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

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

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

1. The Clark County Office of the Coroner/Medical Examiner ("Coroner") is a governmental entity and has no corporate affiliation.

2. The Coroner is represented in the District Court and this Court by the Clark County District Attorney/Civil Division and Marquis Aurbach Coffing.

Dated this 18th day of July, 2018.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
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I. JURISDICTIONAL STATEMENT

The Coroner appeals from the District Court's order granting attorney fees and costs to Respondent, Las Vegas Review-Journal ("LVRJ"). 5 Joint Appendix ("JA") 750–765. The District Court's order granting attorney fees and costs is a "special order entered after final judgment" according to NRAP 3A(b)(8), which is an independently appealable order. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). The underlying final judgment is the District Court's order granting LVRJ's petition for writ of mandamus (2 JA 428–442), which is also a final, appealable order according to NRAP 3A(b)(1).[1] *See Ashokan v. State, Dep't of Ins.*, 109 Nev. 662, 665–666, 856 P.2d 244, 246 (1993). The Coroner's notice of appeal was timely filed on February 5, 2018 from the District Court's order granting attorney fees and costs to LVRJ, which was noticed on February 1, 2018. 5 JA 750–767. Therefore, this Court has appellate jurisdiction over this appeal.

II. ROUTING STATEMENT

The Coroner asks the Supreme Court to retain this appeal according to NRAP 17(a)(10) and (11) since this case involves issues of first impression that are also of statewide public importance. In its March 29, 2018 order, this Court

[1] The Coroner has also appealed the District Court's order granting LVRJ's petition for writ of mandamus, which is docketed in this Court as Case No. 74604.

elected to not consolidate this appeal with Case No. 74604. But, the Court's order states that these two related appeals will be "clustered based on the related subject matter to ensure that the appeals are resolved in a consistent and efficient manner." So, according to the Court's order, the assignment of both appeals should be to the same court.

If this Court rules in favor of the Coroner in Case No. 74604, which is the Coroner's challenge to the District Court's order granting LVRJ's petition for writ of mandamus (2 JA 428–442), LVRJ will no longer be a prevailing party for purposes of its award of attorney fees and costs based upon NRS 239.011(2),[2] and this entire appeal would be summarily resolved in the Coroner's favor.

If LVRJ were to prevail in Case No. 74604, the Court would then need to reach the substance of the issues in this appeal, which involves the interplay between NRS 239.011(2), dealing with awards of attorney fees and costs under the Nevada Public Records Act ("NPRA"), and NRS 239.012, dealing with governmental immunity for refusing in good faith to disclose information requested under the NPRA.[3] The interplay between these statutes has not yet been

[2] NRS 239.011(2), 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."

[3] NRS 239.012 (Immunity for good faith disclosure or refusal to disclose information): "A public officer or employee who acts in good faith in disclosing or

resolved by this Court. Therefore, the Coroner asks that the Supreme Court retain this appeal according to NRAP 17(a)(10) and (11).

III. ISSUES ON APPEAL

A. WHETHER THIS COURT SHOULD VACATE THE DISTRICT COURT'S AWARD OF ATTORNEY FEES AND COSTS TO LVRJ IF IT IS NO LONGER A PREVAILING PARTY.

B. WHETHER THE DISTRICT COURT ERRED BY CONSTRUING NRS 239.011(2) IN ISOLATION TO AWARD ATTORNEY FEES AND COSTS TO LVRJ.

C. WHETHER THE DISTRICT COURT ERRED BY CONCLUDING THAT NRS 239.012 DOES NOT PROVIDE IMMUNITY TO THE CORONER FROM LVRJ'S REQUESTED ATTORNEY FEES AND COSTS.

D. WHETHER THE DISTRICT COURT ERRED BY AWARDING CERTAIN ATTORNEY FEES AND COSTS TO LVRJ WITHOUT PROPER SUPPORTING INFORMATION.

