

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Case No.: 75095

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable Jim Crockett
Presiding

EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)
(Relief needed by March 16, 2018)

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Attorneys for Appellant, Clark County Office of the Coroner/Medical Examiner

Appellant, Clark County Office of the Coroner/Medical Examiner (“Coroner”), by and through its attorneys of record, Marquis Aurbach Coffing and the Clark County District Attorney/Civil Division, hereby moves this Court for emergency stay relief of the District Court’s February 1, 2018 “Order Granting Petitioner Las Vegas Review-Journal’s Motion for Attorney’s Fees and Costs” (attached as **Exhibit 1**) pursuant to NRAP 27(e).

I. INTRODUCTION AND OVERVIEW OF RELIEF REQUESTED

This is a case in which the Coroner challenges the District Court’s order deeming juvenile autopsy reports as public records under NRS Chapter 239 (attached as **Exhibit 2**). The District Court has already stayed its order requiring the Coroner to disclose the requested autopsy reports (attached as **Exhibit 3**), pending the resolution of the related appeal docketed as Case No. 74604.¹ However, on February 1, 2018, the District Court awarded Respondent, Las Vegas Review-Journal (“LVRJ”), attorney fees of \$31,552.50 and costs of \$825.02, for a total of \$32,377.52 (*see* **Exhibit 1**), which is the subject of the instant appeal. The Coroner filed a motion in the District Court on January 29, 2018 to stay execution of the \$32,377.52 award of attorney fees and costs pending appeal (attached as **Exhibit 4**). However, the District Court could not accommodate a shortened time

¹ The Coroner intends to file a motion to consolidate this appeal with Case No. 74604. *See* NRAP 3(b)(2).

hearing until February 15, 2018 (attached as **Exhibit 5**). During the February 15, 2018 hearing, the District Court denied the Coroner's motion for stay pending appeal but extended the NRCP 62(a) automatic stay for 10 calendar days from the date of the written order to allow the Coroner to seek stay relief in this Court (attached as **Exhibit 6**). The Coroner now seeks stay relief pending appeal from this Court before the Saturday, March 17, 2018 expiration of the continued automatic stay. No bond should be required because the Coroner is a government entity. *See* NRCP 62(e); NRS 20.040.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

LVRJ initiated this case in the District Court challenging the Coroner's position on the confidential nature of juvenile autopsy reports. *See* District Court docket sheet (attached as **Exhibit 7**). After briefing and argument, the District Court determined that the requested autopsy reports were presumptively public records under NRS Chapter 239 and that the Coroner failed to meet its burden to demonstrate that the requested autopsy reports are confidential (*see* **Exhibit 2**). The Coroner appealed the District Court's order on the public records determination (attached as **Exhibit 8**), which was docketed in this Court as Case No. 74604. Nevertheless, the District Court stayed enforcement of its order on the public records determination pending the resolution of the appeal in Case No. 74604 (*see* **Exhibit 3**).

After the Coroner's appeal in Case No. 74604 was filed, LVRJ moved the District Court for an award of attorney fees and costs based upon NRS 239.011(2), which in pertinent part, states: "If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." The District Court agreed with LVRJ and awarded attorney fees of \$31,552.50 and costs of \$825.02, for a total of \$32,377.52 against the Coroner (*see Exhibit 1*). In reaching this determination, however, the District Court's order created a split of authority of at least one other District Court Judge who reached a different result based upon the same statutory argument. In *LVRJ v. Wolfson*, District Court Case No. A-14-711233-W, District Court Judge Villani decided (attached as **Exhibit 9**) that NRS 239.011(2) could not be read in isolation but rather must be harmonized with the plain language of NRS 239.012: "A public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns." *See, e.g., S. Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (stating that the provisions of a statutory scheme must be considered together, reconciled, and harmonized). As an aggrieved party, LVRJ appealed Judge

Villani's order denying attorney fees and costs, which is currently pending before this Court as Case No. 73457.

In the instant case, the Coroner moved the District Court for a stay of the attorney fees and costs order pending the resolution of this appeal (*see* **Exhibit 4**). Unfortunately, the District Court was unable to set a hearing until March 22, 2018, even though the Coroner moved the District Court for an order shortening time. *Id.* In an effort to avoid seeking emergency relief in this Court, the Coroner renewed its request for a shortened time hearing in the District Court, which was eventually set for February 15, 2018 (*see* **Exhibit 5**). The Coroner also filed a supplement to its renewed motion (attached as **Exhibit 10**), and LVRJ filed an opposition (attached as **Exhibit 11**). Ultimately, the District Court denied the Coroner's renewed motion for stay pending appeal, but extended the NRCP 62(a) automatic stay until Saturday, March 17, 2018, which is why the Coroner now seeks emergency stay relief from this Court (*see* **Exhibit 6**).

III. LEGAL ARGUMENT

A. STANDARDS FOR GRANTING A STAY PENDING APPEAL.

1. NRAP 8 Considerations.

NRAP 8(a) provides that before moving for a stay in this Court, a party must generally seek a stay in the District Court. The Coroner satisfied this rule by first applying to the District Court for a stay (*see* **Exhibits 4 & 5**). In determining

whether to issue a stay of a judgment or order, NRAP 8(c) outlines four factors for this Court to consider: (1) Whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) Whether the respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail on the merits of the appeal. *See Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (holding that while no one factor is more important, “if one or two factors are especially strong, they may counterbalance other weak factors”). Notably, the “public interest” is not a factor for consideration under Nevada law, even though LVRJ made this issue a focus of its District Court opposition (*see Exhibit 11*).

2. Stay Pending Appeal to Preserve the Status Quo.

The purpose of a stay of a district court judgment pending appeal is to preserve, not change, the status quo. *See U.S. v. State of Mich.*, 505 F.Supp. 467 (W.D. Mich. 1980). This Court has confirmed this recognized purpose of a stay:

The purpose of security for a stay pending appeal is to protect the judgment creditor’s ability to collect the judgment if it is affirmed by preserving the status quo. . . .

Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252, 1254 (2005) (collecting cases).

3. Stay Allowed as a Matter of Right for a Monetary Judgment.

The United States Supreme Court has defined a stay of a monetary judgment as a matter of right once a supersedeas bond is posted. *See U.S. v. Wylie*, 730 F.2d 1401 (11th Cir. 1984) (citing *Am. Mfrs. Mut. Ins. Co. v. Am. Broad.-Paramount Theaters*, 87 S.Ct. 1 (1966)); 11 C. Wright & A. Miller, *FEDERAL PRACTICE AND PROCEDURE*, § 2905, at 326. Other courts have followed the lead of the United States Supreme Court in reaching this holding. *See Ascher v. Gutierrez*, 66 F.R.D. 548 (D.D.C. 1975). This Court has also recognized and followed the analogous federal rule for stays, FRCP 62, including a stay as a matter of right when a supersedeas bond is posted. *See Nelson*, 122 P.3d at 1253 (acknowledging that federal cases construing analogous federal rules are persuasive authority when this Court examines its own rules). Since the Coroner is deemed secure as a matter of law, no bond is required, and this Court should grant the requested stay of the District Court's attorney fees and costs order pending appeal. *See* NRCP 62(e);² NRS 20.040(1).³ Nevertheless, the District Court reasoned that the Coroner should

² "When an appeal is taken by the State or by any county, city or town within the State, or an officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant."

³ "In any action or proceeding before any court or other tribunal in this State, wherein the State of Nevada or any county, city or town of this State, or any officer

pay LVRJ now and could seek repayment if the Coroner prevails on appeal (*see Exhibit 6*). However, the District Court's reasoning is contrary to this Court's holding in *Nelson*, 122 P.3d at 1253. As such, this Court should now grant the Coroner's request for a stay pending appeal.

B. THE CORONER SATISFIES THE NRAP 8(c) FACTORS FOR THIS COURT TO ENTER A STAY PENDING APPEAL.

1. The Object of the Coroner's Appeal Will Be Defeated and the Coroner Will Suffer Serious Injury if a Stay is Denied.

Very simply, if the status quo is not maintained, the Coroner will be at a severe disadvantage by having to satisfy the \$32,377.52 judgment in favor of LVRJ, without having the opportunity for this Court to review the incorrectness of the award. As outlined in *Nelson*, the Coroner is entitled to a stay as a matter of right due to the adequate security. Moreover, nothing prevents LVRJ from making the execution procedure very difficult on remand for the Coroner in the event that the current fees and costs award is reversed by this Court. In essence, the Coroner may be put in the precarious situation of appealing a judgment that may be very difficult to get back from LVRJ, which would in turn result in a hollow appellate

thereof in his or her official capacity, is a party plaintiff or defendant, no bond, undertaking or security shall be required of the State, county, city or town, or such officer in his or her official capacity. . . .”

victory. To preserve the status quo, the Court should stay execution of the \$32,377.52 award of attorney fees and costs to LVRJ pending appeal.

2. LVRJ Will Not Suffer Any Serious Injury if a Stay is Granted.

Notably, an appeal in and of itself does not constitute harm for purposes of entering a stay. *See Fritz Hansen A/S*, 116 Nev. at 658, 6 P.3d at 986–987. Maintaining the status quo and staying execution of the judgment will not harm LVRJ in any way since the Coroner is deemed secured as a matter of law. *See* NRCP 62(e); NRS 20.040(1). In fact, LVRJ conceded in the District Court that it would not suffer any harm through a stay pending appeal (*see Exhibit 11*, pg. 4 n.1). In other words, if the District Court’s order on attorney fees and costs is not disturbed through this appeal, LVRJ will be paid upon remand of the case. And, this Court has already expedited the related appeal in its January 18, 2018 order in Case No. 74604. So, this factor also weighs in favor of the Coroner’s requested stay relief.

3. The Coroner Is Likely to Prevail on the Merits of this Appeal.

In explaining the fourth factor of NRAP 8(c), dealing with the likelihood of success on appeal, this Court has clarified that “a movant does not always have to show a probability of success on the merits, [but] the movant must ‘present a substantial case on the merits when a serious legal question is involved and show

that the balance of equities weighs heavily in favor of granting the stay.” *Fritz Hansen A/S*, 116 Nev. at 658, 6 P.3d at 987 (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). If the Coroner prevails on the underlying appeal determining the non-public nature of the requested autopsy reports (Case No. 74604), LVRJ will automatically lose any entitlement to attorney fees under even its own interpretation of NRS 239.011(2) since LVRJ will no longer be a prevailing party. Even if this Court were to affirm the underlying order on the requested autopsy reports, the Coroner has presented a split of authority on whether attorney fees and costs can be granted in this case based upon the language of NRS 239.012, which should be harmonized with NRS 239.011(2). *See, e.g., S. Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (stating that the provisions of a statutory scheme must be considered together, reconciled, and harmonized); **Exhibits 1 & 9**. Yet, the District Court denied a stay pending appeal because it believed that its own reasoning for granting attorney fees and costs to LVRJ was correct (*see* **Exhibit 6**). However, the District Court’s reasoning for denying a stay pending appeal to the Coroner is flawed because its own order on fees and costs differs from what at least one other District Court Judge has ruled on the identical issue. *Cf.* **Exhibit 9**. Therefore, the Coroner has satisfied the final NRAP 8(c) element to present a “serious legal question,” and this Court should grant the Coroner’s requested stay relief pending appeal.

IV. CONCLUSION

In summary, the Coroner respectfully requests that this Court stay the District Court's order granting attorney fees and costs to LVRJ pending the resolution of this appeal, without the requirement of a bond. The Coroner urges this Court to enter a stay pending appeal of the attorney fees and costs award to LVRJ prior to the Saturday, March 17, 2018 expiration of the NRCP 62(a) automatic stay.

Dated this 8th day of March, 2018.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
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Nevada State Bar No. 8437
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Las Vegas, Nevada 89145
*Attorneys for Appellant, Clark County
Office of the Coroner/Medical Examiner*

NRAP 27(e) CERTIFICATE

I hereby certify that this Emergency Motion for Relief Under NRAP 27(e) relies upon issues raised by the Coroner in the District Court, and otherwise complies with the provisions of NRAP 27(e).

As set forth in the body of this motion, emergency relief is needed on or before **March 16, 2018** because the automatic stay under NRCP 62(a) for the District Court's order granting attorney fees and costs to LVRJ expires on Saturday, March 17, 2018. The telephone numbers and office addresses of the attorneys for the parties are as follows:

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alina@nvlitigation.com
Attorneys for Respondent, Las Vegas Review-Journal

According to the attached certificate of service, all parties through their counsel of record have been served electronically through this Court's electronic filing system, and by email as indicated.

Dated this 8th day of March, 2018.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
Micah S. Echols, Esq.
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10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Appellant, Clark County
Office of the Coroner/Medical Examiner*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)** was filed electronically with the Nevada Supreme Court on the 8th day of March, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.

I further certify that I served a copy of this document by emailing a true and correct copy thereof due to the exigent nature of this matter addressed to:

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
maggie@nvlitigation.com;
alina@nvlitigation.com

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

INDEX OF EXHIBITS TO
EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)

Exhibit No.	Description
1.	Notice of Entry of Order with Order Granting Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs (filed 02/01/18)
2.	Order Granting Petition LVRJ's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus (filed 11/09/17)
3.	Notice of Entry of Order with Order Granting Defendant's Motion for Stay of District Court Order and Order Shortening Time (filed 01/12/18)
4.	Respondent's Motion for Stay of District Court Order and Order Shortening Time (filed 01/29/18)
5.	Respondent's Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order (filed 02/12/18)
6.	Notice of Entry of Order with Order Denying Respondent's Renewed Motion on Order Shortening Time for Stay of District Court Order (filed 03/07/18)
7.	Docket of District Court Case No. A-17-758501-W
8.	Notice of Appeal (filed 11/28/17)
9.	Decision in District Court Case No. A-14-711233-W (<i>LVRJ v. Wolfson</i>) (filed 04/14/17)
10.	Supplement to Respondent's Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order (filed 02/13/18)
11.	Opposition to Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order (filed 02/13/18)

Exhibit 1



1 **NEOJ**
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3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLEATCHIE SHELL LLC**
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9 *Counsel for Petitioner*

DISTRICT COURT

CLARK COUNTY NEVADA

10 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

11 Petitioner,

Dept. No.: XXIV

12 vs.

NOTICE OF ENTRY OF ORDER

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

15 Respondent.

16 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
17 PLEASE TAKE NOTICE that on the 1st day of February, 2018, an Order Granting
18 Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs was entered in
19 the above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

20 Respectfully submitted this 1st day of February, 2018.

21 /s/ Margaret A. McLetchie

22 Margaret A. McLetchie, Nevada Bar No. 10931

23 Alina M. Shell, Nevada Bar No. 11711

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Counsel for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2018, 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 1st day of February, 2018, 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 MCLETCHE SHELL LLC

EXHIBIT 1

Steven D. Grierson

ORDR

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Counsel for Petitioner

DISTRICT COURT

CLARK COUNTY NEVADA

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

Petitioner,

Dept. No.: XXIV

vs.

**ORDER GRANTING PETITIONER
LAS VEGAS REVIEW-JOURNAL'S
MOTION FOR ATTORNEY'S FEES
AND COSTS**

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Respondent.

The Las Vegas Review-Journal's Motion of Attorney's Fees and Costs, having come on for hearing on January 11, 2018, the Honorable Jim Crockett presiding, Petitioner Las Vegas Review-Journal (the "LVRJ") appearing by and through its counsel, Margaret A. McLetchie, and Respondent Clark County Office of the Coroner/Medical Examiner ("Coroner's Office") appearing by and through its counsel, Laura C. Rehfeldt, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

The Records Request and The Coroner's Office's Response

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." 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.

