IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES R. KOZAK, ESQ.,
Petitioner,

vs.

THE TENTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CHURCHILL; AND THE HONORABLE THOMAS L. STOCKARD, DISTRICT JUDGE,
Respondents,

and

SHAUGHNAN L. HUGHES; AND JUSTIN M. TOWNSEND, ESQ.,
Real Parties in Interest.
_____/

Case No. 74857

District Court Case No. 15-10DC-0876

RESPONSE OF REAL PARTIES IN INTEREST TO KOZAK'S NRAP 40B PETITION FOR REVIEW

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NRAP 26.1 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.

None.

DATED this 16th day of November, 2018.

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I.

PROCEDURAL BACKGROUND

On July 27, 2015, SHAUGHNAN L. HUGHES ("HUGHES") through his attorney, JUSTIN M. TOWNSEND, ESQ. ("TOWNSEND"), filed an action for partition of real property, title to which is held jointly by HUGHES and Elizabeth Howard ("Howard"), the Defendant in the underlying District Court matter. RPI003-006.[1]

Howard was served with process in the underlying action by publication of the summons from September 30, 2015 and October 21, 2015. RPI012-013. Sometime in October 2015, TOWNSEND was contacted by Petitioner, CHARLES R. KOZAK, ESQ. ("KOZAK"), who noted that he had been retained to represent Howard. TOWNSEND requested that KOZAK enter an appearance. A0075.

Howard's Answer was due no later than November 17, 2015. On that date, TOWNSEND verified with the District Court that nothing had been filed by Howard, including any appearances. Therefore, TOWNSEND prepared and sent a letter to KOZAK with a Notice of Intent to Take Default if no responsive pleading was filed by Friday, November 20, 2015. RPI014-015.

[1] References to the record herein are references to the record provided with the briefing of this matter in the Court of Appeals.

Just after midnight on Saturday, November 21, 2015, KOZAK faxed to TOWNSEND a copy of Defendant's Answer and Counterclaim. RPI016-029. The pleading was not filed until November 24, 2015.

On December 10, 2015, HUGHES timely filed a Motion to Dismiss Howard's counterclaims. RPI030-049. Service of the Motion to Dismiss was accomplished by placing a true and correct copy thereof in a sealed postage prepaid envelope in the United States mail in Carson City, Nevada on December 10, 2015 addressed to KOZAK pursuant to NRCP (5)(b)(2)(B). RPI042. According to 10JDCR 15(9), an opposition to a motion is due "[w]ithin 10 days after the service of the motion" plus three calendar days for mailing pursuant to 10JDCR 4(3). Howard's Opposition was due, therefore, Monday, December 28, 2015.

The following day, TOWNSEND confirmed with the District Court that no Opposition had been filed and he filed a Reply to the Failure to Oppose Motion to Dismiss together with a Request for Submission. RPI050-053. The Reply was also served on KOZAK's office. RPI053. On January 7, 2016, the District Court, having not received any opposition the Motion to Dismiss, entered an Order Granting the same. RPI056-057. On January 11, 2016, HUGHES filed a Notice of Entry of the Order and served the same on KOZAK's office. RPI058-063.

On December 14, 2015, TOWNSEND had contacted KOZAK and suggested that the NRCP 16.1 early case conference be continued for a period of up to 90 days as allowed by NRCP 16.1, pending the outcome of HUGHES' Motion to Dismiss. KOZAK agreed. TOWNSEND followed this up with a confirming email dated December 14, 2015, to which KOZAK never responded. A0031; A0075.

On or about February 4, 2016, after the District Court had granted HUGHES' Motion to Dismiss, TOWNSEND called KOZAK to arrange the NRCP 16.1 early case conference. During this call, TOWNSEND and KOZAK agreed on a date for a telephonic early case conference. A0075. On February 4, 2016, HUGHES also served Howard with a Notice of Early Case Conference and Request for Production of Documents. RPI064-066.

NRCP 16.1(a)(1) mandates that the parties provide initial disclosures "at or within 14 days of the [early case] conference." Failure to abide by this rule is sanctionable under specific provisions of NRCP 37(c)(1), which allows for an award of attorney's fees caused by the failure. The aforementioned Request for Production of Documents noted the deadline to provide the initial disclosures required by NRCP 16.1(a)(1), which was 14 days after the February 16, 2016 early case conference, or March 1, 2016.

NRCP 16.1 also provides that "[w]ithin 30 days after each case conference, the parties must file a joint case conference report or, if the parties are unable to

agree upon the contents of a joint report, **each party must serve and file a case conference report**." (emphasis added). The case conference report in this matter was due on or before March 14, 2016.