IV. STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

This is a case in which the District Court improperly awarded attorney fees and costs to LVRJ based upon NRS 239.011(2). 5 JA 750–765. Before reaching the merits of the District Court's decision on attorney fees and costs, this Court should first determine whether this appeal can be summarily resolved in favor of the Coroner. If this Court rules in favor of the Coroner in Case No. 74604, which

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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."

arises from the same District Court case, LVRJ will no longer be a prevailing party, thus removing its ability to recover any attorney fees and costs based upon NRS 239.011(2). *See Loomis v. Lange Fin. Corp.*, 109 Nev. 1121, 1129, 865 P.2d 1161, 1165–1166 (1993). Even if the Court reaches the substance of the issues in this appeal, the Court should still reverse or reduce the award of attorney fees and costs to LVRJ for the following reasons:

First, the District Court erred by construing NRS 239.011(2) in isolation to award attorney fees and costs to LVRJ. The District Court relied upon a single provision in NRS 239.011(2) to award attorney fees and costs to LVRJ: "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." However, the District Court avoided construing this statutory provision with the conflicting provision in 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." As a matter of law, multiple statutory provisions within a statutory scheme must be construed together. *See S. Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). If the multiple statutory provisions within a statutory scheme conflict with each other, an ambiguity is

created, such that the legislative history must be consulted. *See, e.g., Nuleaf CLV Dispensary, LLC v. State, Dep't of Health and Human Servs.*, 134 Nev. Adv. Op. No. 17, at *8 (Mar. 29, 2018). Therefore, the Court should first conclude that the District Court's analysis of NRS 239.011(2), to the exclusion of NRS 239.012, was incomplete.

Second, the District Court erred by concluding that NRS 239.012 does not provide immunity to the Coroner from LVRJ's requested attorney fees and costs. The plain meaning of "damages" in NRS 239.012 encompasses the terms "attorney's fees" and "costs" in NRS 239.011(2), such that the Coroner is immune from LVRJ's requested attorney fees and costs. *See* BLACK'S LAW DICTIONARY, 471 (10th ed. 2014) (defining "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury"). The Legislature intended to provide immunity to governmental entities for a good faith refusal to disclose information requested under the NPRA. *See* NRS 239.012. Thus, the District Court erred by ignoring the stated purpose of this statute. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). Since the construction of NRS 239.011(2) together with NRS 239.012 creates an ambiguity, the legislative history must be consulted for the Legislature's intent. In the legislative discussion for Assembly Bill 365 (1993), the language of what is now codified as NRS 239.011 and NRS 239.012 is discussed at length, where the

following observation was made: "Court costs and attorneys' fees were granted only when it was a denial of what was clearly a public record [bad faith]." *Assembly Committee on Government Affairs Minutes: Hearing on AB 365 Before the Assembly Committee on Government Affairs*, 1993 67th Sess. May 3, 1993 (Ande Englemen of the Nevada Press Association speaking). Therefore, the Court should conclude that the Coroner is immune from LVRJ's requested attorney fees and costs based upon NRS 239.012.

Third, the District Court erred by awarding certain attorney fees and costs to LVRJ without proper supporting information. Even if the Court were to allow LVRJ to recover attorney fees and costs based upon an analysis of the competing statutory provisions, the Court should vacate $165.00 in attorney fees for "administrative support" (5 JA 757) since no time keeper was identified or analyzed under the *Brunzell* factors.[4] *See LVMPD v. Yeghiazarian*, 129 Nev. 760, 770, 312 P.3d 503, 510 (2013). The Court should also vacate the $825.02 award of costs to LVRJ since no memorandum of costs was filed, and no supporting documentation was provided. *See Gunderson v. D.R. Horton, Inc.*, 319 P.3d 606, 616 n.6 (Nev. 2014) ("Even if the homeowners were not precluded from recovering costs by NRS 17.115 and NRCP 68, they would be for their failure to

[4] *See Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

file a memorandum of costs pursuant to NRS 18.110(1)."); *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1054 (Nev. 2015).

In summary, the Coroner asks this Court to summarily resolve this appeal by vacating the award of attorney fees and costs to LVRJ if the Coroner prevails in Supreme Court Case No. 74604, which would remove LVRJ's prevailing party status for purposes of NRS 239.011(2).

Even if the Court reaches the substance of the issues in this appeal, the Coroner asks this Court to determine that NRS 239.011(2) cannot be construed in isolation. When NRS 239.011(2) is construed with NRS 239.012, along with the legislative history, the Court should determine that NRS 239.012 provides immunity to the Coroner from LVRJ's requested attorney fees and costs since the Coroner acted in "good faith" in refusing to disclose information.