4. 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.

5. 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.

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

7. 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 8. 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 9. 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 to
6 justify non-disclosure, and agreed to consider providing redacted versions of autopsies of
7 juveniles if the LVRJ provided a specific list of cases it wished to review.

8 10. 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 11. 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 12. The Coroner's Office responded to the May 26, 2017 email on May 31,
14 2017.

15 13. 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 14. 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 15. 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 16. 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 17. 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 *The Litigation*

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

18 19. On August 17, 2017, the LVRJ submitted a Memorandum in support of its
19 Application. The Coroner's Office submitted its Response on August 30, 2017, asserting a
20 number of arguments against production of the public records. The LVRJ submitted its
21 Reply on September 7, 2017.

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

24 21. Subsequently, on November 9, 2017, the Court entered an order rejecting
25 each of the Coroner's Office's arguments and granting the LVRJ's Application, requiring
26 the Coroner's Office to produce the requested records. The Court also ordered that the
27 Coroner's Office was not entitled to any fees or costs for the record, other than the medium
28 the records were to be electronically provided on.

The LVRJ's Motion for Attorney's Fees and Costs

22. On November 29, 2016, The LVRJ filed a Motion for Attorney's Fees and Costs pursuant to Nev. Rev. Stat. § 239.011(2).

23. In its Motion and supporting exhibits, the LVRJ requested compensation at the following rates for work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	27.9	\$450.00	\$12,465.00 ¹
Alina M. Shell	51.3	\$350.00	\$17,220.00 ²
Leo Wolpert	2.1	\$175.00	\$367.50
Pharan Burchfield	8.9	\$150.00	\$1,335.00
Administrative Support	6.6	\$25.00	\$165.00
		Total Fees Requested	\$31,552.50

24. The LVRJ also requested \$825.02 in costs associated with the litigation, for a combined total request for \$32,377.52 in fees and costs.

25. The LVRJ provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

26. The Coroner's Office filed an Opposition to the LVRJ's Motion on December 14, 2017, and the LVRJ filed a Reply on January 4, 2018.

27. In its Opposition, the Coroner's Office asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of the NPRA which provides immunity from damages for public officers who act in good faith in disclosing or refusing to disclose records—the LVRJ had to establish the Coroner's Office acted in bad faith in refusing to disclose the requested

¹ This total reflected voluntary reductions for some time entries, made by counsel for the LVRJ in her billing discretion.

² See *supra* n.1.

records to obtain attorney's fees and costs.

28. Alternatively, the Coroner's Office argued the fees and costs sought by counsel for the LVRJ should be apportioned and reduced, largely relying on case law regarding prevailing market rates from federal cases (including Prison Litigation Reform Act case law).

29. This Court conducted a hearing on the LVRJ's Motion on January 11, 2018.

II.

CONCLUSIONS OF LAW

Legal Standard for the Recovery of Attorney's Fees in NPRA Cases

30. Recovery of attorney fees as a cost of litigation is permissible by agreement, statute, or rule. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001).

31. In this case, recovery of attorney's fees is authorized by the NPRA, which provides in pertinent part that "[i]f the requester prevails [on a petition for public records], the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." Nev. Rev. Stat. § 239.011(2).

32. Thus, pursuant to Nev. Rev. Stat. § 239.011(2) (the "Fees Statute"), a prevailing party (in this case, the LVRJ) is entitled to its reasonable fees and costs.

33. The Fees Statute is explicit and plain. There is no limitation on the entitlement to fees it contains other than the fact that the fees and costs be "reasonable." The Fees Statute does not have any language requiring a prevailing requester to demonstrate that a public officer or employee acted in bad faith in refusing to disclose public records.

34. The fact that a separate statute, § 239.012 (the "Damages Immunity Statute"), provides for immunity for good faith actions of public officers or employees in responding to NPRA requests does not change the interpretation of the Fees Statute for multiple reasons.

35. First, as set forth above, the language of the Fees Statute is plain: if a requester prevails in an action to obtain public records, “the requester is entitled to recover his or her reasonable costs and attorney’s fees in the proceeding from the governmental entity whose officer has custody of the book or record.” Nev. Rev. Stat. § 239.011(2). The Fees Statute does not require a requester to demonstrate a governmental entity acted in bad faith; it only requires that the requester prevail.

36. Because the Fees Statute is clear on its face, this court “cannot go beyond the statute in determining legislative intent.” *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (citation and internal quotation marks omitted); *see also Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (same); *see also State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (“We must attribute the plain meaning to a statute that is not ambiguous.”); *see also Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm’n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) (“When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.”)

37. Second, the separate Damages Immunity Statute only provides for immunity from *damages*—not immunity from fees. *See* Nev. Rev. Stat. § 239.012 (specifying that a public officer or his or her employer are “immune from liability for damages, either to the requester or to the person whom the information concerns”). Damages and fees are different. *See, e.g., Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 956 35 P.3d 964, 968 (2001) (comparing procedure for seeking attorney’s fees as a cost of litigation with fees sought as special damages pursuant to Nev. R. Civ. P. 9(g)); *see also Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617 (7th Cir. 2013) (noting that “an award of attorneys’ fees differs from ‘damages’”); *see also United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993) (noting that attorney fees may be awarded for unfair practice, while punitive damages are awarded for tort based on same conduct).

///

1 38. Third, the Damages Immunity Statute specifically only refers to immunity
2 for actions of "[a] public officer or employee," (i.e., an individual), whereas the Fees Statute
3 makes "governmental entit[ies]" liable for fees for failing to disclose records. Nev. Rev.
4 Stat. § 239.011(2).

5 39. Nev. Rev. Stat. § 239.005(5) defines "governmental entity" as follows:

6 (a) An elected or appointed officer of this State or of a political subdivision
7 of this State;

8 (b) An institution, board, commission, bureau, council, department,
9 division, authority or other unit of government of this State, including,
10 without limitation, an agency of the Executive Department, or of a political
11 subdivision of this State;

12 (c) A university foundation, as defined in NRS 396.405; or

13 (d) An educational foundation, as defined in NRS 388.750, to the extent that
14 the foundation is dedicated to the assistance of public schools.

15 40. The officers and employees whose "good faith" actions are subject to
16 immunity pursuant to the Damages Immunity Statute are not governmental entities. In
17 contrast, the Respondent (in this case, the Coroner's Office) is a "governmental entity"
18 within the meaning of Nev. Rev. Stat. § 239.005(5) and is therefore responsible for fees
19 pursuant to the Fees Statute. Thus, the difference in terms between the Fees Statute and the
20 Damages Immunity Statute supports not reading a "good faith" requirement from the
21 separate Damages Immunity Statute into the Fees Statute.

22 41. Fourth, the Damages Immunity Statute provides immunity to public
23 officers or employees for disclosing *or* refusing to disclose public records, whereas a
24 prevailing party's entitlement to fees and costs under Nev. Rev. Stat. § 239.011(2) attaches
25 only in those instances where a requester successfully petitions court after a governmental
26 entity refuses to disclose public records. This fact further urges against reading a "good
27 faith" requirement from the separate Damages Immunity Statute into the Fees Statute.

28 42. Fifth, it is not necessary to read a good faith requirement into the Fees
Statute to reconcile it with the separate Damages Immunity Statute. This is so because the
good faith provision applies to an entirely different matter than the attorney fees and costs
provision. As set forth above, the Damages Immunity Statute addresses when a public

officer or employee (and his or her employer) is immune from *damages to anyone* for producing records or for failing to produce records if the *officer or employee* acted in good faith. In contrast, the Fees Statute sets forth when a *governmental entity* is responsible to a requester for fees and costs in a petition to obtain records). See *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (“Courts must construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.”) (citation omitted) (emphasis added).

43. Sixth, reading a “good faith” exception into the Fees Statute would be inconsistent with the legislative mandates regarding interpretation of the NPRA, which specifically sets forth “[l]egislative findings and declaration.” Nev. Rev. Stat. § 239.001. Nev. Rev. Stat. § 239.001(1) explains that “[t]he purpose of [the NPRA] is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law.” Nev. Rev. Stat. § 239.001(2) and (3) in turn provide that “[t]he provisions of this chapter must be construed liberally to carry out this important purpose;” and that [a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Reading a good faith limitation into the Fees Statute would be inconsistent with these mandates, and would hinder access to records by making it more expensive for requesters to seek court redress when governmental entities fail to produce public records.

44. Seventh, even if it were relevant, the legislative history of the NPRA does not support the Coroner’s Office’s position and makes clear there is no bad faith requirement in the fees and costs provision. In 1993, via AB 365,³ the NPRA was amended to strengthen the NPRA. Section 2 of AB 365 addressed fees and costs, while Section 3 separately

³ The LVRJ attached the complete legislative history of AB 365 as Exhibit 6 to its Reply to Respondent’s Opposition to Motion for Attorney’s Fees and Costs, and the page references in this Order correspond to the numbering therein.

1 addressed good faith liability from damages. With regard to Section 2, on May 7, 1993,
2 there was discussion making clear that, as initially written, Section 2 mandated that if the
3 requester prevails, "he was entitled to recover his costs and fees and attorney's fees in the
4 proceeding, from the agency whose officer had custody of the record." (*Id.*, pp. 43-44.) That
5 is all it said as originally written. The Legislature did, however, write one (and only one)
6 limitation into the fees and costs provision: it added the word "reasonable" to qualify the
7 fees and costs to which a requester is entitled. (*Id.*, p. 44.) Then, a separate discussion ensued
8 regarding Section 3 and addressing good faith immunity (*id.*, p. 44 (*after passing a motion*
9 *finalizing the fees and costs language*, the committee went on to discuss Section 3). The
10 discussion included an explanation that Section 3 "was for a civil penalty to be imposed on
11 a public employee who acted in bad faith." (*Id.*, p. 45.) Thus, the legislative history does not
12 support a "good faith" limitation on the Fees Statute.

13 45. Further, a strict reading of the Fees Statute (one without a good faith
14 exception read into it) is more in keeping in with the policy favoring access expressed in the
15 NPRA as well as the provision allowing for a court remedy upon a governmental entity's
16 failure to produce public records. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644,
17 651, 730 P.2d 438, 443 (1986) "(We conclude a strict reading of the statute is more in
18 keeping with the policy favoring open meetings expressed in NRS chapter 241 and the spirit
19 of the Open Meeting Law...").

20 46. Accordingly, the LVRJ, which prevailed in this litigation, is entitled to its
21 reasonable attorney's costs and fees that it expended in this matter to obtain public records
22 from the Coroner's Office, regardless of whether the Coroner's Office acted in "good faith."
23 ***The LVRJ's Requested Fees and Costs Are Reasonable, and the Brunzell Factors Support***
24 ***a Full Award of Fees and Costs to the LVRJ.***

25 47. As noted above, the LVRJ ⁽⁴⁵⁾ is entitled to its "reasonable" attorney's fees and
26 costs in this matter.

27 48. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31
28 (1969), a court must consider four elements in determining the reasonable value of

attorneys' services:

(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.

Brunzell, 85 Nev. at 349, 455 P.2d at 33 (citation omitted); *accord Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

49. The Court has carefully reviewed and considered the motion for fees, supporting detail of work performed and costs, and supporting declarations in light of the *Brunzell* factors in determining an appropriate award of fees and costs to the LVRJ

50. As to the first factor, the "qualities of the advocate," the Court finds that the rates sought are reasonable in light of their ability, training, education, experience, professional standing and skill. The rates sought for staff are also reasonable, and compensable.

51. The Court also finds that the second *Brunzell* factor, the "character of the work" performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of a full award of fees and costs to the LVRJ.

52. As the Coroner's Office noted in its Opposition to the LVRJ's Motion for Attorney's Fees and Costs, this case involved an unsettled and contentious area of public records law with serious legal questions of public importance. The Coroner's Office asserted a number of claims of confidentiality requiring versatility and comfort with various areas of law. And, as the NPRA reflects, the work involved in seeking access to public records is important: access to public records fosters democratic principles. Nev. Rev. Stat. § 239.001(1). Representing the newspaper of record also necessarily involves a high level of responsibility and immediate attention. Further, NPRA matters involve matters of high prominence.

///

53. As to the third factor, the work actually performed by counsel, the Court finds that counsel for the LVRJ exercised appropriate discretion in the time and attention they dedicated to litigating this matter, and how they structured work in this matter. LVRJ counsel deducted or omitted entries where appropriate.

54. Further, counsel necessarily had to dedicate significant time in this case due both to its character and due to the fact that the Coroner's Office asserted numerous purported bases for refusing to provide public records.

55. Thus, this factor weighs in favor of a full award of costs and fees to the LVRJ.

56. The final *Brunzell* factor requires this Court to consider "the result: whether the attorney was successful and what benefits were derived." *Brunzell*, 85 Nev. at 349, 455 P. 2d at 33.

57. As set forth above, the LVRJ is the prevailing party in this public records litigation, and as a result of its counsel's efforts, obtained an order from this Court directing the Coroner's Office to produce the requested autopsy records.

58. Thus, this final factor weighs in favor of an award of fees and costs to the LVRJ.

59. Having considered the *Brunzell* factors, and having considered the papers and pleadings on file in this matter, including the documentation provided by the LVRJ in support of its Motion for Attorney's Fees and Costs, the Court finds the LVRJ is entitled to all its attorney's fees and costs through November 9, 2017 in the sum of \$32,377.52.

III.

ORDER

60. Based on the foregoing findings of fact and conclusions of law, the Court hereby ORDERS that the Coroner's Office must pay the LVRJ \$32,377.50 to compensate it for the costs and reasonable attorney's fees it expended through November 9, 2017 in litigating this matter. *Costs of \$825⁰². Attorney's fees of \$31,552⁵⁰.*

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MS

61. Nothing in this Order precludes the LVRJ from seeking compensation for fees and costs incurred after November 9, 2017 if appropriate upon conclusion of the appeal in this matter.

ORDER

It is so ORDERED this 30 day of January, 2018.

DISTRICT COURT JUDGE

(MS)

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Exhibit 2

Steven D. Grierson

ORDER

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DISTRICT COURT

CLARK COUNTY NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

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

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

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<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.