On March 1, 2016, HUGHES timely served Howard with his NRCP 16.1 initial disclosures. RPI067-071. TOWNSEND also provided to KOZAK on March 1, 2016 a draft Joint Case Conference Report. On the evening of March 7, 2016, KOZAK's office sent via email to TOWNSEND's office a revised draft Joint Case Conference Report and stated that "[t]he initial disclosure will be sent tomorrow, 3/8/16." A0037. The initial disclosures were not sent on March 8, 2016.

Indeed, at a pretrial conference held on May 17, 2016 the District Court, on learning that Howard had not yet served HUGHES with her initial disclosures, ordered KOZAK to serve the undersigned with the same no later than May 19, 2016 via messenger service. RPI118; RPI136-137. The initial disclosures were finally received by TOWNSEND on May 20, 2016. RPI170-180.

As it concerns the draft joint case conference report, KOZAK's May 7, 2016, revisions included two changes that TOWNSEND could not agree to, including an assertion that Howard had demanded a jury trial, which was simply untrue. On March 8, 2016, TOWNSEND sent an email to KOZAK in which he outlined his concerns with only two of KOZAK's revisions and noted that all other

revisions were accepted. Whereas the case conference report was due to be filed on Monday, March 14, 2016, TOWNSEND requested that KOZAK respond no later than Friday, March 11, 2016. A0042. He never responded, so HUGHES sent his individual Case Conference Report on March 14, 2016 to be filed with the Court. A copy of HUGHES' Case Conference Report was served on Howard on the same day. RPI072-088.

In his aforementioned March 8, 2018 email to KOZAK, TOWNSEND noted to KOZAK his multiple failures to that point to follow the rules. A0042. He also noted to KOZAK that he would be requesting a pretrial conference to discuss the same and that sanctions would be on the table. A0042. As noted above, a pretrial conference was held, at HUGHES' request, on May 17, 2016.

At the pretrial conference, the District Court noted that it had not received a case conference report from Howard. RPI111-112. TOWNSEND also noted that he had not been served with a copy of a case conference report from Howard. KOZAK insisted at the pretrial conference that he had filed Howard's individual Case Conference Report, so the District Court requested that KOZAK have his office fax or email proof of the same. RPI119-121. In response, KOZAK's office emailed a copy of Howard's Case Conference Report, which was not file-stamped. A0044-0054. At the pretrial conference was the first time the District Court or

TOWNSEND had seen any version of Howard's Case Conference Report, more than two months after it was due.

Returning to the dismissal of Howard's counterclaims, when TOWNSEND called KOZAK on February 16, 2016 for the telephonic case management conference, the telephone was answered by Nan Adams, a secretary at KOZAK's law firm, who asked if HUGHES or TOWNSEND had not received an opposition to HUGHES' Motion to Dismiss. TOWNSEND confirmed that no opposition had ever been received by his office and indicated his understanding that the District Court had not received any opposition either. TOWNSEND was then transferred to KOZAK, who again asked if an opposition had been received. TOWNSEND reiterated directly to KOZAK that no opposition had been received. This was the first time anybody had mentioned to TOWNSEND a claim that an opposition had been filed. A0076.

Exactly three months later, on May 16, 2016, one day before the aforementioned pretrial conference, Howard filed a Motion to Set Aside Dismissal of Counterclaim, which alleged that Howard had filed an Opposition to HUGHES' Motion to Dismiss on December 30, 2016, but that it was "never filed by this Court" due to "post office mistake or being misplaced somewhere at the Court." RPI092-108. Howard also claimed in that Motion that "Mr. Hughes' counsel acknowledged to Ms. Howard's counsel that he had received the Opposition;

however, he noted that it was not a file-stamped copy." RPI096. The assertion about TOWNSEND acknowledging receipt of an Opposition is a lie, plain and simple. At no time did TOWNSEND acknowledge to KOZAK that he had received a copy of an Opposition because no such Opposition was ever filed with the District Court or served on HUGHES. A0076. Evidence of the alleged mailing of the Opposition to the District Court attached to the Motion to Set Aside Dismissal was a corner of an envelope bearing a stamp. RPI108. The remainder of the envelope, which would have shown the addressee, was not provided. In the May 17, 2016 Pretrial Conference, the District Court noted the insufficiency of the evidence and, on that basis, verbally ordered supplemental information. RPI114-117; 120-121; 126-129; 137.