Finally, the Court should vacate $165.00 in attorney fees awarded to LVRJ for an unknown time keeper, and $825.02 in costs due to the absence of a memorandum of costs or any supporting documentation.

V. STANDARDS OF REVIEW

A. STANDARDS FOR CONSTRUING STATUTES.

This Court reviews questions of law de novo. *See Birth Mother v. Adoptive Parents*, 118 Nev. 972, 974, 59 P.3d 1233, 1235 (2002). Statutory interpretation is a question of law that this Court reviews de novo. *Id.* When the Legislature has

addressed a matter with "imperfect clarity," it becomes the responsibility of this Court to discern the law. *See Baron v. Dist. Ct.*, 95 Nev. 646, 648, 600 P.2d 1192, 1193–1194 (1979). Given an ambiguous statute, this Court must interpret the statute "in light of the policy and the spirit of the law, and the interpretation should avoid absurd results." *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995).

B. STANDARDS FOR REVIEWING AWARDS OF ATTORNEY FEES AND COSTS.

When an attorney fees matter implicates questions of law, the proper review is de novo. *See In re Estate and Trust of Rose Miller*, 125 Nev. 550, 553, 216 P.3d 239, 241 (2009). Statutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law. *See Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994).

VI. FACTUAL AND PROCEDURAL BACKGROUND

A. BACKGROUND ON THE DUTIES AND PURPOSE OF THE CLARK COUNTY CORONER/MEDICAL EXAMINER (NRS CHAPTER 259 AND CLARK COUNTY CODE CHAPTER 2.12).

The purpose of the Coroner is to investigate deaths within Clark County that are violent, suspicious, unexpected, or unnatural to identify and report on the cause and manner of death. This may include those reported as unattended by a physician, suicide, poisoning or overdose, occasioned by criminal means, resulting

or related to an accident. *See* Clark County Code ("CCC") § 2.12.060; 1 JA 225–234. When the Coroner is notified of a death, a Coroner investigator responds to the scene and conducts a medico-legal investigation. Information is gathered from the scene and persons (such as witnesses, law enforcement officers, and family members), the decedent is identified, the next of kin is notified, and property found on or about the decedent is secured. The investigation often entails obtaining medical records or health information of the decedent. Most often, the body is transported to the Coroner's Office for a physical examination known as an autopsy, which is conducted by a medical examiner who is a forensic pathologist. *See* CCC §§ 2.12.060, 2.12.280; 1 JA 226–227.

In conducting the autopsy, the medical examiners perform an external and internal exam of the body of the decedent. They review investigative findings, medical records, and health history prior to commencing the exam. The organs are examined, and histology samples along with blood are submitted to a laboratory for analysis. It is the responsibility of the medical examiners to determine the cause and manner of death. *See* CCC §§ 2.12.040, 2.12.060; 1 JA 226–227. The manner of death is the method by which someone died. The five manners of death are homicide, suicide, natural, accident, and undetermined. The cause of death is the circumstance that triggers a death, such as a gunshot wound, heart attack, or drug overdose. The medical examiner documents findings, including the cause and

manner of death in an autopsy report. *See* CCC §§ 2.12.060, 2.12.040, 2.12.250; 1 JA 226–227. After completion of the autopsy, the body is released to a mortuary, and the person with rights to the body takes over the handling of the body. *See* CCC §§ 2.12.270, 2.12.280; NRS 451.024. The death of the decedent, including the cause and manner, is documented in a death certificate, which is generated and maintained by the Department of Vital Statistics. *See* CCC § 2.12.250, ¶ 2(e).