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

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

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

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

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

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

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

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

17. On July 11, 2017, the Coroner's Office provided sample files of redacted autopsy reports for other autopsies of juveniles that were not handled by a child death review team. The samples files were heavily redacted; the Coroner's Office asserted that the 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 ///
28

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 NPRA 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 WRIT'S PUBLIC
RECORDS ACT APPLICATION
PURSUANT TO NRS 239.001
PETITION FOR WRIT OF
MANDAMUS

ORDER

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


DISTRICT COURT JUDGE

Prepared and submitted by:


Margaret A. McLetchie, NBN 10931
Alina M. Shell, NBN 11711
McLetchie Shell, LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Petitioner

MCLETSCHIESHELL

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(702) 728-5300 (T) / (702) 425-8220 (F)
WWW.MCLETSCHIESHELL.COM

Exhibit 3



1 **NOTC**
2 **STEVEN B. WOLFSON**
3 **District Attorney**
4 **CIVIL DIVISION**
5 **State Bar No. 001565**
6 **By: LAURA C. REHFELDT**
7 **Deputy District Attorney**
8 **State Bar No. 005101**
9 **500 South Grand Central Pkwy.**
10 **Las Vegas, Nevada 89155-2215**
11 **(702) 455-4761**
12 **Fax (702) 382-5178**
13 **E-Mail: Laura.Rehfeldt@ClarkCountyDA.com**
14 **Attorneys for Defendant**
15 **Clark County Coroner**

DISTRICT COURT

CLARK COUNTY, NEVADA

10 **LAS VEGAS REVIEW JOURNAL,**

11 **Petitioner,**

12 **vs.**

13 **CLARK COUNTY OFFICE OF THE**
14 **CORONER/MEDICAL EXAMINER,**

15 **Respondent.**

Case No: A-17-758501-W
Dept. No: XXIV


NOTICE OF ENTRY OF ORDER

17 **TO: THE ABOVE NAMED PARTIES:**

18 **YOU WILL PLEASE TAKE NOTICE** that an Order Granting Defendant's Motion
19 **for Stay of District Court Order and Order Shortening Time** was entered in the above-
20 **entitled matter on the 11th day of January, 2018, a copy of which is attached hereto.**

21 **DATED this 12 day of January, 2018.**

22 **STEVEN B. WOLFSON**
23 **DISTRICT ATTORNEY**

24 **By: **
25 **LAURA C. REHFELDT**
26 **District Attorney**
27 **State Bar No. 005101**
28 **500 South Grand Central Pkwy. 5th Flr.**
Las Vegas, Nevada 89155-2215
Attorney for Defendant
Clark County Coroner

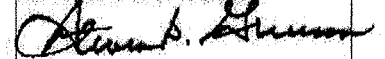
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2
3 **CERTIFICATE OF ELECTRONIC SERVICE**

4 I hereby certify that I am an employee of the Office of the Clark County District
5 Attorney and that on this 10th day of January, 2018, I served a true and correct copy of the
6 foregoing Notice of Entry of Order (United States District Court Pacer System or the Eighth
7 Judicial District Wiznet), by e-mailing the same to the following recipients. Service of the
8 foregoing document by e-mail is in place of service via the United States Postal Service.

9 Margaret A. McLetchie, Esq,
10 Alina M. Shell, Esq.
11 McLetchie Shell LLC
12 701 East Bridger Avenue #520
13 Las Vegas, NV 89101
14 *Attorney for Petitioner*
15 alina@nvlitigation.com

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27
28

An Employee of the Clark County District
Attorney's Office – Civil Division



1 **ORDR**
2 STEVEN B. WOLFSON
3 District Attorney
4 **CIVIL DIVISION**
5 State Bar No. 001565
6 By: **LAURA C. REHFELDT**
7 Deputy District Attorney
8 State Bar No. 005101
9 500 South Grand Central Pkwy.
10 P. O. Box 552215
11 Las Vegas, Nevada 89155-2215
12 (702) 455-4761
13 Fax (702) 382-5178
14 E-Mail: Laura.Rehfeldt@ClarkCountyDA.com
15 Attorneys for Respondent
16 **Clark County Coroner**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 LAS VEGAS REVIEW JOURNAL,

12 Petitioner,

13 vs.

14 CLARK COUNTY OFFICE OF THE
15 CORONER/MEDICAL EXAMINER.

16 Respondent.

Case No.: A-17-758501-W

Dept. No.: XXIV

13 PROPOSED ORDER GRANTING
14 DEFENDANT'S MOTION FOR
15 STAY OF DISTRICT COURT
16 ORDER AND ORDER
17 SHORTENING TIME

17 The Clark County Office of the Coroner/Medical Examiner's Motion for Stay of
18 District Court Order having come on for hearing on December 12, 2017, the Honorable Jim
19 Crockett presiding, Petitioner Las Vegas Review-Journal appearing by and through its
20 counsel, Margaret A. McLetchie and Alina M. Shell, and Respondent Clark County Office of
21 the Coroner/Medical Examiner appearing by and through its counsel, Laura C. Rehfeldt, and
22 the Court having read and considered all of the papers and pleadings on file and being fully
23 advised, and good cause appearing therefor:

24 **IT IS HEREBY ORDERED ADJUDGED and DECREED** that based on NRA^P
25 8(c):

26 The Clark County Office of the Coroner/Medical Examiner's Motion for Stay of
27 District Court Order Granting Petitioner LVRI's Public Records Act Application Pursuant to
28 Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus signed November 8, 2017, and

1 filed in the Eighth Judicial District Court and noticed on November 9, 2017, is **GRANTED**
2 pending resolution or opinion from the Nevada Supreme Court.

3 If the Nevada Supreme Court upholds the District Court's order, the Coroner must
4 comply with said order without delay.

5 It is so ORDERED this _____ day of _____, 2017.

6
7 
DISTRICT COURT JUDGE

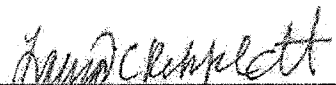
8
9 Date: December 21, 2017

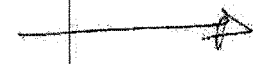
Date: _____

10 Prepared and submitted by:

MCLETCHIE SHELL LLC

11 STEVEN B. WOLFSON
12 DISTRICT ATTORNEY

13 By: 
14 LAURA C. REHFELDT
15 District Attorney
16 State Bar No. 005101
17 500 South Grand Central Pkwy. 5th Flr.
18 Las Vegas, Nevada 89155-2215
19 Attorney for Respondent
20 Clark County Coroner/Medical
21 Examiner

22 By: 
23 Margaret A. McLetchie, Esq.
24 State Bar No. 10931
25 616 South Eighth Street
26 Las Vegas, NV 89101
27 maggie@nvlitigation.com
28 Attorney for Petitioner
Las Vegas Review Journal

A758501

1 filed in the Eighth Judicial District Court and noticed on November 9, 2017, is **GRANTED**
2 pending resolution or opinion from the Nevada Supreme Court.

3 If the Nevada Supreme Court upholds the District Court's order, the Coroner must
4 comply with said order without delay.

5 It is so ORDERED this 3 day of January 2018
6 2017

7
8 
DISTRICT COURT JUDGE

9 Date: _____

Date: 12/21/2017

10 Prepared and submitted by:

MCLETCHIE SHELL LLC

11 STEVEN B. WOLFSON
12 DISTRICT ATTORNEY


13 By: _____
14 LAURA C. REHFELDT
15 District Attorney
16 State Bar No. 005101
17 500 South Grand Central Pkwy. 5th Flr.
18 Las Vegas, Nevada 89155-2215
19 Attorney for Respondent
20 **Clark County Coroner/Medical**
21 **Examiner**

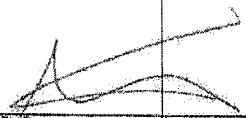
By: 
Margaret A. McLetchie, Esq.
State Bar No. 10931
616 South Eighth Street
Las Vegas, NV 89101
maggie@nvlitigation.com
Attorney for Petitioner
Las Vegas Review Journal

Exhibit 4



1 **MSTY**
2 STEVEN B. WOLFSON
3 District Attorney
4 **CIVIL DIVISION**
5 State Bar No. 001565
6 By: **LAURA C. REHFELDT**
7 Deputy District Attorney
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13 E-Mail: Laura.Rehfeldt@ClarkCountyDA.com
14 Attorneys for Respondent
15 **Clark County Coroner/Medical Examiner**

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DISTRICT COURT
CLARK COUNTY, NEVADA

12 LAS VEGAS REVIEW JOURNAL,)

13 Petitioner,)

14 vs.)

15 CLARK COUNTY OFFICE OF THE)
16 CORONER/MEDICAL EXAMINER,)

17 Respondent.)
18)

Case No: A-17-758501-W
Dept. No: XXIV

19 **RESPONDENT'S MOTION FOR STAY OF DISTRICT COURT ORDER AND**
20 **ORDER SHORTENING TIME**

21 COMES NOW, Respondent, CLARK COUNTY OFFICE OF THE
22 CORONER/MEDICAL EXAMINER ("Coroner"), and hereby moves this honorable Court
23 for a stay of the ORDER GRANTING PETITIONER LVRJ'S MOTION FOR ATTORNEY'S
24 FEES AND COSTS PURSUANT TO PUBLIC RECORDS ACT APPLICATION
25 PURSUANT TO NEV. REV. STAT. § 239.001/PETITION FOR WRIT OF MANDAMUS
26 ("Order") in the instant matter. This motion is based on the papers and pleadings on file, the
27 attached declaration of counsel, the following memorandum of law, and any argument the
28

DECLARATION OF LAURA C. REHFELDT, ESQ.
IN SUPPORT OF ORDER SHORTING TIME

LAURA C. REHFELDT, ESQ. hereby declares that she has personal knowledge and is competent to testify to the following facts:

1. I am an attorney at law duly licensed and authorized to practice before this Court and have been since 1993. I am the Deputy District Attorney assigned to this case.

2. This case involves a public records request for autopsy reports. In April 2017, the Las Vegas Review Journal ("LVRJ") made a public records request to the Coroner for autopsy reports relating to juvenile deaths dating back to January 2012. The Coroner denied access to the records and the LVRJ filed a Public Records Act Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus ("Petition"), which was briefed and argued before this Court. The Court ordered that the Coroner make the records available no later than December 28, 2017. The Coroner filed an appeal and this Court stayed the order pending appeal.

3. On November 29, 2017, the LVRJ filed a Motion for Attorney's Fees and Costs. The parties briefed the matter and it was heard before this Court on January 11, 2018. The Coroner argued that pursuant to NRS 239.011 and 239.012, and the legislative history, the Coroner was immune from liability because it acted in good faith. The Coroner also argued that the fees and costs constituted damages under NRS 239.012, and that the fees were excessive and did not meet the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 445 P.2d 31 (1969). The LVRJ argued otherwise and the Court found that the LVRJ was entitled to fees and costs based on NRS 239.011, the legislative history of NRS 239.011 and 012 did not support the Coroner's position, and damages do not include fees and costs. This Court ordered that the LVRJ was entitled to attorney's fees in the amount of \$31,552.50 and costs in the amount of \$825.02.

4. The parties submitted competing orders to this Court. The execution of an order by this Court and notice of entry of order is pending. Because the Coroner intends to appeal the Court's order granting the LVRJ attorney's fees and costs, and for purposes of ensuring ample opportunity for briefing and hearing prior to the expiration of the time period under NRCP 62(a) for payment of attorney's fees and costs, the Coroner is asking for a stay prior to

1 the service of the notice of entry of order.

2 5. Because once the notice of entry of order is served, NRCp 62(a) requires that
3 payment of attorney's fees and costs pursuant to this Court's Order must take place within ten
4 days, shortened time to hear this Motion is required.

5 6. Additionally, shortened time to hear this Motion is required so that, if denied,
6 the Coroner may have sufficient time to file a Motion before the Nevada Supreme Court.

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

8 EXECUTED this 29th day of January, 2018, in Las Vegas, Nevada.

9
10 By: 
11 LAURA C. REHFELDT

12
13 **MEMORANDUM OF LAW**

14 **I. FACTS AND PROCEDURAL HISTORY**

15 In April 2017, the LVRJ made a records request to the Coroner for autopsy reports of
16 juvenile deaths dating back to January 2012. The Coroner denied access to these reports
17 based on the legal analysis in Attorney General Opinion 82-12, which concluded that the
18 privacy interests in the autopsy reports outweighed public access, and NRS 432B.407(6)
19 which states that information and records accessed by the child death review team are
20 confidential and not subject to disclosure. On July 17, 2017, the LVRJ filed its Petition for
21 access to autopsy reports of juvenile deaths dating back to January 2012. The parties briefed
22 this matter before this Court. The Court ordered that the autopsy reports be provided
23 unredacted, by December 28, 2017. The Coroner is appealing this ruling and this Court has
24 stayed the disclosure of the autopsy.

25 On November 29, 2017, the LVRJ filed a Motion for Attorney's Fees and Costs. The
26 parties briefed the matter and it was heard before this Court on January 11, 2018. The Coroner
27 argued that pursuant to NRS 239.011 and 239.012, and the legislative history, the Coroner was
28 immune from liability on grounds it acted in good faith. The Coroner also argued that the fees

1 and costs constituted damages under NRS 239.012, and that the fees were excessive and did
2 not met the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 445 P.2d 31
3 (1969). The LVRJ argued otherwise and the Court found that the LVRJ was entitled to fees
4 and costs based on NRS 239.011, the legislative history of NRS 239.011 and 012 did not
5 support the Coroner's position, and damages do not include fees and costs. This Court ordered
6 that the LVRJ was entitled to attorney's fees in the amount of \$31,552.50 and costs in the
7 amount of \$825.02. The Coroner intends to appeal this order.

8 **II. LEGAL ARGUMENT**

9 Pending appeal to the Supreme Court, a party is entitled to request a stay of the
10 proceedings below, pending disposition of the appeal, and such a request must first be made
11 in the district court. NRAP 8(c) states:

12 In deciding whether to issue a stay or injunction, the Supreme Court
13 or Court of Appeals will generally consider the following factors: (1)
14 whether the object of the appeal or writ petition will be defeated if the
15 stay or injunction is denied; (2) whether appellant/petitioner will
16 suffer irreparable or serious injury if the stay or injunction is denied;
17 (3) whether respondent/real party in interest will suffer irreparable or
18 serious injury if the stay or injunction is granted; and (4) whether
19 appellant/petitioner is likely to prevail on the merits in the appeal or
20 writ petition.

21 With respect to the first factor, the object of the appeal will be lost if a stay is not
22 entered. The purpose of the appeal is to challenge the District Court's Order to the Coroner
23 to pay attorney's fees and costs to the LVRJ. Without a stay, the Coroner must comply with
24 the Court Order, pursuant to NRCP 62(a), requiring payment within ten days after service of
25 the notice of entry of order. Payment of attorney's fees and costs would be contrary to the
26 purpose of the Coroner's appeal, which is to ask the Nevada Supreme Court to review the
27 decision of the District Court to order the fees and costs. If payment is made to the LVRJ, the
28 Coroner will have to recoup the monies from the LVRJ, possibly without the benefit of a court
order, if it prevails on appeal. Payment of the fees and costs prior to completion of the appeal
process could be construed as an admission, compromise, settlement, or accord and
satisfaction, which would undermine the Coroner's argument and an appeal.

1 As to the second factor, without a stay, irreparable or serious injury will result because
2 if the Coroner makes the payment to the LVRJ, and then prevails on appeal, the Coroner will
3 have to use resources and legal means to recover the payment. Potentially, recovering these
4 funds could be without the benefit of a court order, i.e. if the Nevada Supreme Court were to
5 simply reverse the District Court. Further, by the time a decision is made by the Nevada
6 Supreme Court, the LVRJ could be bankrupt or insolvent, or in some other financial situation
7 that could preclude the LVRJ from reimbursing the Coroner for the fees and costs. Thus,
8 recovering these fees and costs from the LVRJ at a later date could be quite a process and
9 costly in and of itself. The LVRJ can provide no assurance that the Coroner could recover this
10 payment in the event the Nevada Supreme Court finds in favor of the Coroner.

11 With respect to the third factor, there is no corresponding prejudice to the LVRJ. A
12 stay of the order granting attorney's fees and costs does not prejudice the LVRJ. If the Coroner
13 loses on appeal, the LVRJ has the assurance that the Coroner will comply with the District
14 Court order. Unlike risks associated with a private party in its ability or willingness to fulfill
15 these obligations after the appeal process has expired, those risks do not exist with Clark
16 County. This is reflected in NRCP 62(e), which does not require a governmental entity to post
17 a bond, obligation or other security when a judgment is stayed pending appeal. NRCP 62(e)
18 states:

19 When an appeal is taken by the State or by any county, city or
20 town within the State, or an officer or agency thereof and the
21 operation or enforcement of the judgment is stayed, no bond,
obligation or other security shall be required from appellant.