The District Court followed this up, on May 19, 2016, by issuing a briefing schedule with regard to Howard's Motion to Set Aside Dismissal in which Howard was ordered to supplement her Motion with additional evidence no later than July 8, 2016. RPI181-183. Instead of filing a supplement, Howard filed, on or about June 20, 2016, a pleading styled as an Opposition to HUGHES' Motion to Dismiss, which was not received by TOWNSEND until June 28, 2016. RPI184-199. On the day TOWNSEND received the aforementioned Opposition, he called KOZAK to inquire as to why Howard was filing an Opposition to a Motion six months after it was due and more than five months after the Motion had already

been granted. KOZAK asserted that the June 20, 2016 Opposition was filed in response to the May 19, 2016 Order. TOWNSEND noted the May 19, 2016 Order required a supplement to the May 17, 2016 Motion to Set Aside Dismissal and KOZAK responded that the June 20, 2016 Opposition was the same thing as a supplement to the Motion to Set Aside Dismissal. A0076.

On June 29, 2016, TOWNSEND sent an email to KOZAK in which he demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to the Court's May 19, 2016 Order be filed in its place by the deadline set therein. A0056; A0076. On or about July 7, 2016, Howard withdrew the June 20, 2016 Opposition and filed a Supplement to Motion to Set Aside Dismissal, which failed to address the District Court's concerns with the original Motion. RPI200-219.

The Court's May 19, 2016 Order provided that HUGHES had until July 27, 2016 to file an Opposition to the Motion to Set Aside Dismissal and any supplements thereto. HUGHES filed an Opposition on July 27, 2016. RPI220-258. The Scheduling Order also provided that Howard then had until August 5, 2016 to file a Reply. No Reply was filed.

As noted above, the Motion to Set Aside Dismissal was filed one day before the previously scheduled pretrial conference. At the pretrial conference, KOZAK stood before the Court and insisted that he had (a) filed an Opposition to Motion to

Dismiss on December 30, 2016; (b) served HUGHES with a copy of an Opposition to Motion to Dismiss on December 30, 2016; (c) filed a case conference report with the Court; (d) served HUGHES with a copy of a case conference report; (e) served HUGHES with the initial disclosures required by NRCP 16.1; and (f) that his office had proof of filing and/or serving each of these documents, including without limitation, having in his possession file-stamped copies of one or more of these documents. RPI268-349. The District Court briefly recessed the pretrial conference and ordered that KOZAK have his office fax or email the proof he claimed to have. He was unable to do so. RPI126-130; 134-137. Indeed, all that KOZAK's office provided to the Court during the pretrial conference was an email string and unfiled copy of Howard's individual Case Conference Report

To date, KOZAK has failed to provide any evidence of any of the actions listed above nor has he withdrawn his assertions of having performed the same. There is no file-stamped Opposition to Motion to Dismiss or case conference report. There is no evidence that he had previously served any of the above-referenced documents on HUGHES or his counsel. The truth is that KOZAK misrepresented these actions. His misrepresentations to the Court at the May 17, 2016 pretrial conference were in bad faith in violation of 10JDCR 8(6) and for improper purposes of delay, harassment, or perhaps concealment of earlier rules violations that conceivably affected his client's case, all of which are violations of

NRCP 11(b)(1). These actions delayed these proceedings and HUGHES requested sanctions, in part, to deter further such actions. A0001-0015. In a September 7, 2016 Order denying Howard's Motion to Set Aside the Dismissal, the District Court specifically noted KOZAK's lack of candor to the tribunal. RPI262-264.

During the May 17, 2016 pretrial conference, KOZAK was specifically instructed to file Howard's individual Case Conference Report and that the emailed copy received by the District Court that day was not suitable to be filed because it was not an original. RPI156. In its September 7, 2016 Order Denying Howard's Motion for Summary Judgment and Motion to Set Aside Dismissal of Counterclaim, the District Court reiterated that Howard's individual Case Conference Report was not yet on file. RPI263. In his August 26, 2016 Motion for Sanctions, HUGHES noted the continuing absence of Howard's Case Conference Report. A0008-0009. In his September 21, 2016 Reply to Howard's Opposition of the Motion for Sanctions, HUGHES reiterated that Howard's Case Conference Report was still not on file. A0094-0095. On December 7, 2016, KOZAK took HUGHES' deposition. TOWNSEND made an objection on the record that HOWARD was not allowed to conduct any discovery because she had not yet filed her Case Conference Report. RPI272-273. On December 21, 2016, TOWNSEND sent a letter to KOZAK in response to written discovery requests and reiterated his objection that HOWARD was not entitled to conduct

discovery because her Case Conference Report was still not on file. RPI350-351. Despite repeated reminders over a period of several months, KOZAK did not file HOWARD's Case Conference Report until January 3, 2017, ten months after it was due and just one month before trial. RPI352-377. The report ultimately filed by KOZAK differed from the copy of the unfiled report emailed to the District Court during the May 17, 2016 Pretrial Conference.