1. Content of Autopsy Reports.

Autopsy reports consist of the findings from the autopsy, including those related to the cause and manner of death of the decedent. Additionally, the name, age, sex, and date of death are identified. 1 JA 226–227. The external examination is described in the autopsy report and includes an analysis as to the medical/health status or condition of the exterior parts of the body. These findings could range from observations about the genitalia to recent medical treatment to a hidden tattoo. *Id.* The findings related to the internal examination are also included in the autopsy report. Such findings may include radiographic findings, detailed descriptions of medical evaluations as to the condition of organs and functions, which may include the neck (i.e., thyroid, cricoids, prevertebral tissue, and muscles); cardiovascular system (i.e., aorta, coronary arteries, heart); respiratory system (i.e., trachea, major bronchi, pulmonary vessels, lungs);

hepatobiliary system (i.e., liver); hemolymphatic system (i.e., spleen); gastrointestinal system (i.e., esophagus, stomach, appendix, intestines); genitourinary system (i.e., renal and genitalia); endocrine system (i.e., thyroid and adrenal glands); and central nervous system (i.e., brain). *Id.* The fluids, tissue, and organ samples retained and submitted for testing are included in the autopsy report, along with the types of tests ordered. The test results and any microscopic examinations are also included. *Id.*

References to specific medical records, specific medical or health information, and personal characteristics about the decedent may also be included in an autopsy report. Such references could include sexual orientation of the decedent and types of diseases, such as venereal, HIV, liver, cancer, mental illness, or drug/alcohol addiction or overdoses. This information may not be publicly known, and its dissemination may result in unwanted social stigmas or embarrassment to a family. 1 JA 226–227.

2. The Coroner's Policy With Respect to the Release of Autopsy Reports.

The Coroner's policy with respect to the release of autopsy reports is to release them, upon request, to the legal next of kin, an administrator or executor of an estate, law enforcement officers in performing their official duties, and pursuant to a subpoena. *Cf.* NRS 259.045; AB 57 (1 JA 236–237). The Coroner's policy not to release autopsy reports to the general public is based on the underlying legal

analysis in Attorney General Opinion ("AGO") 82-12. 1 JA 227. This AGO concludes that an autopsy report is a public record but not for public dissemination based on public policy and the law treating the subject matter in an autopsy report as confidential. 1 JA 36–39. However, the Coroner does make public the information related to the fulfillment of its statutory duties, such as the identification of a decedent, location and date of death, cause and manner of death, which is consistent with AGO 82-12. 1 JA 227.

B. LVRJ'S REQUEST FOR JUVENILE AUTOPSY REPORTS.

On April 13, 2017, Arthur Kane ("Kane") and Brian Joseph ("Joseph"), investigative reporters for LVRJ, emailed a public records request to the Coroner for:

> . . . all autopsy reports, notes and other documentation of all autopsies performed by the Clark County Coroner's office from Jan. 1 2012 to present on anyone who was younger than the age of 18 when he or she died.

1 JA 19. On the same day, Nicole Charlton ("Charlton"), administrative secretary of the Coroner, responded by stating that there were hundreds of these cases and asked if LVRJ wanted all manners of death (suicide, homicide, accidents, etc.) or just certain types. 1 JA 18. LVRJ was informed that the Coroner could not provide autopsy reports, notes, or other documents, but could provide a spreadsheet of data, consisting of the Coroner case number, name of decedent, date of death, gender, age, race, location of death, and cause and manner of death.

1 JA 17–18, 228.[5] Kane verified the desire for spreadsheets in addition to the actual autopsy reports and asked for confirmation as to whether the cases went to full autopsy. 1 JA 17. Charlton explained that autopsies are not conducted on all decedents involved in the Coroner's Office and that she could not separate cases that were not autopsied from ones that were. 1 JA 16. She also provided an explanation as to why the Coroner does not release autopsy reports. *Id.*

> Autopsy reports are public records but not open to any member of the public for inspection, copying, and dissemination. ***The reasoning is that the reports contain medical information and confidential information about the deceased's body***. There may be a situation when a particular report would be available for a particular party who has sufficient interest to justify access. AGO 82-12 (6-15-82). This decision may preclude the dissemination of an autopsy report to members of the decedent's immediate family without following the correct procedures of law, i.e., a court order. In that situation, it may be appropriate to require the decedent's family to sign a release form in exchange for the autopsy report.

1 JA 16 (emphasis added). Kane was emailed detailed spreadsheets listing all Clark County juvenile deaths dating back to January 2012 that involved the Coroner. 1 JA 22–27, 35–63. Later that day, April 13, 2017, Kane emailed the Civil Division, District Attorney's ("D.A.") Office stating:

> I requested all autopsies for any deaths between 2012 and present of people younger than 18 years old from the Clark County Coroner's

[5] A few months earlier, LVRJ had asked for a listing of all homicides dating back to 2006. The Coroner provided a spreadsheet of public information, pursuant to CCC § 2.12.060, consisting of name, Coroner case number, date of death, age, gender, race, cause and manner of death going back to January 2012. 1 JA 228.