22 The purpose of the bond is to ensure a private party fulfills its obligations in the event a
23 judgment against it is upheld on appeal. This is not necessary for a public entity. The County's
24 revenues make it able to cover this potential obligation. Additionally, the County's credit
25 rating demonstrates that it takes its financial obligations seriously. The County is not in a
26 position to default on the \$32,377.52 in the Order should it not receive a favorable ruling from
27 the Nevada Supreme Court. It would be hard to imagine that the County would risk the
28

1 consequences of non-payment of this obligation. Thus, staying payment of the attorney's fees
2 and costs would not prejudice the LVRJ.

3 The fourth factor for consideration is whether the Coroner is likely to prevail on the
4 merits of the appeal. The Nevada Supreme Court has held that a movant for a stay need not
5 always have to show a probability of success on the merits.

6 [W]hen moving for a stay pending an appeal or writ
7 proceedings, a movant does not always have to show a
8 probability of success on the merits, the movant must 'present
9 a substantial case on the merits when a serious legal question
10 is involved and show that the balance of equities weighs
11 heavily in favor of granting of the stay.'

12 Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000).

13 The Coroner presents a substantial case on the merits with a serious legal question. As
14 discussed above, the issue is the application and interpretation of NRS 239.011 and 012, the
15 legislative history, and whether a governmental entity is subject to attorney costs and fees
16 when it acts in good faith. The Coroner presents legal arguments supporting the statutory
17 interpretation that if the public entity acts in good faith then it should not be liable for fees and
18 costs. The LVRJ argues that it is entitled to fees and costs. Further, this case presents an
19 important policy issue. The Nevada Supreme Court will be asked to consider whether a public
20 body that uses sound judgment and legal basis in denying disclosure of records be subject to
21 attorney's fees and costs. Thus, this issue has merit.

22 This fourth factor, combined with the other factors, that the object of the appeal will be
23 lost, and irreparable injury will be sustained if the attorney's fees and costs are paid prior to
24 completion of the appeal process with no corresponding prejudice whatsoever to the LVRJ,
25 demonstrate the necessity of the stay.

26 **III. CONCLUSION**

27 For the foregoing reasons, a stay should be entered for the payment of \$32,377.52, in
28 attorney's fees and costs until resolution of an appeal.

Alternatively, should this Court deny this motion, then Respondent respectfully requests that a stay be entered pending the Nevada Supreme Court's consideration of a Motion for Stay.

DATED this 29th day of January 2018.

Respectfully submitted,

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By:

LAURA C. REHFELDT
Deputy District Attorney
State Bar No. 5101
500 South Grand Central Pkwy. 5th Floor
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Respondent
Clark County Coroner Medical Examiner

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 20th day of January, 2018, I served a true and correct copy of the foregoing **MOTION FOR STAY OF DISTRICT COURT ORDER AND ORDER SHORTENING TIME** to the following parties by the method shown below:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Margaret A. McLetchie, Esq. Alina M. Shell, Esq. McLetchie Shell LLC 701 East Bridger Avenue #520 Las Vegas, NV 89101 alina@nvlitigation.com maggie@nvlitigation.com	<i>Petitioner Las Vegas Review Journal</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)

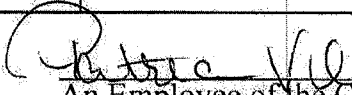

An Employee of the Clark County District
Attorney's Office – Civil Division

Exhibit 5



1 **MSTY**
2 STEVEN B. WOLFSON
3 District Attorney
4 **CIVIL DIVISION**
5 State Bar No. 001565
6 By: **LAURA C. REHFELDT**
7 Deputy District Attorney
8 State Bar No. 005101
9 500 South Grand Central Pkwy.
10 Las Vegas, Nevada 89155-2215
11 (702) 455-4761
12 Fax (702) 382-5178
13 E-Mail: Laura.Rehfeldt@ClarkCountyDA.com
14 Attorneys for Respondent
15 **Clark County Coroner/Medical Examiner**

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW JOURNAL,

Petitioner,

vs.

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Respondent.

Case No: A-17-758501-W
Dept. No: XXIV

**RESPONDENT'S RENEWED MOTION FOR ORDER SHORTENING TIME ON
MOTION FOR STAY OF DISTRICT COURT ORDER**

COMES NOW, Respondent, CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER ("Coroner"), and hereby renews its motion to this
honorable Court for an ORDER SHORTENING TIME on RESPONDENT'S MOTION FOR
STAY of the ORDER GRANTING PETITIONER LAS VEGAS REVIEW-JOURNAL'S
("LVRJ") MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO PUBLIC
RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. § 239.001/PETITION
FOR WRIT OF MANDAMUS ("Order"). This motion is based on the papers and pleadings
on file, specifically the Motion for Stay filed on January 29, 2018, and the attached declaration

1 of counsel, and any argument the Court may wish to entertain upon a hearing of this matter.

2 DATED this 5th day of February, 2018.

3 Respectfully submitted,

4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY

6 By: 

7 LAURA C. REHFELDT

8 District Attorney

9 State Bar No. 005101

10 500 South Grand Central Pkwy. 5th Flr.

11 P. O. Box 552215

12 Las Vegas, Nevada 89155-2215

13 Attorney for Respondent

14 Clark County Coroner Medical Examiner

15 ORDER SHORTENING TIME

16 Good cause appearing therefor,

17 IT IS HEREBY ORDERED that the time for hearing of the above-entitled matter will
18 be shortened to the 15 day of FEB, 2018, at the hour of 9:00 am/p.m. in Department
19 No. XXIV.

20 DATED this 8 day of Feb., 2018.

21 
22 DISTRICT JUDGE

23 Submitted By:

24 STEVEN B. WOLFSON
25 DISTRICT ATTORNEY

26 By: 

27 LAURA C. REHFELDT

28 District Attorney

State Bar No. 005101

500 South Grand Central Pkwy. 5th Flr.

P. O. Box 552215

Las Vegas, Nevada 89155-2215

Attorney for Respondent

Clark County Coroner Medical Examiner

1 **DECLARATION OF LAURA C. REHFELDT, ESQ.**
2 **IN SUPPORT OF RENEWED MOTION FOR ORDER SHORTING TIME**

3 LAURA C. REHFELDT, ESQ. hereby declares that she has personal knowledge and
4 is competent to testify to the following facts:

5 1. I am an attorney at law duly licensed and authorized to practice before this Court
6 and have been since 1993. I am the Deputy District Attorney assigned to this case.

7 2. This case involves a public records request for autopsy reports. In April 2017,
8 the Las Vegas Review Journal ("LVRJ") made a public records request to the Coroner for
9 autopsy reports relating to juvenile deaths dating back to January 2012. The Coroner denied
10 access to the records and the LVRJ filed a Public Records Act Application Pursuant to NRS §
11 239.001/Petition for Writ of Mandamus ("Petition"), which was briefed and argued before this
12 Court. The Court ordered that the Coroner make the records available no later than December
13 28, 2017. The Coroner filed an appeal and this Court stayed that order pending appeal.

14 3. On November 29, 2017, the LVRJ filed a Motion for Attorney's Fees and Costs.
15 The parties briefed the matter and it was heard before this Court on January 11, 2018. The
16 Coroner argued that pursuant to NRS 239.011 and 239.012, and the legislative history, the
17 Coroner was immune from liability because it acted in good faith. The Coroner also argued
18 that the fees and costs constituted damages under NRS 239.012, and that the fees were
19 excessive and did not meet the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev.
20 345, 445 P.2d 31 (1969). The LVRJ argued otherwise and the Court found that the LVRJ was
21 entitled to fees and costs based on NRS 239.011, the legislative history of NRS 239.011 and
22 012 did not support the Coroner's position, and damages do not include fees and costs. This
23 Court ordered that the LVRJ was entitled to attorney's fees in the amount of \$31,552.50 and
24 costs in the amount of \$825.02.

25 4. On January 29, 2018, in anticipation of appealing the Order, the Coroner filed a
26 Motion for Stay in this matter and an Order Shortening Time. Motion for Stay is attached
27 hereto as Exhibit "A". The Court did not sign the Order Shortening Time and set the Motion
28 for Stay for hearing on March 22, 2018. However, at that time, the Order had not been entered.

 5. The Order was entered on February 1, 2018.

6. On February 5, 2018, the Coroner filed a notice of appeal of the District Court's Order. Because once the notice of entry of order is served, NRCP 62(a) requires that payment of attorney's fees and costs pursuant to this Court's Order must take place within ten days, shortened time to hear the Motion for Stay (which was filed on January 29, 2018) is required. Additionally, shortened time to hear this Motion for Stay is required so that, if denied, the Coroner may have sufficient time to file a Motion for Stay before the Nevada Supreme Court.

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

EXECUTED this 5th day of February, 2018, in Las Vegas, Nevada.

By: 
LAURA C. REHFELDT

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 5TH day of February, 2018, I served a true and correct copy of the foregoing **RESPONDENT'S RENEWED MOTION FOR ORDER SHORTENING TIME ON MOTION FOR STAY OF DISTRICT COURT ORDER** to the following parties by the method shown below:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Margaret A. McLetchie, Esq, Alina M. Shell, Esq. McLetchie Shell LLC 701 East Bridger Avenue #520 Las Vegas, NV 89101 alina@nvlitigation.com maggie@nvlitigation.com	<i>Petitioner Las Vegas</i> <i>Review Journal</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)

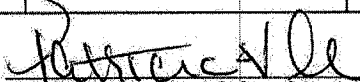
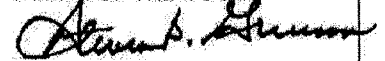

An Employee of the Clark County District
Attorney's Office - Civil Division

EXHIBIT A

**Respondent's Motion for Stay of District
Court Order and Order Shortening Time**



1 **MSTY**
2 **STEVEN B. WOLFSON**
3 **District Attorney**
4 **CIVIL DIVISION**
5 **State Bar No. 001565**
6 **By: LAURA C. REHFELDT**
7 **Deputy District Attorney**
8 **State Bar No. 005101**
9 **500 South Grand Central Pkwy.**
10 **Las Vegas, Nevada 89155-2215**
11 **(702) 455-4761**
12 **Fax (702) 382-5178**
13 **E-Mail: Laura.Rehfeldt@ClarkCountyDA.com**
14 **Attorneys for Respondent**
15 **Clark County Coroner/Medical Examiner**

16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 **LAS VEGAS REVIEW JOURNAL,**

19 **Petitioner.**

20 **vs.**

21 **CLARK COUNTY OFFICE OF THE**
22 **CORONER/MEDICAL EXAMINER,**

23 **Respondent.**

24 **Case No: A-17-758501-W**
25 **Dept. No: XXIV**

26 **RESPONDENT'S MOTION FOR STAY OF DISTRICT COURT ORDER AND**
27 **ORDER SHORTENING TIME**

28 **COMES NOW, Respondent, CLARK COUNTY OFFICE OF THE**
29 **CORONER/MEDICAL EXAMINER ("Coroner"), and hereby moves this honorable Court**
30 **for a stay of the ORDER GRANTING PETITIONER LVRJ'S MOTION FOR ATTORNEY'S**
31 **FEEES AND COSTS PURSUANT TO PUBLIC RECORDS ACT APPLICATION**
32 **PURSUANT TO NEV. REV. STAT. § 239.001/PETITION FOR WRIT OF MANDAMUS**
33 **("Order") in the instant matter. This motion is based on the papers and pleadings on file, the**
34 **attached declaration of counsel, the following memorandum of law, and any argument the**

1 Court may wish to entertain upon a hearing of this matter.

2 DATED this 29th day of January, 2018.

3 Respectfully submitted.

4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY

6 By: *Laura C. Rehfeldt*
7 LAURA C. REHFELDT
8 District Attorney
9 State Bar No. 005101
10 500 South Grand Central Pkwy. 5th Flr.
11 P. O. Box 552215
12 Las Vegas, Nevada 89155-2215
13 Attorney for Respondent
14 Clark County Coroner Medical Examiner

15 ORDER SHORTENING TIME

16 Good cause appearing therefor,

17 IT IS HEREBY ORDERED that the time for hearing of the above-entitled matter will
18 be shortened to the 22nd day of March, 2018, at the hour of 9:00 a.m./~~xxx~~ in Department
19 No. XXIV.

20 DATED this _____ day of _____, 2018.

21 XXX UNSIGNED XXX

22 DISTRICT JUDGE

23 Submitted By:

24 STEVEN B. WOLFSON
25 DISTRICT ATTORNEY

26 By: *Laura C. Rehfeldt*
27 LAURA C. REHFELDT
28 District Attorney
State Bar No. 005101
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Respondent
Clark County Coroner Medical Examiner

DECLARATION OF LAURA C. REHFELDT, ESQ.
IN SUPPORT OF ORDER SHORTING TIME

LAURA C. REHFELDT, ESQ. hereby declares that she has personal knowledge and is competent to testify to the following facts:

1. I am an attorney at law duly licensed and authorized to practice before this Court and have been since 1993. I am the Deputy District Attorney assigned to this case.

2. This case involves a public records request for autopsy reports. In April 2017, the Las Vegas Review Journal ("LVRJ") made a public records request to the Coroner for autopsy reports relating to juvenile deaths dating back to January 2012. The Coroner denied access to the records and the LVRJ filed a Public Records Act Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus ("Petition"), which was briefed and argued before this Court. The Court ordered that the Coroner make the records available no later than December 28, 2017. The Coroner filed an appeal and this Court stayed the order pending appeal.

3. On November 29, 2017, the LVRJ filed a Motion for Attorney's Fees and Costs. The parties briefed the matter and it was heard before this Court on January 11, 2018. The Coroner argued that pursuant to NRS 239.011 and 239.012, and the legislative history, the Coroner was immune from liability because it acted in good faith. The Coroner also argued that the fees and costs constituted damages under NRS 239.012, and that the fees were excessive and did not meet the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 445 P.2d 31 (1969). The LVRJ argued otherwise and the Court found that the LVRJ was entitled to fees and costs based on NRS 239.011, the legislative history of NRS 239.011 and 012 did not support the Coroner's position, and damages do not include fees and costs. This Court ordered that the LVRJ was entitled to attorney's fees in the amount of \$31,552.50 and costs in the amount of \$825.02.

4. The parties submitted competing orders to this Court. The execution of an order by this Court and notice of entry of order is pending. Because the Coroner intends to appeal the Court's order granting the LVRJ attorney's fees and costs, and for purposes of ensuring ample opportunity for briefing and hearing prior to the expiration of the time period under NRCP 62(a) for payment of attorney's fees and costs, the Coroner is asking for a stay prior to

1 consequences of non-payment of this obligation. Thus, staying payment of the attorney's fees
2 and costs would not prejudice the LVRJ.

3 The fourth factor for consideration is whether the Coroner is likely to prevail on the
4 merits of the appeal. The Nevada Supreme Court has held that a movant for a stay need not
5 always have to show a probability of success on the merits.

6 [W]hen moving for a stay pending an appeal or writ
7 proceedings, a movant does not always have to show a
8 probability of success on the merits, the movant must 'present
9 a substantial case on the merits when a serious legal question
is involved and show that the balance of equities weighs
heavily in favor of granting of the stay.'

10 Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000).

11 The Coroner presents a substantial case on the merits with a serious legal question. As
12 discussed above, the issue is the application and interpretation of NRS 239.011 and 012, the
13 legislative history, and whether a governmental entity is subject to attorney costs and fees
14 when it acts in good faith. The Coroner presents legal arguments supporting the statutory
15 interpretation that if the public entity acts in good faith then it should not be liable for fees and
16 costs. The LVRJ argues that it is entitled to fees and costs. Further, this case presents an
17 important policy issue. The Nevada Supreme Court will be asked to consider whether a public
18 body that uses sound judgment and legal basis in denying disclosure of records be subject to
19 attorney's fees and costs. Thus, this issue has merit.