To date, KOZAK has not cured any of his sanctionable conduct except to serve HOWARD's initial disclosures two months late and to file HOWARD's individual Case Conference Report ten months late and after several ignored reminders from the Court and from TOWNSEND. KOZAK has not retracted any of his lies to the Court, nor has he offered any apology therefor.

II.

INDISPUTABLE PERTINENT FACTS

The following are indisputable facts, material to this Court's consideration of KOZAK's NRAP 40B Petition for Review:

1. KOZAK lied to the District Court about filing and serving several pleadings in this matter.

2. KOZAK lied to the District Court about conversations with TOWNSEND.

3. KOZAK, on behalf of his client, failed to timely serve initial disclosures as required by NRCP 16.1.

4. KOZAK, on behalf of his client, failed to timely file an individual Case Conference Report as required by NRCP 16.1.

5. On March 8, 2018, TOWNSEND emailed KOZAK and first raised the specter of sanctions to which KOZAK never responded. A0042

6. During the May 17, 2016 pretrial conference, TOWNSEND again raised the possibility of sanctions, which the District Court indicated, in open court, might be appropriate. RPI144. Again, KOZAK did nothing to cure his behavior or withdraw his lies to the Court.

7. On August 25, 2016, HUGHES served KOZAK with a Motion for Sanctions. A0015. On August 26, 2016, the Motion for Sanctions was filed with the Court. A0001. The Motion was not presented to Judge Stockard, however, pursuant to 10JDCR 15(15), until September 19, 2016, when HUGHES filed a Reply to Howard's Opposition and a Request for Submission. A0091-0098.[2]

8. HUGHES sought sanctions pursuant to NRCP 11, NRCP 16.1, NRCP 37, 10JDCR 8, and 10JDCR 25.

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[2] The Request for Submission, which should have been but was not included in Petitioner's Appendix, was inadvertently left out of Real Parties in Interest Appendix. Request, therefore, is hereby made that this Court take judicial notice, pursuant to NRS 47.130, that a Request for Submission was, in fact, filed with the District Court on September 19, 2016 in compliance with 10JDCR 15(15).

9. The District Court granted HUGHES' Motion for Sanctions, in part, on March 1, 2017.

10. KOZAK filed a Motion for Reconsideration of the District Court's March 1, 2018 Order on March 20, 2017.

11. On April 20, 2017, the District Court entered an Order Denying KOZAK's Motion for Reconsideration.

12. The District Court entered an Order Regarding Amount of Sanctions on April 24, 2017 in which it ordered KOZAK to personally pay TOWNSEND fees in the amount of $16,500.

13. On May 8, 2017, KOZAK, on behalf of Howard, filed a Notice of Appeal of the April 24, 2017 Order (Docket No. 72965), which was dismissed by this Court for lack of jurisdiction on October 25, 2017.

14. KOZAK filed, to open this docket, a Petition for Writ of Mandamus on January 12, 2018 and the case was transferred to the Court of Appeals on January 25, 2018.

15. The Court of Appeals denied KOZAK's Petition on June 13, 2018.

16. On June 29, 2018, KOZAK filed a Petition for Rehearing, which was denied on August 24, 2018.

17. This NRAP 40B Petition for Review, therefore, represents KOZAK's fifth attempt to reverse the entry of sanctions against him without any attempt to cure his bad behavior.

III.

ARGUMENT

KOZAK's NRAP 40B Petition for Review mischaracterizes the District Court's Order as being based solely on NRCP 11. He also misunderstands the holding in *Ford Motor Credit Company v. Crawford*, 109 Nev. 616, 855 P.2d 1024 (1993) and ignores other controlling law.

A. KOZAK was appropriately sanctioned under NRCP 16.1 and 37, and 10JDCR 8 and 25.

In his NRAP 40B Petition for Review, KOZAK raises, for the first time, the legal precedent set forth in *Ford Motor Credit Co. v. Crawford*, 109 Nev. 616, 855 P.2d 1024 (1993), which provides generally that "NRCP 11 may not be used to impose sanctions for violations of other rules." KOZAK seeks to apply this holding here in spite of the fact that HUGHES sought sanctions independently under several rules. Nowhere in the record is there any support for the idea that HUGHES sought to use NRCP 11 to impose sanctions for violations of other rules.