> office this morning. The response is below. I do not see any legal citation to deny these records, the Coroner admits they're public just not available and they cite a privacy right which does not exist for deceased people.
>
> Can you consult with them and let them know these are public documents that they are required to produce[?] Conversely, if you believe they are not, please cite a statute that exempts them from release.

1 JA 29. The D.A.'s Office responded to Kane on April 14, 2017, stating that the basis for nondisclosure of the juvenile autopsy reports is the legal underpinnings of AGO 82-12, as previously expressed by the Coroner. Specifically, the D.A.'s Office stated:

> As I believe you are aware, the Nevada Attorney General, in Opinion No. 82-12, has opined that the autopsy report is a public record but not open to public inspection. The opinion setting forth the legal analysis of the attorney general is attached.
>
> It is the practice of the Clark County Coroner to release the autopsy reports to the next of kin, if desired. It is my belief that the Nevada Supreme Court would agree with the practice of the Coroner.
>
> Notably, there is legislation pending, AB 57, which, if enacted, will specifically state to whom the Coroner may provide a report (parents, guardians, adult children or custodians of a decedent). The analysis behind this bill is also compatible with the current practice.

1 JA 18–19.

On Sunday, May 7, 2017, Coroner John Fudenberg ("Fudenberg") met in person with Kane and Joseph at the Coroner's Office. 1 JA 228, ¶ 7. Fudenberg explained the office policy on the release of autopsy reports to them. *Id.* He tried to determine the information they wanted and to understand their request. *Id.*

Joseph emailed Fudenberg after that meeting with an additional request for public records. 1 JA 233–234. Based on that email, it became apparent that Joseph was interested in deaths of children who were involved in the Clark County Department of Child and Family Services ("DFS"), as he was trying to match up DFS cases with Coroner cases. *Id.*; 1 JA 228. After the meeting and email from Joseph, Fudenberg compiled a second spreadsheet consisting of the same data as the spreadsheet sent on April 13, 2017, but listed only the cases in which autopsies were conducted. 1 JA 65–88. This updated spreadsheet was sent to LVRJ on May 9, 2017. 1 JA 228, ¶ 7.

LVRJ did not contact the Coroner until about May 23, 2017, when counsel for LVRJ, Maggie McLetchie ("McLetchie"), wrote to the Coroner and the D.A.'s Office. In that letter, LVRJ alleged that the Coroner failed to establish the existence of a privilege protecting the documents, or that any interest in nondisclosure outweighed the public interest to access. 1 JA 41–44. Additionally, from the letter, LVRJ revealed that it was investigating the handling of child deaths, "which of course implicates important child welfare and public policy interests." 1 JA 43, 228–229, ¶ 8. The D.A.'s Office responded to McLetchie on May 26, 2017, setting forth the Coroner's legal position with respect to the release of the autopsy reports. This letter essentially repeated the analysis of the policy and law stated within AGO 82-12. 1 JA 48–50. Additionally, due to LVRJ's

specific expressed interest in DFS cases, the Coroner's response cited to the statutory privilege, NRS 432B.407, with respect to the autopsy reports accessed by the chil death review ("CDR") team, of which the Coroner is a representative. *Id.* The D.A.'s Office, on behalf of the Coroner, offered to consider redacting autopsy reports not reviewed by the CDR team, pursuant to NRS 239.010(3), provided that LVRJ identify particular cases. *Id.*

Later in the day on May 26, 2017, Kane requested redacted autopsy reports of approximately 126 specific deaths. 1 JA 91, 229. On May 31, 2017, the D.A.'s Office responded:

> We are in receipt of your records request. Due to the magnitude of the request and the review involved, we will be unable to have the records available by the end of the fifth business day. Each record has to be reviewed individually by experienced personnel, and, of course, those subject to privilege will not be disclosed. Additionally, it will take time to redact content of the records that are not subject to privilege. Because of the detail involved in this request, we are unable to determine at this time when they will be ready. As we progress, we will have a better idea of the timeframe. We will keep you updated as to the timeframe and the charges.