20 This fourth factor, combined with the other factors, that the object of the appeal will be
21 lost, and irreparable injury will be sustained if the attorney's fees and costs are paid prior to
22 completion of the appeal process with no corresponding prejudice whatsoever to the LVRJ,
23 demonstrate the necessity of the stay.

24 **III. CONCLUSION**

25 For the foregoing reasons, a stay should be entered for the payment of \$32,377.52, in
26 attorney's fees and costs until resolution of an appeal.
27
28

Alternatively, should this Court deny this motion, then Respondent respectfully requests that a stay be entered pending the Nevada Supreme Court's consideration of a Motion for Stay.

DATED this 29th day of January 2018.

Respectfully submitted,

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By: Laura C. Rehfeldt
LAURA C. REHFELDT
Deputy District Attorney
State Bar No. 5101
500 South Grand Central Pkwy. 5th Floor
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Respondent
Clark County Coroner Medical Examiner

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 20th day of January, 2018, I served a true and correct copy of the foregoing **MOTION FOR STAY OF DISTRICT COURT ORDER AND ORDER SHORTENING TIME** to the following parties by the method shown below:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Margaret A. McLetchie, Esq. Alina M. Shell, Esq. McLetchie Shell LLC 701 East Bridger Avenue #520 Las Vegas, NV 89101 alina@nvlitigation.com maggie@nvlitigation.com	<i>Petitioner Las Vegas Review Journal</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)

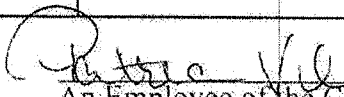
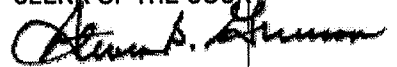

An Employee of the Clark County District
Attorney's Office - Civil Division

Exhibit 6



1 **NEOJ**
2 MARGARET A MCLETCHE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLETCHE SHELL LLC**
5 701 East Bridger Ave., Suite 520
6 Las Vegas, Nevada 89101
7 Telephone: (702) 728-5300; Fax: (702) 425-8220
8 Email: maggie@nvlitigation.com
9 *Counsel for Petitioner*

DISTRICT COURT

CLARK COUNTY NEVADA

10 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

11 Petitioner,

Dept. No.: XXIV

12 vs.

NOTICE OF ENTRY OF ORDER

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

Respondent.

15
16 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
17 PLEASE TAKE NOTICE that on the 7th day of March, 2018, an Order Denying
18 Respondent's Renewed Motion on Order Shortening Time for Stay of District Court Order
19 was entered in the above-captioned action. A copy of the Order Denying Respondent's
20 Renewed Motion on Order Shortening Time for Stay of District Court Order is attached
21 hereto as Exhibit 1.

22 Respectfully submitted this 7th day of March, 2018.

23 /s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931

Alina M. Shell, Nevada Bar No. 11711

MCLETCHE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2018, 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.

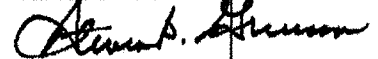
I hereby further certify that on the 7th day of March, 2018, pursuant to Nev. R. Civ. P. 5(b)(2)(B) I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Mary-Anne Miller and Laura Rehfeldt
Clark County District Attorney's Office
500 S. Grand Central Pkwy., Ste. 5075
Las Vegas, NV 89106

Micah Echols
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
Counsel for Respondent, Clark County Office of the Coroner/Medical Examiner

/s/ Pharan Burchfield
An Employee of MCLEATCHIE SHELL LLC

EXHIBIT 1



1 **ORDER**

2 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE SHELL LLC**

5 701 East Bridger Ave., Suite 520

6 Las Vegas, Nevada 89101

Telephone: (702) 728-5300; Fax: (702) 425-8220

Email: maggie@nvlitigation.com

Counsel for Petitioner the Las Vegas Review-Journal

7 **DISTRICT COURT**

8 **CLARK COUNTY NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

10 Petitioner,

Dept. No.: XXIV

11 vs.

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

**ORDER DENYING RESPONDENT'S
RENEWED MOTION ON ORDER
SHORTENING TIME**

**FOR STAY OF DISTRICT
COURT ORDER**

Respondent.

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18 This matter came before the Court regarding the Respondent Clark County Office
of the Coroner/Medical Examiner's Motion and Renewed Motion of for Order Shortening
Time on a Motion for Stay of District Court Order ("Motion").

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20 On January 29, 2018 the Respondent Clark County Office of the Coroner/Medical
21 Examiner's (the "Coroner's Office") filed its Motion for Stay of District Court Order. On
22 February 12, 2018, the Coroner's Office filed its Renewed Motion of for Order Shortening
23 Time on a Motion for Stay of District Court Order. On February 13, 2018, the Las Vegas
24 Review-Journal ("LVRJ") filed its Opposition to the Renewed Motion of for Order
25 Shortening Time on a Motion for Stay of District Court Order. The Coroner's Office filed a
26 Supplement on February 13, 2018.

27 At the February 15, 2018 hearing on the Motion, Laura C. Rehfeldt of the Clark
28 County District Attorney's Office and Micah Echols of the law firm Marquis Aurbach

1 Coffing appeared on behalf of the Respondent Coroner's Office, and Margaret A.
2 McLetchie of the law firm McLetchie Shell appeared on behalf of Petitioner LVRJ.

3 Based on the Court's careful review of the parties' briefs, oral argument by
4 counsel and the pleadings and papers on file, for the reasons stated by the Court and
5 reflected in the record, and for good cause shown, the Court find and rules as follows:

6 1. On April 13, 2017, the LVRJ sent the Clark County Coroner's Office a
7 request pursuant to the NPRA seeking autopsy reports related to child deaths since 2012.
8 Following the Coroner's Office's months-long refusal to accommodate this request, on July
9 17, 2017, the Review-Journal filed with this Court a Petition for Writ of Mandamus
10 pursuant to Nev. Rev. Stat. § 239.011. At a September 28, 2017 hearing, this Court granted
11 the Review-Journal's motion, ordering the Coroner's Office to disclose the requested
records in unredacted form. The Coroner's Office is appealing that ruling, but is not likely
to succeed on the merits.

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19 2. On November 29, 2017, the LVRJ filed a Motion for Attorney's Fees and
Costs pursuant to Nev. Rev. Stat. § 239.011(2), which entitles a prevailing requester to
costs and reasonable attorney's fees. After a January 11, 2018 hearing, this Court ruled in
favor of the LVRJ, ordering that the LVRJ was entitled to \$31,552.50 in attorney's fees and
\$825.02 in costs. This Court entered an order to this effect on February 1, 2018. On
February 5, the Coroner's Office filed Notice of Appeal with this Court.

20 3. The Coroner's Office is not entitled to an automatic stay. Instead, it has
21 the burden of demonstrating that the circumstances merit such an exercise of this Court's
22 discretion, and has not demonstrated that it is entitled to a stay pursuant to Rule 8(c) of the
23 Nevada Rules of Appellate Procedure.

24 4. This Court must consider the following factors in deciding whether to
25 exercise its discretion to issue a stay: (1) "whether the object of the appeal will be defeated
26 if the stay is denied;" (2) "whether appellant/petitioner will suffer irreparable or serious
27 injury if the stay is denied;" (3) "whether respondent/real party in interest will suffer
28 irreparable or serious injury if the stay is granted;" and (4) "whether appellant/petitioner is

1 likely to prevail on the merits in the appeal." *Hansen v. Eighth Judicial Dist. Court ex rel.*
2 *Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing Nev. R. App. P. 8(c) and
3 *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)). In this case, these factors do not support a
4 stay.

5 5. Immediate payment of fees and costs to the LVRJ would not defeat the
6 purpose of the appeal.

7 6. Denial of a stay will not irreparably harm the Coroner's Office. Payment
8 of money for fees and costs does not constitute irreparable harm. The possibility of having
9 to get the funds back is mere inconvenience does not constitute irreparable harm, and the
10 Coroner's Office has not established that it will not be able to collect from the LVRJ.

11 7. The Coroner's Office cannot demonstrate that their appeal raises any
serious legal questions or that they have any probability of prevailing on appeal. The plain,
unambiguous language of the NPRA entitles prevailing requestors to attorney's fees and
costs.

12 8. The plain, unambiguous language of the NPRA entitles prevailing
requestors to attorney's fees and costs. The NPRA provides that "...[i]f the requester
prevails, the requester is *entitled* to recover his or her costs and reasonable attorney's fees
in the proceeding from the governmental entity whose officer has custody of the book or
19 record." Nev. Rev. Stat. § 239.011(2). (emphasis added). Further, the explicit mandate of
20 the NPRA is to "foster democratic principles by providing members of the public with
21 access to inspect and copy public books and records to the extent permitted by law." Nev.
22 Rev. Stat. 239.001(1). The NPRA further mandates that "[t]he provisions of this chapter
23 must be construed liberally to carry out this important purpose [and a]ny exemption,
24 exception or balancing of interests which limits or restricts access to public books and
25 records by members of the public must be construed narrowly." Nev. Rev. Stat.
26 § 239.001(2)-(3).

27 9. The clear entitlement to fees and costs set forth in Nev. Rev.
28 Stat. § 239.011(2) and the NPRA's mandates that require this Court to interpret the

A758501

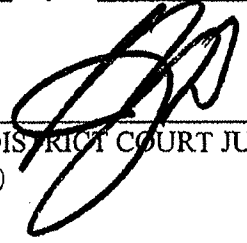
1 provisions in favor of furthering access additionally make a stay delaying payment to the
2 LVRJ of the fees and costs inappropriate. The fees and costs provisions furthers access to
3 records by ensuring that governmental entities who withhold public records, not requesters,
4 pay the costs and fees associated with obtaining compliance.

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clark
6 County Office of the Coroner/Medical Examiner's Renewed Motion of for Order
7 Shortening Time on a Motion for Stay of District Court Order is denied in its entirety.

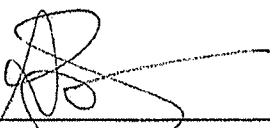
8 At the time of the stay hearing on February 15, 2018, the Court extended the
9 NRCP 62(a) automatic stay until 10 calendar days following the entry of this filed order,
10 which is now confirmed here. The Coroner's Office shall have 10 calendar days following
11 the entry of this filed order to seek stay relief in the Supreme Court. If the Supreme Court
denies the stay request from the Coroner's Office, the Coroner's Office will pay LVRJ the
\$31,552.50 in attorney's fees and \$825.02 in costs forthwith.

ORDER

It is so ORDERED this 6 day of MARCH, 2018.

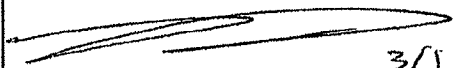

DISTRICT COURT JUDGE
(MS)

21 Prepared and submitted by:

22 
23
24
25 Margaret A. McLetchie, NBN 10931
Alina M. Shell, NBN 11711
26 McLetchie Shell, LLC
701 East Bridger Ave., Suite 520
27 Las Vegas, Nevada 89101
28 Counsel for Petitioner

A758501

1 **Approved as to form and content:**

2
3 
4 3/1/18

4 Micah S. Echols, NBN 8437

5 **Marquis Aurbach Coffing**

10001 Park Run Drive

6 Las Vegas, Nevada 89108

7 Laura C. Rehfeldt, NBN 5101

8 **Clark County District Attorney's Office**

500 S. Grand Central Pkwy., Ste. 5075

9 Las Vegas, NV 89106

10 *Counsel for Respondent*

11
[Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner,
Case No. A-17-758501-W, ORDER DENYING RESPONDENT'S RENEWED MOTION
FOR ORDER SHORTENING TIME ON A MOTION FOR STAY OF DISTRICT
COURT ORDER]

MCIEICHIE

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28

Exhibit 7

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REGISTER OF ACTIONS

CASE No. A-17-758501-W

Las Vegas Review-Journal, Plaintiff(s) vs. Clark County Office of the Coroner/ Medical Examiner, Defendant(s)

§
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§
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§
§

Case Type: **Writ of Mandamus**
Date Filed: **07/17/2017**
Location: **Department 24**
Cross-Reference Case Number: **A758501**
Supreme Court No.: **74604**
75095

PARTY INFORMATION

Defendant	Clark County Office of the Coroner/ Medical Examiner	Lead Attorneys Laura C Rehfeldt <i>Retained</i> 702-455-4761(W)
Plaintiff	Las Vegas Review-Journal	Margaret A. McLetchie <i>Retained</i> 702-728-5300(W)

EVENTS & ORDERS OF THE COURT

02/01/2018	DISPOSITIONS Order (Judicial Officer: Crockett, Jim) Debtors: Clark County Office of the Coroner/ Medical Examiner (Defendant) Creditors: Las Vegas Review-Journal (Plaintiff) Judgment: 02/01/2018, Docketed: 02/01/2018 Total Judgment: 32,377.50
07/17/2017	OTHER EVENTS AND HEARINGS Petition <i>Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
07/17/2017	Exhibits <i>Appendix of Exhibits in Support of Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
07/17/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
07/18/2017	Summons <i>Summons - Civil</i>
08/04/2017	Stipulation and Order <i>Stipulation and Order Regarding Briefing Schedule</i>
08/04/2017	Notice of Entry of Order <i>Notice of Entry of Order</i>
08/17/2017	Memorandum <i>Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
08/17/2017	Declaration <i>Attorney Margaret A. McLetchie's Declaration in Support of Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
08/30/2017	Response <i>Response to Petition and Memorandum Supporting Writ for Mandamus for Access to Autopsy Reports of Juvenile Deaths</i>
09/07/2017	Reply <i>Reply to Response to Petition and Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
09/25/2017	Supplement <i>Supplement to Reply to Response to Petition and Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
09/28/2017	Petition for Writ of Mandamus (9:00 AM) (Judicial Officer Crockett, Jim) <i>Plaintiff's Petition for Writ of Mandamus</i> <u>Parties Present</u> <u>Minutes</u> Result: Matter Heard
11/09/2017	Order <i>Order Granting Petitioner LVRJ's Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus</i>
11/09/2017	Notice of Entry of Order <i>Notice of Entry of Order</i>
11/28/2017	Notice of Appeal <i>Notice of Appeal</i>
11/28/2017	Case Appeal Statement <i>Case Appeal Statement</i>
11/29/2017	Motion for Attorney Fees and Costs <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
11/29/2017	Motion to Stay

	<i>Defendant's Motion for Stay of District Court Order and Order Shortening Time</i>
12/06/2017	Opposition to Motion <i>Petitioner Las Vegas Review-Journal's Opposition to Motion for Stay of District Court Order and Order Shortening Time</i>
12/08/2017	Reply to Opposition <i>Reply to Petitioner Las Vegas Review Journal s Opposition to Motion for Stay of District Court Order and Order Shortening Time</i>
12/12/2017	Motion For Stay (9:00 AM) (Judicial Officer Crockett, Jim) <i>Defendant's Motion for Stay of District Court Order and Order Shortening Time</i> <u>Parties Present</u> <u>Minutes</u> Result: Granted
12/14/2017	Opposition to Motion <i>Respondent's Opposition to Las Vegas Review-Journal's Motion for Attorneys' Fees and Costs</i>
01/04/2018	Reply to Opposition <i>Reply to Respondent's Opposition to Motion for Attorney's Fees and Costs</i>
01/11/2018	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer Crockett, Jim) <i>Plaintiff Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i> <u>Parties Present</u> <u>Minutes</u> Result: Granted
01/11/2018	Order <i>[Order] Granting Defendant's Motion for Stay of District Court Order and Order Shortening Time</i>
01/12/2018	Notice of Entry of Order <i>Notice of Entry of Order</i>
01/29/2018	Motion to Stay <i>Respondent's Motion for Stay of District Court Order and Order Shortening Time</i>
02/01/2018	Order <i>Order Granting Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
02/01/2018	Notice of Entry of Order <i>Notice of Entry of Order</i>
02/01/2018	Request <i>Request for Transcript of Proceedings</i>
02/05/2018	Notice of Appeal <i>Notice of Appeal</i>
02/05/2018	Case Appeal Statement <i>Case Appeal Statement</i>
02/12/2018	Motion to Stay <i>Respondent's Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order</i>
02/13/2018	Opposition to Motion <i>Opposition to Renewed Motion for Order Shortening Time On Motion for Stay of District Court Order</i>
02/13/2018	Supplement <i>Supplement to Respondent's Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order</i>
02/13/2018	Notice of Appearance <i>Notice of Appearance</i>
02/15/2018	Motion to Stay (9:00 AM) (Judicial Officer Crockett, Jim) <i>Respondent's Motion for Stay of District Court Order and Order Shortening Time</i> <i>03/22/2018 Reset by Court to 02/15/2018</i>
03/07/2018	Order Denying Motion <i>Order Denying Respondent's Renewed Motion on Order Shortening Time for Stay of District Court Order</i>
03/07/2018	Notice of Entry of Order <i>Notice of Entry of Order</i>

