first instance of supplying the court with specific and detailed evidence from which the court can determine the reasonable hourly rate." Id. at 1303. "The court's order on attorney's fees must allow meaningful review – the district court must articulate the decisions it made, give principled reasons for those decisions, and show its calculation." Id. at 1304.

In the matter at hand, Hughes' counsel Justin Townsend did not address the specific Brunzell factors nor did he provide any evidence of the "prevailing market rate". A 0109 @Vol. 1. Other than deducting a $605 amount from the $29,576.25 originally sought, the District Court failed to account for the $16,500 eventually awarded. A0194:24 and A0110:1 @Vol. 1. Although it stated, in a conclusory manner, that it "considered" the Brunzell factors, the District Court failed to

provide sufficient reasoning and findings in support of the award. The District Court failed to address the "prevailing market rate". A 0192 @Vol. 1. Apparently, the amount was determined in a capricious and arbitrary manner.

## CONCLUSION

When moving for sanctions, Hughes failed to abide by the 21 day "safe harbor" provision mandated under Rule 11. Contrary to the District Court's ruling, one cannot "substantially" comply with the provision. Sanctions for "discovery" conduct are not allowed under Rule 11. Nor did the District Court provide sufficient reasoning and findings to support the amount awarded. Consequently, the District Court abused its discretion and reversal of its award of sanctions is warranted.

## CERTIFICATE OF COMPLIANCE

I certify that I have read this Petition and that it is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of ligation.

I certify that this Petition complies with all applicable Rules.

I certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This Petition has been prepared in a

proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman.

Pursuant to NRS 239B.030, the undersigned certifies no Social Security numbers are contained in this document.

Dated this 11th day of January 2018.

Submitted by:

*/s/ Charles R. Kozak*
Charles R. Kozak, Esq.
Petitioner appearing pro se

# AFFIDAVIT OF CHARLES R. KOZAK

STATE OF NEVADA )
) SS.
COUNTY OF WASHOE )

I, Charles Kozak, being first duly sworn, deposes and states as follows:

1) That I am the Petitioner to this action, appearing pro se.

2) That I have read the Petition for Writ of Mandamus and know the contents thereof; that the same is true to my knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

3) Notices of Filing Petition for Writ of Mandamus will be given to Reno Carson Messenger Service for service upon Judge Thomas Stockard and Shaughnan L. Hughes. The Notices will be filed in the Nevada Supreme Court and the Tenth Judicial District Court under #15-10DC-0876.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 11th day of January 2018.

CHARLES R. KOZAK

Subscribed and sworn to before me

this 11th day of January 2018.

Notary Public

MONTSERRAT M. PEREZ
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 03-80906-2 - Expires April 8, 2019

## CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2018, I gave copies of the Petition for Writ of Mandamus and its Appendix to Reno Carson Messenger Service for service on the following:

Justin Townsend, Esq.
Allison MacKenzie, Ltd.
Attorneys for Shaughnan L. Hughes
402 North Division Street
Carson City, NV 89703

Judge Thomas L. Stockard
Tenth Judicial District Court
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