1 JA 90. On June 12, 2017, as the Coroner suggested, Kane provided a list of prioritized cases. 1 JA 75–76. At this time, the Coroner was ascertaining which autopsy reports involved cases not reviewed by the CDR team and, therefore, could be disclosed in redacted form. 1 JA 229–230, ¶¶ 10–11. On July 7, 2017, Kane inquired as to an update on the redacted records. 1 JA 103. On July 9, 2017 Kane was informed of the progress:

> We have researched the cases going back to January 1, 2012 and identified those that are not child death review committee cases and subject to privilege under NRS 432B.407. The cases listed below are not child death review committee cases. We are commencing the redaction process with respect to these cases. I will check with the Coroner tomorrow with respect to a time frame, but I would think the redaction process and delivery to you could occur within the next 30 days. Again, I will verify tomorrow.

1 JA 100–102. All of the cases involving the Coroner listed on LVRJ's May 26, 2017 and June 12, 2017 lists had been reviewed by the CDR team and were, therefore, privileged. Additionally, researching back to January 2012, per LVRJ's overall request, it was determined that all but 49 deaths were reviewed by the CDR team. 1 JA 229–230, ¶¶ 10–11.

The D.A.'s Office followed up with Kane on July 11, 2017, informing him that it was expected to take 30 days to redact the autopsy reports involving deaths that were not reviewed by the CDR team. Kane was also advised as to the significant work and time involved in compiling spreadsheets, setting redaction parameters, and testing the redaction. Kane was provided with three samples of redacted autopsy reports so that LVRJ could review them and determine if it wanted the Coroner to proceed with redaction of the remaining reports that were not privileged. 1 JA 108–109. While the Coroner did not intend to seek costs for this preliminary work already completed, the Coroner would charge LVRJ for the extraordinary use of personnel in redacting the remaining reports in the 49 cases not reviewed by the CDR team. *Id.* This charge was due to the time, level of

detail, and necessity for experienced personnel. It was determined that it would take 10–12 hours to redact the remaining reports and cost $45.00 per hour for the extraordinary use of personnel. *Id.* The Coroner advised LVRJ of this cost and asked for a commitment before proceeding. *Id.*; 1 JA 229–230, ¶¶ 10–14. With respect to the three sample redacted autopsy reports, LVRJ was advised as to the basis for the redactions as follows:

> Attached please find samples of redacted autopsy reports. The language that is redacted consists of information that is medical, relates to the status of the decedent's health (or the mother of a baby), could be marked with stigmata or considered an invasion of privacy by the family. With respect to the autopsy reports of children decedents, most of the redacted information is related to medical or health related. Statements of diagnosis or opinion that are medical or health related that go to the cause of death are not redacted. Note that there is not much more information in the redacted documents than in the spreadsheets the Coroner's Office provided you.

1 JA 108–109. LVRJ subsequently filed its petition for writ of mandamus in the District Court. 1 JA 1–11.

C. LVRJ'S PETITION FOR WRIT OF MANDAMUS AND THE DISTRICT COURT PROCEEDINGS.

In its petition for writ of mandamus, LVRJ alleged that the requested autopsy reports are not privileged or confidential, and that the Coroner violated NRS 239.0107. 1 JA 1–11, 144–161. The Coroner filed a detailed response to LVRJ's petition for writ of mandamus and related filings. 1 JA 196–237. LVRJ filed a reply, and without leave of the District Court, also filed a supplement.

2 JA 238–397. The District Court held a hearing on LVRJ's writ petition and ordered the requested autopsy reports to be produced, starting within five days in an unredacted form. 2 JA 398, 441. The District Court also limited the Coroner's costs to $15.00 per compact disc for a production of electronic files, and did not allow any fee for the Coroner's extraordinary use of personnel. *Id.* Upon the Coroner's motion, the District Court stayed the Coroner's compliance with the District Court's own production order pending the resolution of the appeal. 2 JA 448–452. The Coroner's appeal from the District Court's order granting LVRJ's petition for writ of mandamus is pending before this Court as Case No. 74604.