FINANCIAL INFORMATION

	Defendant Clark County Office of the Coroner/ Medical Examiner	
	Total Financial Assessment	48.00
	Total Payments and Credits	48.00
	Balance Due as of 03/08/2018	0.00
11/28/2017	Transaction Assessment	24.00
11/28/2017	Fee Waiver	(24.00)
02/06/2018	Transaction Assessment	24.00
02/06/2018	Fee Waiver	(24.00)
	Plaintiff Las Vegas Review-Journal	
	Total Financial Assessment	270.00
	Total Payments and Credits	270.00
	Balance Due as of 03/08/2018	0.00
07/18/2017	Transaction Assessment	270.00
07/18/2017	Efile Payment Receipt # 2017-58007-CCCLK Las Vegas Review-Journal	(270.00)

Exhibit 8



1 **ANOT**
2 STEVEN B. WOLFSON
3 District Attorney
4 **CIVIL DIVISION**
5 State Bar No. 001565
6 By: **LAURA C. REHFELDT**
7 Deputy District Attorney
8 State Bar No. 005101
9 500 South Grand Central Pkwy.
10 Las Vegas, Nevada 89155-2215
11 (702) 455-4761
12 Fax (702) 382-5178
13 E-Mail: Laura.Rehfeldt@ClarkCountyDA.com
14 Attorneys for Defendant
15 **Clark County Coroner/Medical Examiner**

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

10 LAS VEGAS REVIEW JOURNAL,

11 Petitioner,

12 vs.

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

15 Respondent.

Case No: A-17-758501-W
Dept. No: XXIV

16 **NOTICE OF APPEAL**

17 Notice is hereby given that the Clark County Office of the Coroner/Medical Examiner,
18 defendant above named, hereby appeals to the Supreme Court of Nevada from the ORDER
19 GRANTING PETITIONER LVRJ'S PUBLIC RECORDS ACT APPLICATION
20 PURSUANT TO NEV. REV. STAT. § 239.001/PETITION FOR WRIT OF MANDAMUS
21 entered in this action on November 9, 2017.

22 DATED this 28 day of November, 2017.

23 STEVEN B. WOLFSON
24 DISTRICT ATTORNEY

25 By: 

26 LAURA C. REHFELDT

27 District Attorney

28 State Bar No. 005101

500 South Grand Central Pkwy. 5th Flr.

Las Vegas, Nevada 89155-2215

Attorney for Defendant

Clark County Coroner Medical Examiner

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 28th day of November, 2017, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** to the following parties by the method shown below:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Margaret A. McLetchie, Esq. Alina M. Shell, Esq. McLetchie Shell LLC 701 East Bridger Avenue #520 Las Vegas, NV 89101 alina@nvlitigation.com maggie@nvlitigation.com	<i>Petitioner Las Vegas Review Journal</i>	<input checked="" type="checkbox"/> Electronic Service <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service <input type="checkbox"/> Personal Service (ROC)

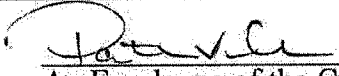


An Employee of the Clark County District
Attorney's Office – Civil Division

Exhibit 9



CLERK OF THE COURT

1 ORDR

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 LAS VEGAS REVIEW JOURNAL,

8 Plaintiff/ Petitioner,

9 v.

10 STEVEN WOLFSON, CLARK COUNTY
DISTRICT ATTORNEY

Case No.: A-14-711233-W
Department: XVII

DECISION

11 Defendant/ Respondent.

12
13 Plaintiff Las Vegas Review Journal's Motion to Motion for Attorneys Fees came before
14 this Court on April 5, 2017 Calendar. Following review of the papers and files herein and oral
15 argument, the Court rules as follows:

16
17 The recovery of attorney fees as a cost of litigation is permissible by agreement, statute,
18 or rule. See *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35
19 P.3d 964, 969 (2001). LVRJ submits that because they are a "prevailing party" NRS 239.011(2)
20 allows for such fees and costs. NRS 239.011(2) states in relevant part "...[i]f the requester
21 prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the
22 proceeding from the governmental entity whose officer has custody of the book or record." NRS
23 239.011(2). NRS 239.005 (4)(a) (b) defines "government entity" as "[a]n elected or appointed
24 official of this State or of a political subdivision of this state; or an institution, board,
25 commission, bureau, council, department, division, authority or other unit of government of this
26 State or of a political subdivision."
27

1 Wolfson does not refute the validity of NRS 239.011(2), but rather asserts that he is
2 immune from an award of fees and costs based on his good faith actions. Wolfson seeks
3 protection pursuant to NRS 239.012 which states "Immunity for good faith disclosure or refusal
4 to disclose information. A public officer or employee who acts in good faith in disclosing or
5 refusing to disclose information and the employer of the public officer or employee are immune
6 from liability for damages, either to the requester or to the person whom the information
7 concerns." LVRJ argues that only NRS 239.011 applies and therefore, good or bad faith on
8 behalf of Wolfson is irrelevant for an award of attorney fees and costs. LVRJ further relies on
9 *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015) and argues that
10 because LVRJ prevailed on some issues sought during the pendency of litigation, they are
11 entitled to attorney's fees. The Court notes that in *Blackjack Bonding*, the NRS 239.012 "good
12 faith exception" was not timely raised and pursuant to NRAP 40(c) the moving parties Motion
13 for Reconsideration was denied. Therefore, *Blackjack Bonding* is not persuasive to this Court on
14 the issue of the good faith exception.
15

16
17 Therefore, the Court must decide whether NRS 239.012 applies and whether Wolfson is
18 covered under said statute. The Court notes that the Complaint in question names "Steven
19 Wolfson, Clark County District Attorney" only and not Clark County or the Clark County
20 District Attorney's office. The COURT FINDS that Wolfson is an elected officer as defined in
21 NRS 239.005 and covered under NRS 239.012. NRS 239.012 provides immunity for a "public
22 officer" and "the employer of the public officer."
23

24 The Court must next decide whether the term "damages" as indicated in NRS 239.012 is
25 meant to include attorneys' fees and costs. Both parties agree that "damages" is not defined
26 within the NRS. Therefore, this Court must resolve this ambiguity by looking to the legislative
27 intent for clarification. See *State v. Lucero*, 127 Nev. 92, 95, 249 P.2d 1226, 1228
28

1 (2011)(Finding the starting point for determining legislative intent is a statutes plain meaning,
2 but when the statutory language lends itself to two or more reasonable interpretations, the statute
3 is ambiguous, the Court looks to the legislative history to construe a statute in a manner
4 consistent with reason and public policy). The Court therefore looks to the testimony and
5 minutes of the Assembly Committee on Government Affairs in order to construe the Statute in a
6 manner consistent with public policy. Assembly Bill 365 described as "Substitutes civil
7 enforcement of access to public records for criminal penalty" was the Draft Bill to the now
8 codified NRS 239.011 and NRS 239.012. In determining whether "fees" was intended to be
9 included in the legislature's description of "costs", the Court is swayed by testimony of May 3,
10 1993. During said testimony, the language of what is now codified NRS 239.011 and NRS
11 239.012 are discussed at length. The Court notes that both statutes are discussed one after
12 another and conversation of the "good faith" exception continually overlaps with discussion of
13 the now NRS 239.011. The Committee Notes directly link immunity with fees. Ande Englemen
14 of the Nevada Press Association stated to Assembly Committee on Government Affairs:

17 Taxpayers were also paying the fees for the agency Mr. Bennett
18 observed. The question was, should the taxpayers, in general, have
19 to cover those costs when the suit might be rather frivolous. Ms.
20 Engleman noted the bill did not grant court costs and attorneys'
21 fees if a suit was over a record everyone had though to be
22 confidential. **Court costs and attorneys' fees were granted only
when it was a denial of what was clearly a public record [bad
faith].** Therefore, she did not think there would be frivolous
lawsuits.

23 *Assembly Committee on Government Affairs Minutes: Hearing on AB 365 Before the Assembly*
24 *Committee on Government Affairs, 1993 67th Sess. May 3, 1993 (statement of Ande Englemen,*
25 *Nevada Press Association) (emphasis added); See also Nevada State Library, Archives and*
26 *Public Records Nevada Public Records Act: A Manual for State Agencies 2014 (Interpreting and*
27
28

1 instructing Nevada State Employees that NRS 239.012 relieves a good faith refusal to disclose
2 information).

3
4 Therefore, the COURT FINDS that based on a review of the legislative minutes, fees and
5 costs were intended to be linked with the "good faith" immunity exception of what is now NRS
6 239.012. Moreover, the Court notes that in cases of public records requests, "fees" would be the
7 only likely "damages" available to a party who prevails on a wrongfully withheld disclosure of
8 public record under NRS 239.011.

9
10 The Court must next determine whether Wolfson actually acted in "good faith" during
11 the pendency of litigation. The term "good faith" is an intangible and abstract quality with no
12 technical meaning or definition and encompasses, among other things, an honest belief, the
13 absence of malice, and the absence of design to defraud. *Stoecklein v. Johnson Elec., Inc.*, 109
14 Nev. 268, 273, 849 P.2d 305, 309 (1993). The Court notes that the present case is one where both
15 parties obtained success on various Motions. Furthermore, LVRJ has made no showing of malice
16 or that Wolfson acted in bad faith. The record reflects that Wolfson produced over 1200 pages
17 prior to the commencement of litigation, an immense amount of time was spent redacting
18 documents in the inducement index, and at the end of litigation only 143 additional redacted
19 pages were ordered to be turned over. The Court further notes that as his role as District
20 Attorney, Wolfson is subject to competing interests when dealing with sensitive information
21 such as the information sought in this case. Therefore, based on the history of the litigation, this
22 Court does not find Wolfson acted in bad faith, but rather acted reasonably based on the
23 competing safety and privacy interests at play. Further, the Court Finds that both parties to one
24 extent or another prevailed on significant issues of public interest.
25
26
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1 Since the Court finds NRS 239.012 applicable and that Wolfson acted in good faith,
2 Plaintiff's motion for Attorney Fees is DENIED. Counsel for Defendant Wolfson is directed to
3 submit a proposed order consistent with the foregoing within ten (10) days after counsel is
4 notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21.
5 Such Order should set forth a synopsis of the supporting reasons proffered to this Court in
6 briefing and be approved as to form and content by both parties.
7

8 DATED this 12th day of April, 2017.

9 
10 MICHAEL P. VILLANI
11 DISTRICT COURT JUDGE
12
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this DECISION was electronically served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or mailed via the U.S. postal service as follows:

Margaret A. McLetchie, Esq.
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CHERYL CARPENTER
Judicial Executive Assistant

Exhibit 10



DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

Case No.: A-17-758501-W
Dept. No.: XXIV

vs.

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Hearing Date: February 15, 2018
Hearing Time: 9:00 a.m.

Respondent.

**SUPPLEMENT TO RESPONDENT'S RENEWED MOTION FOR ORDER
SHORTENING TIME ON MOTION FOR STAY OF DISTRICT COURT ORDER**

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Attorneys for Respondent, Clark County Office of the Coroner/Medical Examiner

Respondent, Clark County Office of the Coroner/Medical Examiner (“Coroner”), by and through its counsel of record, Marquis Aurbach Coffing and the Clark County District Attorney/Civil Division, hereby files this supplement to its “Renewed Motion for Order Shortening Time on Motion for Stay of District Court Order.” This supplement is made and based on the papers and pleadings on file herein, the attached memorandum of points and authorities, and the oral argument before the Court.

I. INTRODUCTION

In this supplement, the Coroner provides the Court with additional points and authorities for staying the Court's award to Petitioner, Las Vegas Review-Journal ("LVRJ"), for attorney fees of \$31,552.50 and costs of \$825.02, for a total of \$32,377.52 pending appeal. Specifically, the Court should grant the Coroner's requested stay pending appeal of the attorney fees and costs order without a bond for the following additional reasons: (1) the purpose of a stay pending appeal is to preserve the status quo; (2) a stay pending appeal is allowed as a matter of right for a monetary judgment, particularly for government entities; (3) within the NRAP 8(c) analysis, LVRJ will not suffer any serious injury because the Coroner's appeal in and of itself does not constitute harm for purposes of entering a stay; and (4) the Coroner is likely to prevail on the merits of its appeal. In addition to the reasons outlined in the Coroner's renewed motion for stay, the Coroner moves the Court to consider the points and authorities in this supplement to grant a stay of the February 1, 2018 order granting attorney fees and costs to LVRJ, without a bond.

1 **II. LEGAL ARGUMENT**

2 **A. THE PURPOSE OF A STAY PENDING APPEAL IS TO PRESERVE THE**
3 **STATUS QUO.**

4 The purpose of a stay of a district court judgment pending appeal is to preserve, not
5 change, the status quo. *See U.S. v. State of Mich.*, 505 F.Supp. 467 (W.D. Mich. 1980). The
6 Nevada Supreme Court has confirmed this recognized purpose of a stay:

7 The purpose of security for a stay pending appeal is to protect the judgment
8 creditor's ability to collect the judgment if it is affirmed by preserving the status
9 quo. . . .

10 *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252, 1254 (2005) (collecting cases). Therefore, the
11 Court should grant the Coroner's requested stay relief.

12 **B. A STAY PENDING APPEAL IS ALLOWED AS A MATTER OF RIGHT**
13 **FOR A MONETARY JUDGMENT, PARTICULARLY FOR**
14 **GOVERNMENT ENTITIES.**

15 The United States Supreme Court has defined a stay of a monetary judgment as a matter
16 of right once a supersedeas bond is posted. *See U.S. v. Wylie*, 730 F.2d 1401 (11th Cir. 1984)
17 (citing *Am. Mfrs. Mut. Ins. Co. v. Am. Broad.-Paramount Theaters*, 87 S.Ct. 1 (1966));
18 11 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE, § 2905, at 326. Other courts
19 have followed the lead of the United States Supreme Court in reaching this holding. *See Ascher*
20 *v. Gutierrez*, 66 F.R.D. 548 (D.D.C. 1975). The Nevada Supreme Court has also recognized
21 and followed the analogous federal rule for stays, FRCP 62, including a stay as a matter of right
22 when a supersedeas bond is posted. *See Nelson*, 122 P.3d at 1253 (acknowledging that federal
23 cases construing analogous federal rules are persuasive authority when this Court examines its
24 own rules). Since the Coroner is deemed secure as a matter of law, no bond is required, and this
25 Court should grant a stay of the attorney fees and costs order pending appeal. *See* NRCP 62(e);¹
26 NRS 20.040(1).²

27 ¹ "When an appeal is taken by the State or by any county, city or town within the State, or an
28 officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond,
obligation, or other security shall be required from the appellant."