HUGHES sought sanctions pursuant to NRCP 11, 16.1, 37, 10JDCR 8, and 25. A0001-0014. KOZAK's argument throughout his numerous efforts to reverse

the sanctions order has been that HUGHES failed to provide safe harbor as required by NRCP 11(c)(1)(A). He first made that argument in his Opposition to Motion for Sanctions. A0079-0081. KOZAK has never addressed the merits of sanctions under the other provisions cited by HUGHES.

Further, even if this Court agrees that it was improper to seek sanctions under NRCP 11 as well as under other rules, the behavior for which KOZAK was sanctioned (discovery failures) was clearly sanctionable, independently, under NRCP 16.1, 26, and 37 as well as under 10JDCR 8(6) and 25. All lower courts in this matter have concluded that sanctions for discovery failures were clearly warranted by the rules cited in HUGHES' Motion for Sanctions. The provisions of NRCP 11 are not necessary in order to find KOZAK sanctionable and this Court can affirm each of the lower court decisions on this matter without any finding regarding the applicability of NRCP 11.

NRCP 26(g) provides that an attorney's failure to provide appropriate disclosures thereunder subjects him to sanctions, including an order to pay reasonable attorneys' fees. NRCP 37(c) similarly provides for sanctions, including payment of attorneys' fees.

Although the District Court did not cite NRCP 26 or 37 in its sanctions Orders, HUGHES did cite NRCP 37 and the Orders granting HUGHES' Motion for Sanctions should be read as approving the arguments and citations made in said

Motion. Alternatively, this Court should uphold the District Court's sanctions Orders on the basis that it reached the right result even if it did not specifically cite all of the proper authorities. *See Wyatt v. State*, 86 Nev. 294, 468 P.2d 338 (1970). This is precisely how the Court of Appeals Order Denying Writ of Mandamus should be read.

10JDCR 8(6) allowed the District Court to enter sanctions for counsel's participation in pretrial conferences in bad faith. Here, the District Court found that KOZAK lacked candor to the tribunal during the May 17, 2016 pretrial conference and in pleadings discussed therein. RPI262.

10JDCR 25 allowed the District Court to impose sanctions for an attorney's failure to comply with applicable rules. Allowable sanctions thereunder include the awarding of attorney's fees.

B. Sanctions are also warranted under NRCP 11.

However, this Court could also find that sanctions under NRCP 11 are allowed here.

NRCP 11 reads in pertinent part as follows:

> A motion for sanctions…shall be served as provided in NRCP 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion…the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

KOZAK cites no Nevada cases interpreting the foregoing safe harbor provision. His Petitions, to date, are based entirely on federal case law interpreting FRCP 11. His reliance on federal law is misplaced, particularly where pertinent local procedural rules differ substantially from federal procedure and where there is Nevada case law on point.

10JDCR 15(15) provides that the District Court "is ordinarily unaware of the existence of any contested motion until the filing of a 'Request for Submission,'" which may not ordinarily be filed until at least ten judicial days after service of the motion if no opposition is filed and fifteen judicial days if an opposition is filed. There does not appear to be any similar submission procedure in any of the federal districts/circuits in which the cases cited by KOZAK are applicable. Thus, where a motion is immediately presented to a federal court upon filing, in the Tenth Judicial District of Nevada, a motion is not presented to the judge until the filing of a Request for Submission.

Indeed, in practice, a motion for sanctions filed in a Nevada jurisdiction requiring a request for submission should not be submitted until the twenty-one day safe harbor period has passed. An opposition should not be filed until the safe harbor period has passed (allowing the opposing party first an opportunity to cure his behavior). In fact, this Court recently held that the filing of an opposition before the safe harbor period has lapsed operates as a waiver of the right to assert a

violation of the safe harbor provision. *Garmong v. Rogney and Sons Construction*, 2016 WL 1108454, Docket No. 68255, March 18, 2016, unpublished decision (Nev. 2016) (holding that the party opposing sanctions "waived his right to rely on NRCP 11's safe harbor provision by virtue of filing his opposition to [the NRCP 11] motion before the safe-harbor period expired").