D. LVRJ'S MOTION FOR ATTORNEY FEES AND COSTS, AND THE DISTRICT COURT'S ORDER.

After the District Court granted LVRJ's petition for writ of mandamus, LVRJ filed a motion for attorney fees and costs. 2 JA 448–460. LVRJ's motion relied upon NRS 239.011(2) as the basis to recover attorney fees and costs against the Coroner. *Id.* The declaration of counsel in support of LVRJ's motion for attorney fees and costs did not identify the time keeper for "administrative support." 2 JA 461–464; 5 JA 757. LVRJ did not file a memorandum of costs but instead provided only a single-page spreadsheet, without any supporting documentation. 2 JA 480. The Coroner's opposition relied upon NRS 239.012 for immunity from LVRJ's requested attorney fees and costs. 3 JA 487–506. The

Coroner's opposition also highlighted the legislative history supporting its position for immunity. *Id.* The hearing before the District Court reflects the District Judge's inclination to grant LVRJ's motion for attorney fees and costs in its entirety. 5 JA 733–744. The District Court's order granting LVRJ's motion for attorney fees and costs reflects that LVRJ was granted the full relief that it requested. 5 JA 750–765. The Coroner now seeks relief from this Court. 5 JA 766–767.

VII. LEGAL ARGUMENT

A. THIS COURT SHOULD VACATE THE DISTRICT COURT'S AWARD OF ATTORNEY FEES AND COSTS TO LVRJ IF IT IS NO LONGER A PREVAILING PARTY.

This Court should vacate the District Court's award of attorney fees and costs to LVRJ if it is no longer a prevailing party. Before reaching the merits of the District Court's decision on attorney fees and costs, this Court should first determine whether this appeal can be summarily resolved in favor of the Coroner. If this Court rules in favor of the Coroner in Case No. 74604, which arises from the same District Court case, LVRJ will no longer be a prevailing party, thus removing its ability to recover any attorney fees and costs based upon NRS 239.011(2). *See Loomis v. Lange Fin. Corp.*, 109 Nev. 1121, 1129, 865 P.2d 1161, 1165–1166 (1993). In other words, if the precondition in NRS 239.011(2) "[i]f the requester prevails…." no longer exists, then LVRJ will not have any basis to recover any

attorney fees and costs against the Coroner. *Cf.* 10 Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE, § 2668 at 213–214 (3d ed.) (stating that any costs awarded to a previously prevailing party are automatically vacated upon reversal or substantial modification of the underlying judgment). Therefore, if the Coroner prevails in Case No. 74604, this Court should simply vacate the District Court's award of attorney fees and costs to LVRJ.

B. THE DISTRICT COURT ERRED BY CONSTRUING NRS 239.011(2) IN ISOLATION TO AWARD ATTORNEY FEES AND COSTS TO LVRJ.

The District Court erred by construing NRS 239.011(2) in isolation to award attorney fees and costs to LVRJ. The District Court relied upon a single provision in NRS 239.011(2) to award attorney fees and costs to LVRJ: "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." However, the District Court avoided construing this statutory provision with the conflicting provision in 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." Therefore, the Court should conclude that the District Court's analysis of NRS 239.011(2), to the exclusion of NRS 239.012, was incomplete.

1. Multiple Statutory Provisions Within a Statutory Scheme Must Be Construed Together.

As a matter of law, multiple statutory provisions within a statutory scheme must be construed together. *See S. Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). The Legislature's intent is the primary consideration when interpreting an ambiguous statute. *See Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). When construing an ambiguous statutory provision, this Court determines the meaning of the words used in a statute by examining the context and the spirit of the law or the causes which induced the legislature to enact it. *See Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007). In conducting this statutory analysis, "[t]he entire subject matter and policy may be involved as an interpretive aid." *Id.* Accordingly, this Court will consider "the statute's multiple legislative provisions as a whole." *Id.*

Courts have a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized. *Id.*; *S. Nev. Homebuilders v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). In addition, this Court will not render any part of the statute meaningless, and will not read the statute's language so as to produce absurd or unreasonable results. *See Leven*, 123 Nev. at 405, 168 P.3d at 716. Therefore, it was error for the District Court to interpret NRS 239.011(2) in isolation.

2. Conflicting Statutory Provisions Within a Statutory Scheme Create an Ambiguity, Such that the Legislative History Must Be Consulted.