² "In any action or proceeding before any court or other tribunal in this State, wherein the State
of Nevada or any county, city or town of this State, or any officer thereof in his or her official

1 **C. WITHIN THE NRAP 8(c) ANALYSIS, LVRJ WILL NOT SUFFER ANY**
2 **SERIOUS INJURY BECAUSE AN APPEAL IN AND OF ITSELF DOES**
3 **NOT CONSTITUTE HARM FOR PURPOSES OF ENTERING A STAY.**

4 Notably, an appeal in and of itself does not constitute harm for purposes of entering a
5 stay. *See Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 986–987 (2000).
6 Maintaining the status quo and staying execution of the judgment will not harm LVRJ in any
7 way since the Coroner is deemed secured as a matter of law. *See* NRCP 62(e); NRS 20.040(1).
8 In other words, if the District Court’s order on attorney fees and costs is not disturbed on
9 appeal, LVRJ will be paid upon remand of the case. And, the Supreme Court has already
10 expedited the underlying juvenile autopsy reports appeal in its January 18, 2018 order.³ Once
11 the Supreme Court docketed the Coroner’s separate appeal from the attorney fees and costs order,
12 the Coroner will move the Supreme Court to consolidate both appeals into the underlying
13 expedited appeal. *See* NRAP 3(b)(2). So, this third NRAP 8(c) factor also weighs in favor of
14 the Coroner’s requested relief of a stay pending appeal without a bond.

15 **D. THE CORONER IS LIKELY TO PREVAIL ON THE MERITS OF ITS**
16 **APPEAL.**

17 In the renewed motion, the Coroner already pointed out that in explaining the fourth
18 factor of NRAP 8(c), dealing with the likelihood of success on appeal, the Nevada Supreme
19 Court has clarified that “a movant does not always have to show a probability of success on the
20 merits, [but] the movant must ‘present a substantial case on the merits when a serious legal
21 question is involved and show that the balance of equities weighs heavily in favor of granting
22 the stay.’” *Fritz Hansen A/S*, 116 Nev. at 658, 6 P.3d at 987 (citing *Ruiz v. Estelle*, 650 F.2d
23 555, 565 (5th Cir. 1981)). If the Coroner prevails on the underlying appeal determining the
24 non-public nature of the requested juvenile autopsy reports, LVRJ will automatically lose any

25
26 capacity, is a party plaintiff or defendant, no bond, undertaking or security shall be required of
the State, county, city or town, or such officer in his or her official capacity. . . .”

27 ³ The Supreme Court order filed on January 18, 2018 expediting appeal in Case No. 74604 is
28 attached as **Exhibit A**.

1 entitlement to attorney fees under even its own interpretation of NRS 239.011(2) since LVRJ
2 will no longer be a prevailing party.

3 Even if the Nevada Supreme Court were to affirm the underlying order on the juvenile
4 autopsy reports, the Coroner has presented a split of authority on whether attorney fees and
5 costs can be granted in this case based upon the language of NRS 239.012. Specifically, this
6 Court granted LVRJ its requested attorney fees and costs in the February 1, 2018 order based
7 upon NRS 239.011(2), which in pertinent part, states: "If the requester prevails, the requester is
8 entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the
9 governmental entity whose officer has custody of the book or record." In contrast, District
10 Court Judge Villani decided⁴ in *LVRJ v. Wolfson*, District Court Case No. A-14-711233-W that
11 NRS 239.011(2) cannot be read in isolation but rather must be harmonized with the plain
12 language of NRS 239.012: "A public officer or employee who acts in good faith in disclosing or
13 refusing to disclose information and the employer of the public officer or employee are immune
14 from liability for damages, either to the requester or to the person whom the information
15 concerns." See, e.g., *S. Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171,
16 173 (2005) (stating that the provisions of a statutory scheme must be considered together,
17 reconciled, and harmonized). As an aggrieved party, LVRJ appealed Judge Villani's order
18 denying attorney fees and costs, which is currently pending before the Nevada Supreme Court
19 as Case No. 73457. Therefore, the Coroner has satisfied the final NRAP 8(c) element to present
20 a "serious legal question," and this Court should grant the requested stay pending appeal.

21 **III. CONCLUSION**

22 In summary, the Court should grant a stay pending appeal of the February 1, 2018 order
23 granting to LVRJ attorney fees of \$31,552.50 and costs of \$825.02, for a total of \$32,377.52,
24 without a bond, for the reasons outlined in the Coroner's renewed motion for stay, as well as the
25 following reasons in this supplement: (1) the purpose of a stay pending appeal is to preserve the
26 status quo; (2) a stay pending appeal is allowed as a matter of right for a monetary judgment,

27 ⁴ Judge Villani's April 14, 2017 order on attorney fees and costs in District Court Case
28 No. A-14-711233-W is attached as **Exhibit B**.

1 particularly for government entities; (3) within the NRAP 8(c) analysis, LVRJ will not suffer
2 any serious injury because an appeal in and of itself does not constitute harm for purposes of
3 entering a stay; and (4) the Coroner is likely to prevail on the merits of its appeal.

4 Dated this 13th day of February, 2018.

5
6 MARQUIS AURBACH COFFING

7
8 By /s/ Micah S. Echols
9 Micah S. Echols, Esq.
10 Nevada Bar No. 8437
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 *Attorneys for Respondent, Clark County*
14 *Office of the Coroner/Medical Examiner*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **SUPPLEMENT TO RESPONDENT'S RENEWED MOTION FOR ORDER SHORTENING TIME ON MOTION FOR STAY OF DISTRICT COURT ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 13th day of February, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁵

Margaret A McLetchie
maggie@nvlitigation.com
Alina M Shell
alina@nvlitigation.com
Attorneys for Petitioner, Las Vegas Review-Journal

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

⁵ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit A

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,
Appellant,

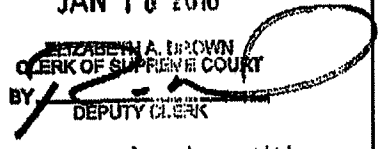
vs.

LAS VEGAS REVIEW-JOURNAL,
Respondent.

No. 74604

FILED

JAN 18 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER

This is an appeal from an order granting respondent's petition for a writ of mandamus, and directing appellant to produce reports of autopsies conducted of anyone under the age of 18 from 2012 through April 13, 2017, to the Las Vegas Review Journal in unredacted form.

Respondent has filed a motion requesting that this appeal be expedited and that the appeal be removed from this court's settlement program.¹ The motion is opposed, and respondent has filed a reply. We grant the motion to expedite this appeal to the following extent. Upon completion of briefing, this appeal shall be expedited to the extent that this court's docket will allow.

The deadlines for filing documents in this appeal are reinstated as follows. Appellant shall have 15 days from the date of this order to file and serve the transcript request form or a certificate of no transcript request. NRAP 9(a). Appellant shall have 90 days from the date of this

¹The settlement judge has filed a report that this appeal is not appropriate for mediation; accordingly, we deny, as moot, the request to remove the appeal from the program.

order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

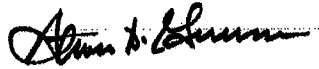
It is so ORDERED.²

Dwyer, C.J.

cc: Clark County District Attorney/Civil Division
McLetchie Shell LLC

²We note that respondent may speed the briefing process by filing its answering brief before the due date for the document.

Exhibit B


CLERK OF THE COURT

1 ORDR

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6
7 LAS VEGAS REVIEW JOURNAL,

8 Plaintiff/ Petitioner,

Case No.: A-14-711233-W
Department: XVII

9 v.

10 STEVEN WOLFSON, CLARK COUNTY
DISTRICT ATTORNEY

DECISION

11 Defendant/ Respondent.

12
13 Plaintiff Las Vegas Review Journal's Motion to Motion for Attorneys Fees came before
14 this Court on April 5, 2017 Calendar. Following review of the papers and files herein and oral
15 argument, the Court rules as follows:

16
17 The recovery of attorney fees as a cost of litigation is permissible by agreement, statute,
18 or rule. See *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35
19 P.3d 964, 969 (2001). LVRJ submits that because they are a "prevailing party" NRS 239.011(2)
20 allows for such fees and costs. NRS 239.011(2) states in relevant part "...[i]f the requester
21 prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the
22 proceeding from the governmental entity whose officer has custody of the book or record." NRS
23 239.011(2). NRS 239.005 (4)(a) (b) defines "government entity" as "[a]n elected or appointed
24 official of this State or of a political subdivision of this state; or an institution, board,
25 commission, bureau, council, department, division, authority or other unit of government of this
26 State or of a political subdivision."
27
28

1 Wolfson does not refute the validity of NRS 239.011(2), but rather asserts that he is
2 immune from an award of fees and costs based on his good faith actions. Wolfson seeks
3 protection pursuant to NRS 239.012 which states "Immunity for good faith disclosure or refusal
4 to disclose information. A public officer or employee who acts in good faith in disclosing or
5 refusing to disclose information and the employer of the public officer or employee are immune
6 from liability for damages, either to the requester or to the person whom the information
7 concerns." LVRJ argues that only NRS 239.011 applies and therefore, good or bad faith on
8 behalf of Wolfson is irrelevant for an award of attorney fees and costs. LVRJ further relies on
9 *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015) and argues that
10 because LVRJ prevailed on some issues sought during the pendency of litigation, they are
11 entitled to attorney's fees. The Court notes that in *Blackjack Bonding*, the NRS 239.012 "good
12 faith exception" was not timely raised and pursuant to NRAP 40(c) the moving parties Motion
13 for Reconsideration was denied. Therefore, *Blackjack Bonding* is not persuasive to this Court on
14 the issue of the good faith exception.
15

16
17 Therefore, the Court must decide whether NRS 239.012 applies and whether Wolfson is
18 covered under said statute. The Court notes that the Complaint in question names "Steven
19 Wolfson, Clark County District Attorney" only and not Clark County or the Clark County
20 District Attorney's office. The COURT FINDS that Wolfson is an elected officer as defined in
21 NRS 239.005 and covered under NRS 239.012. NRS 239.012 provides immunity for a "public
22 officer" and "the employer of the public officer."
23

24 The Court must next decide whether the term "damages" as indicated in NRS 239.012 is
25 meant to include attorneys' fees and costs. Both parties agree that "damages" is not defined
26 within the NRS. Therefore, this Court must resolve this ambiguity by looking to the legislative
27 intent for clarification. See *State v. Lucero*, 127 Nev. 92, 95, 249 P.2d 1226, 1228
28

1 (2011)(Finding the starting point for determining legislative intent is a statutes plain meaning,
2 but when the statutory language lends itself to two or more reasonable interpretations, the statute
3 is ambiguous, the Court looks to the legislative history to construe a statute in a manner
4 consistent with reason and public policy). The Court therefore looks to the testimony and
5 minutes of the Assembly Committee on Government Affairs in order to construe the Statute in a
6 manner consistent with public policy. Assembly Bill 365 described as "Substitutes civil
7 enforcement of access to public records for criminal penalty" was the Draft Bill to the now
8 codified NRS 239.011 and NRS 239.012. In determining whether "fees" was intended to be
9 included in the legislature's description of "costs", the Court is swayed by testimony of May 3,
10 1993. During said testimony, the language of what is now codified NRS 239.011 and NRS
11 239.012 are discussed at length. The Court notes that both statutes are discussed one after
12 another and conversation of the "good faith" exception continually overlaps with discussion of
13 the now NRS 239.011. The Committee Notes directly link immunity with fees. Ande Englemen
14 of the Nevada Press Association stated to Assembly Committee on Government Affairs:

17 Taxpayers were also paying the fees for the agency Mr. Bennett
18 observed. The question was, should the taxpayers, in general, have
19 to cover those costs when the suit might be rather frivolous. Ms.
20 Engleman noted the bill did not grant court costs and attorneys'
21 fees if a suit was over a record everyone had though to be
22 confidential. **Court costs and attorneys' fees were granted only
when it was a denial of what was clearly a public record [bad
faith].** Therefore, she did not think there would be frivolous
lawsuits.

23 *Assembly Committee on Government Affairs Minutes: Hearing on AB 365 Before the Assembly*
24 *Committee on Government Affairs, 1993 67th Sess. May 3, 1993 (statement of Ande Englemen,*
25 *Nevada Press Association) (emphasis added); See also Nevada State Library, Archives and*
26 *Public Records Nevada Public Records Act: A Manual for State Agencies 2014 (Interpreting and*
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1 instructing Nevada State Employees that NRS 239.012 relieves a good faith refusal to disclose
2 information).

3
4 Therefore, the COURT FINDS that based on a review of the legislative minutes, fees and
5 costs were intended to be linked with the "good faith" immunity exception of what is now NRS
6 239.012. Moreover, the Court notes that in cases of public records requests, "fees" would be the
7 only likely "damages" available to a party who prevails on a wrongfully withheld disclosure of
8 public record under NRS 239.011.

9
10 The Court must next determine whether Wolfson actually acted in "good faith" during
11 the pendency of litigation. The term "good faith" is an intangible and abstract quality with no
12 technical meaning or definition and encompasses, among other things, an honest belief, the
13 absence of malice, and the absence of design to defraud. *Stoecklein v. Johnson Elec., Inc.*, 109
14 Nev. 268, 273, 849 P.2d 305, 309 (1993). The Court notes that the present case is one where both
15 parties obtained success on various Motions. Furthermore, LVRJ has made no showing of malice
16 or that Wolfson acted in bad faith. The record reflects that Wolfson produced over 1200 pages
17 prior to the commencement of litigation, an immense amount of time was spent redacting
18 documents in the inducement index, and at the end of litigation only 143 additional redacted
19 pages were ordered to be turned over. The Court further notes that as his role as District
20 Attorney, Wolfson is subject to competing interests when dealing with sensitive information
21 such as the information sought in this case. Therefore, based on the history of the litigation, this
22 Court does not find Wolfson acted in bad faith, but rather acted reasonably based on the
23 competing safety and privacy interests at play. Further, the Court Finds that both parties to one
24 extent or another prevailed on significant issues of public interest.
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1 Since the Court finds NRS 239.012 applicable and that Wolfson acted in good faith,
2 Plaintiff's motion for Attorney Fees is DENIED. Counsel for Defendant Wolfson is directed to
3 submit a proposed order consistent with the foregoing within ten (10) days after counsel is
4 notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21.
5 Such Order should set forth a synopsis of the supporting reasons proffered to this Court in
6 briefing and be approved as to form and content by both parties.
7

8 DATED this 12th day of April, 2017.



10 MICHAEL P. VILLANI
11 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this DECISION was electronically served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or mailed via the U.S. postal service as follows:

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CHERYL CARPENTER
Judicial Executive Assistant

Exhibit 11



1 **OPPM**
2 MARGARET A MCLEATCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
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6 Las Vegas, Nevada 89101
7 Telephone: (702) 728-5300; Fax: (702) 425-8220
8 Email: maggie@nvlitigation.com
9 *Counsel for Petitioner*

10 **DISTRICT COURT**

11 **CLARK COUNTY NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

13 Petitioner,

Dept. No.: XXIV

14 vs.