In this case, the Motion for Sanctions was served on HOWARD on August 25, 2016. A0015. Twenty-one days therefrom is September 15, 2016. HOWARD's Opposition was filed on September 9, 2016. A Reply and a Request for Submission were filed on September 19, 2016. A0098. Therefore, the Motion for Sanctions was first presented to the District Court after the safe harbor period had lapsed. Further, in applying the authority set forth in *Garmong*, KOZAK waived the right to rely on the safe harbor provision by (a) not curing his sanctionable behavior and (b) filing the Opposition before the safe harbor period had ended.

C. The District Court was within its sound discretion to enter sanctions.

KOZAK's entire Petition is based on an argument that HUGHES failed to comply with the NRCP 11 safe harbor in which he could have cured his sanctionable behavior. Not once, however, does KOZAK assert that he has cured the behavior for which he was sanctioned. Indeed, he has not.

From the outset of this case, KOZAK failed at nearly every turn to comply with the rules. His very first action in this case was to file his client's Answer and Counterclaim four days late. He failed to oppose a timely filed Motion to Dismiss and then lied to the District Court about doing so. He also lied to the District Court about a conversations with TOWNSEND. He failed to timely serve his client's initial disclosures and lied to the District Court about that. The initial disclosures were served two months late. He failed to timely file his client's individual Case Conference Report for more than ten months despite repeated reminders from the District Court and from TOWNSEND. Not once has he acknowledged fault for any of this. Instead, he has attempted to shift blame to his secretary or, in some cases, he has simply ignored the behavior. These disclosure requirements are specifically sanctionable under NRCP 26(g) and 37 as well as 10JDCR 8(6) and 25. To reverse the District Court's sanction of this uncured bad behavior would signal to KOZAK that he does not have to follow the rules.

KOZAK's reliance on the NRCP 11 safe harbor is a farce as he has not demonstrated any intent to actually cure his sanctionable conduct. The reality is that HUGHES continues to dig a deeper financial hole with each new filing presented by KOZAK, including this Petition for Review, which, again, is the fifth attempt by KOZAK to have the District Court's sanctions orders reversed. $16,500 is simply not enough to make HUGHES whole. Nevertheless, the

sanctions imposed by the District Court were well within its sound discretion and well justified by KOZAK's multiple uncured rules violations in this case.

D. The District Court properly determined a reasonable award of attorneys' fees.

KOZAK argues that the District Court failed to analyze the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Those factors are (1) the qualities of the advocate, (2) the character of the work to be done, (3) the work actually performed, and (4) the result. The District Court, in its April 24, 2017 Order noted specifically that TOWNSEND's "ability, training and education facilitated his ability to achieve a favorable result for his client." A0193-0194. It noted further that TOWNSEND "carried the unanticipated burden of having to compensate for [KOZAK's] lack of preparation and diligence on several occasions" and that he "was diligent in preserving his client's interests." In an Affidavit presented to the District Court, TOWNSEND explained in detail the work he had performed and the District Court stated that it reviewed and considered that detail in determining a reasonable sanctions award. A0061-0073; A109-112; A0194.

KOZAK also argues that TOWNSEND failed to prove that his hourly rate was prevailing market rate. This argument was not raised below and is therefore waived. *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 290 P.3d 249

(2012). Further, KOZAK offers no evidence that TOWNSEND's rate of $275 per hour in this matter is not market rate for firms of the reputation and size of Allison MacKenzie, Ltd.

VI.

CONCLUSION

For the reasons stated herein, HUGHES respectfully requests that the District Court's March 1, 2017 and April 24, 2017 Orders and the Court of Appeals' June 13, 2018 and August 24, 2018 Orders be affirmed.

DATED this 16th day of November, 2018.

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CERTIFICATE OF COMPLIANCE (BASED UPON NRAP FORM 16)

1. I hereby certify that this Response 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) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 points Times New Roman type style.

2. I further certify that this Response complies with the page- or type-volume limitations of NRAP 40 or 40A[3] because it is proportionately spaced, has a typeface of 14 points or more, and contains 4577 words.

Dated this 19th day of November, 2018.

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[3] NRAP 40B, under which Kozak's Petition was filed, does not appear to require this Certificate to accompany a Response to such a Petition.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

Via E-Flex Notification:
Charles R. Kozak, Esq.
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Via First Class Mail:
Honorable Thomas L. Stockard, District Judge
c/o Sue Sevon, Court Administrator
Tenth Judicial District Court
73 North Maine Street, Suite B
Fallon, NV 89406

DATED this 16th day of November, 2018.

/s/ Nancy Fontenot
NANCY FONTENOT

4815-3684-3387, v. 3