15 **OPPOSITION TO RENEWED**
16 **MOTION FOR ORDER**
17 **SHORTENING TIME ON**
18 **MOTION FOR STAY OF**
19 **DISTRICT COURT ORDER**

20 CLARK COUNTY OFFICE OF THE
21 CORONER/MEDICAL EXAMINER,

22 Respondent.

23 Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through
24 its undersigned counsel, hereby submits this Opposition to Respondent the Clark County
25 Office of the Coroner/Medical Examiner's (the "Coroner's Office") Renewed Motion for
26 an Order Shortening Time on Motion for Stay of District Court Order. This Opposition is
27 supported by the attached memorandum of points and authorities, any attached exhibits, the
28 papers and pleadings already on file herein, and any oral argument the Court may permit at
the hearing of this Motion.

Respectfully submitted this 13th day of February, 2018.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
MCLEATCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Petitioner

I. INTRODUCTION

Further, the Coroner's Office cannot demonstrate that their appeal raises any "serious legal questions," let alone that they have any probability of prevailing on appeal. Far from upholding the Nevada Public Records Act's (the "NPRO") explicit mandate that any restrictions on its provisions be narrowly construed, the Coroner's Office argues that this Court should read non-existent restrictions on prevailing requesters recovering attorney's fees and costs. This straw-grasping argument ignores the plain, unambiguous language of the NPRO, which *entitles* prevailing requestors to attorney's fees and costs, full stop. Finally, this Court should deny this stay to uphold the public interest in governmental transparency. The Coroner's Office should not be rewarded for its bad faith attempts at keeping the public from accessing public records, even if that "reward" is only a temporary reprieve from paying the Review-Journal the fees and costs to which it is entitled. For these reasons, this Court should not grant a stay of payment pending appeal.

///

1 **II. PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS**

2 On April 13, 2017, the Review-Journal sent the Clark County Coroner's Office a
3 request pursuant to the NPRA seeking autopsy reports related to child deaths since 2012.
4 Following the Coroner's Office's months-long refusal to accommodate this request, on July
5 17, 2017, the Review-Journal filed with this Court a Petition for Writ of Mandamus pursuant
6 to Nev. Rev. Stat. § 239.011. At a September 28, 2017 hearing, this Court granted the
7 Review-Journal's motion, ordering the Coroner's Office to disclose the requested records in
8 unredacted form. The Coroner's Office is appealing that ruling, but is not likely to succeed
9 on the merits, as argued in the Review-Journal's Opposition to the Coroner's Office's Motion
10 to Stay filed December 8, 2017, on file with this Court.

11 On November 29, 2017, the Review-Journal filed a Motion for Attorney's Fees and
12 Costs pursuant to Nev. Rev. Stat. § 239.011(2), which *entitles* a prevailing requester to costs
13 and reasonable attorney's fees. After a January 11, 2018 hearing, this Court ruled in favor of
14 the Review-Journal, ordering that the Review-Journal was entitled to \$31,552.50 in
15 attorney's fees and \$825.02 in costs. This court entered an order to this effect on February 1,
16 2018. On February 5, the Coroner's Office filed Notice of Appeal with this Court. On
17 February 12, the Coroner's Office served the Review-Journal with a renewed Motion for a
18 Stay of this Court's February 1 Order Awarding Fees and Costs to the Review-Journal. The
19 Review-Journal now opposes that renewed Motion.

20 **III. LEGAL ARGUMENT**

21 **A. Legal Standard**

22 "A stay is not a matter of right, even if irreparable injury might otherwise result."
23 *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272
24 U.S. 658, 672 (1926)). Rather, the grant of a stay pending appeal is "an exercise of judicial
25 discretion" and "the party requesting a stay bears the burden of showing that the
26 circumstances justify an exercise of that discretion." *Nken*, 556 U.S. 418, 433-34 (citing
27 *Virginian R. Co.*, 272 U.S. at 672-73); *see also Clinton v. Jones*, 520 U.S. 681, 708 (1997).

28 ///

1 This Court must consider the following factors in deciding whether to issue a stay:
2 (1) “whether the object of the appeal will be defeated if the stay is denied;” (2) “whether
3 appellant/petitioner will suffer irreparable or serious injury if the stay is denied;” (3)
4 “whether respondent/real party in interest will suffer irreparable or serious injury if the stay
5 is granted;” and (4) “whether appellant/petitioner is likely to prevail on the merits in the
6 appeal.” *Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 657, 6
7 P.3d 982, 986 (2000) (citing Nev. R. App. P. 8(c) and *Kress v. Corey*, 65 Nev. 1, 189 P.2d
8 352 (1948)); accord *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38
9 (2004). In addition, as the United States Supreme Court has held, courts must also consider
10 “where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations
11 omitted); accord *NML Capital, Ltd. v. Republic of Argentina*, No. 2:14-CV-492-RFB-VCF,
12 2015 WL 3489684, at *4 (D. Nev. June 3, 2015).

13 The Nevada Supreme Court has “not indicated that any one factor carries more
14 weight than the others,” and instead “recognizes that if one or two factors are especially
15 strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp.*, 120 Nev. at
16 251, 89 P.3d at 38 (citing *Hansen*, 116 Nev. 650, 6 P.3d 982 (2000)).¹ The Coroner’s Office
17 is correct to note that “when moving for a stay pending an appeal or writ proceedings, a
18 movant does not always have to show a probability of success on the merits, the movant must
19 ‘present a substantial case on the merits when a serious legal question is involved and show
20 that the balance of equities weighs heavily in favor of granting the stay.’” (Motion, p. 7:6-10
21 (quoting *Hansen*, 116 Nev. at 659, 6 P.3d at 987).)²

22
23 ¹ For example, the Review-Journal concedes that it will not suffer irreparable harm or serious
24 injury if the stay is granted, as the Court can impose mechanisms, such as adding interest the
25 fees and costs award, to fully compensate the Review-Journal for at the conclusion of the
26 appeals process. *see* §III(C). Despite this concession, the other factors demonstrate that the
27 Coroner’s Office cannot meet its heavy burden in showing that a stay is warranted.

28 ² While the Coroner’s Office relies heavily on *Hansen*, in that case the Nevada Supreme
Court denied the stay sought because the movant did not meet its burden. *Id.* at 658-59, 987.
Similarly, the Coroner’s Office fails to establish that a stay is warranted in this case.

The factors of NRAP 8(c) weigh against a stay of this Court's Order. Moreover, the balance of the equities does not weigh in favor of stay. Instead, the NPRA and the case law interpreting its provisions demonstrate that the public interest lies with immediate payment to the Review-Journal.

B. The NPRA 8(c) Factors and the Public Interest in Disclosure Weigh Against a Stay.

1. The Object of the Appeal Will Not Be Defeated by Denying the Stay.

In its Motion, the Coroner's Office does not argue that the object of its appeal—avoidance of paying the Review-Journal's attorney's fees and costs in this litigation—will be defeated by delaying the stay. Rather, it argues that it would be inconvenienced: “[i]f payment is made to the [Review-Journal], the Coroner will have to recoup the monies from the [Review-Journal], possibly without the benefit of a court order, if it prevails on appeal.” (Motion, p. 5:24-26.) Another concern voiced by the Coroner's Office is that “[p]ayment of the fees and costs prior to completion of the appeal process could be construed as an admission, compromise, settlement, or accord and satisfaction, which would undermine the Coroner's argument and an appeal.” (Motion, p.5:26-28.)

The Coroner's Office provides no citation for the proposition that either of the aforementioned concerns amount to “defeating” the purpose of the appeal. This is because they do not “defeat” the purpose of the appeal, merely delay it. The Coroner's Office's insinuation—that if it pays attorney's fees and costs now, the Review-Journal will either disappear or defy this Court's order to repay the Coroner's Office should it prevail on appeal—is both insulting and untrue. Denial of this stay will not affect the ultimate outcome of this appeal one way or the other, and therefore this factor weighs in favor of the Review-Journal.

2. The Coroner's Office Will Not Suffer Irreparable Harm or Serious Injury if the Stay is Denied.

The Coroner's Office not only fails to carry its burden of demonstrating “irreparable harm or serious injury,” it fails to comprehend the concept of “irreparable harm or serious

1 injury.” In its Motion, the only “irreparable harm” the Coroner’s Office identifies is that it
2 will “have to use resources and legal means to recover the payment” if it prevails on its
3 appeal. (Motion, p. 6:2-3.) The Coroner’s Office then insultingly speculates that “by the time
4 a decision is made by the Nevada Supreme Court, the [Review-Journal] could be bankrupt
5 or insolvent, or in some other financial situation that could preclude the [Review-Journal]
6 from reimbursing the Coroner for the fees and costs.” (Motion, p. 6:5-7.)

7 This simply does not suffice to meet the heavy burden the Coroner’s Office bears in
8 justifying a stay. “Having to use resources and legal means”—i.e. spending money on
9 hypothetical future litigation—is a quintessentially reparable harm. This is particularly true
10 for a wealthy municipality like Clark County, whose “revenues make it able to cover this
11 potential obligation,” whose “credit rating demonstrates that it takes its financial obligations
12 seriously,” which “is not in a position to default on the \$32,377.52 in the Order should it not
13 receive a favorable ruling from the Nevada Supreme Court.” (Motion, p. 6:23-28.)

14 The harm the Coroner’s Office alleges is that it will have to pay fees now, rather than
15 in the future. “Simply put, the alleged harm is wholly monetary . . . [i]n other words, the
16 harm is not irreparable.” *In re Capability Ranch, LLC*, No. 2:13-CV-1812 JCM, 2013 WL
17 6058198, at *3 (D. Nev. Nov. 15, 2013) (holding that forcing losing party to pay attorney’s
18 fees does not constitute irreparable harm); *see also Orquiza v. Walldesign, Inc.*, No. 2:11-
19 CV-1374 JCM CWH, 2013 WL 4039409, at *2 (D. Nev. Aug. 6, 2013) (“Monetary damages
20 alone do not amount to irreparable harm”); *Taddeo v. Am. Invsco Corp.*, No. 2:12-CV-01110
21 APG NJK, 2014 WL 12708859, at *1 (D. Nev. Sept. 19, 2014) (“simple monetary damages
22 generally are not considered to be irreparable harm”); *see also Town Ctr. Drive & 215, LLC*
23 *v. Bank of Am., N.A.*, No. 60672, 2014 WL 3764503, at *3 (Nev. July 29, 2014) (finding no
24 irreparable harm when injunction-seeking plaintiff would only be entitled to monetary
25 damages). Because paying attorney’s fees earlier than a party prefers is the exact opposite of
26 an “irreparable harm,” this factor weighs heavily in favor of denying a stay.

27 ///

28 ///

3. The Coroner's Office is Unlikely to Prevail on the Merits in its Appeal.

The Coroner's Office argues that "the issue is the application and interpretation of NRS 239.011 and 012, the legislative history, and whether a governmental entity is subject to attorney costs and fees when it acts in good faith." (Motion, p. 7:12-15.) This, however, is a non-issue—the NPRA's provisions are crystal clear. "If a statute is clear on its face a court cannot go beyond the language of the statute in determining the legislature's intent." *Thompson v. First Judicial Dist. Court, Storey County*, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984).

The NPRA provides that "...[i]f the requester prevails, the requester is *entitled* to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." Nev. Rev. Stat. § 239.011(2). (emphasis added) As the Nevada Supreme Court has explained, "... by its *plain meaning*, [NRS 239.011(2)] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

If the legislature had intended to make an entitlement to attorney's fees and costs contingent on the governmental agency's bad faith, they could easily have made it explicit in Nev. Rev. Stat. § 239.011. The legislature chose not to. Instead, the legislature chose to specifically make immune from "liability *for damages*"³ "a public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee." (emphasis added). Nev. Rev. Stat. § 239.012. As reiterated by Judge Crockett at the January 11 hearing, damages and attorney's fees are not the same thing. Furthermore, the NPRA was designed to revamp and strengthen access to public records—it

³ Notably, Nev. Rev. Stat. § 239.012 does not grant immunity from "liability for damages and attorney's fees and costs." Essentially, the Coroner's Office expects this Court to believe that the legislature meant to include attorney's fees and costs in this good faith safe harbor, but accidentally forgot about their existence between drafting Nev. Rev. Stat. § 239.011 and Nev. Rev. Stat. § 239.012.

1 simply does not make sense that such a bill would grant the prevailing party an *entitlement*
2 to attorney's fees, then cryptically yank it away in a section that does not even mention
3 attorney's fees.

4 The Coroner's Office's arguments are particularly hollow in light of the NPRA's
5 explicit command that "[a]ny exemption, exception or balancing of interests which limits or
6 restricts access to public books and records by members of the public must be construed
7 narrowly." Nev. Rev. Stat. § 239.001(3). Asking this Court to read an invisible "bad faith"
8 requirement into Nev. Rev. Stat. § 239.011 and an invisible "attorney's fees actually count
9 as damages" provision into Nev. Rev. Stat. § 239.012 is asking this Court to do the exact
10 opposite of "narrow construction." The Coroner's Office's appeal does not present a "serious
11 legal question;" it simply asks the Court of Appeals to pretend the NPRA says something it
12 most obviously does not. Therefore this factor weighs in favor of the Review-Journal.

13 **4. The Strong Public Interest in Disclosure and Government**
14 **Transparency Weighs in Favor of Denying the Stay.**

15 The explicit mandate of the NPRA is to "foster democratic principles by providing
16 members of the public with access to inspect and copy public books and records to the extent
17 permitted by law." Nev. Rev. Stat. 239.001(1). It further mandates that "[t]he provisions of
18 this chapter must be construed liberally to carry out this important purpose [and a]ny
19 exemption, exception or balancing of interests which limits or restricts access to public books
20 and records by members of the public must be construed narrowly." Nev. Rev. Stat. §
21 239.001(2)-(3).

22 Governmental entities face strong incentives to resist transparency. As seen in this
23 case, it takes the hard work of several attorneys and staff, as well as the resources of the
24 largest newspaper in the state, to drag public records produced by the Coroner's Office into
25 the light of day. Entitling a prevailing requestor to attorney's fees and costs creates incentives
26 that further the NPRA's important purpose. First, it incentivizes attorneys to fight for public
27 records on behalf of the public (or journalistic outlets that are both part of and proxies for the
28 public, such as the Review-Journal). Without the prospect of recouping fees, many important

1 requests for public records would undoubtedly be aborted *ab initio*. Second, it incentivizes
2 governmental entities to provide public records efficiently, without the type of needless
3 resistance that results in protracted litigation and hefty bills that are ultimately paid by
4 taxpayers. Thus, the balance of equities, and upholding the mandate of the NPRA, weighs in
5 favor of denying a stay.

6 **C. If the Stay is Granted and the Review-Journal Prevails on Appeal, the**
7 **Review-Journal Will be Entitled to Interest on the Fees and Costs.**

8 Nevada statute mandates that a judgment “draws interest from the time of service of
9 the summons and complaint until satisfied ... at a rate equal to the prime rate at the largest
10 bank in Nevada ... plus 2 percent.” Nev. Rev. Stat. § 17.130(2). If this Court grants the
11 Coroner’s Office’s Motion, and the Coroner’s Office subsequently loses on appeal, the
12 Review-Journal will move to seek interest pursuant to the above. Thus, in addition to wasting
13 taxpayer dollars fighting this case, the Coroner’s Office may be forced to pay a significantly
14 larger sum by virtue of its repeated, protracted delays in payment. For these reasons, this
15 Court should not grant a stay.

16 **IV. CONCLUSION**

17 As argued above, The Coroner’s Office cannot meet its burden, as the factors set
18 forth under NRAP 8(c) urge against a stay. Therefore, this Court must exercise its discretion
19 and deny the Coroner’s Office’s Motion for a stay of its February 1 Order awarding the
20 Review-Journal attorney’s fees and costs.

21
22 Respectfully submitted this 13th day of February, 2018.

23 /s/ Margaret A. McLetchie

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