If the multiple statutory provisions within a statutory scheme conflict with each other, an ambiguity is created, such that the legislative history must be consulted. *See, e.g.*, *Nuleaf CLV Dispensary, LLC v. State, Dep't of Health and Human Servs.*, 134 Nev. Adv. Op. No. 17, at *8 (Mar. 29, 2018); *S. Nev. Homebuilders v. Clark Cnty.*, 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); *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 514 (2000) (courts must look to the entire statutory scheme for legislative intent). In other words, ambiguity in statutory provisions is not only created by competing interpretations of the same statutory provision. *See In re Candelaria*, 126 Nev. 408, 411, 245 P.3d 518, 520 (2010). Aside from *Nuleaf* decided by this Court, several federal courts have reached the same conclusion regarding ambiguity in construing multiple statutory provisions together. *See, e.g.*, *Herrera-Castillo v. Holder*, 573 F.3d 1004, 1007 (10th Cir. 2009) (holding that a statute is ambiguous where "applying the statute's plain language would render [a specific statutory provision] a nullity"); *Mora v. Mukasey*, 550 F.3d 231, 237–238 (2d Cir. 2008) (same); *United States v. Heckenliable*, 446 F.3d 1048, 1051 (10th Cir. 2006) (rejecting an interpretation that would render a statute "a nullity in a majority of

the states" and explaining that a court's "interpretation must give practical effect to Congress's intent, rather than frustrate it").

When multiple statutory provisions within a particular statutory scheme create an ambiguity, as in the instant case, courts should look to the legislative history to determine the intent for guidance in interpreting the multiple statutory provisions. *See, e.g., United States v. Manning*, 526 F.3d 611, 617 (10th Cir. 2008) (considering the reasons that a particular member of Congress introduced the original legislative proposal); *United States v. Craig*, 181 F.3d 1124, 1127 (9th Cir 1999) (looking to an act's legislative history, including House floor statements from several members of Congress, and the underlying genesis of the act, in determining the appropriate interpretation). Since NRS 239.012 creates ambiguity in how NRS 239.011(2) is interpreted, the District Court erred by ignoring and, thus, rendering NRS 239.012 meaningless. Therefore, this Court should consider both statutory provisions together, including the legislative history to conclude that the Coroner is immune from LVRJ's requested attorney fees and costs.

C. THE DISTRICT COURT ERRED BY CONCLUDING THAT NRS 239.012 DOES NOT PROVIDE IMMUNITY TO THE CORONER FROM LVRJ'S REQUESTED ATTORNEY FEES AND COSTS.

The District Court erred by concluding that NRS 239.012 does not provide immunity to the Coroner from LVRJ's requested attorney fees and costs.

1. The Plain Language of NRS 239.012 Creates an Exception to NRS 239.011(2).

The plain meaning of "damages" in NRS 239.012 encompasses the terms "attorney's fees" and "costs" in NRS 239.011(2), such that the Coroner is immune from LVRJ's requested attorney fees and costs.[6] *See* BLACK'S LAW DICTIONARY, 471 (10th ed. 2014) (defining "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury"). Otherwise, NRS 239.012 would become a nullity. That is, what other "damages" could a requester, such as LVRJ, possibly seek under NRS Chapter 239? "'Damages' is a broad term and includes special as well as general damages." *Taylor v. Neill*, 80 Idaho 90, 94, 326 P.2d 391, 393 (1958) (citing 25 C.J.S. DAMAGES, § 2). Courts have determined that the term "damages" must include "fees." For instance, under a statute that permitted a mortgagor to recover "damages" from a mortgagee who refused to discharge a mortgage, the Supreme Court of Utah considered the law of several other states then concluded that "damages" must include attorney fees. *See Swaner v. Union Mortg. Co*., 99 Utah 298, 305, 105 P.2d 342, 345–346 (1940). In *State ex rel. O'Sullivan v. Dist. Ct.*, 127 Mont. 32, 35, 256 P.2d 1076, 1078 (1953), the

[6] The District Court's order granting attorney fees and costs to LVRJ suggests that NRS 239.012 only extends immunity to an individual and not the governmental entity. 5 JA 760, ¶ 38. But, this conclusion fails to take into consideration the complete language of the statute, which includes the phrase "and the employer of the public officer or employee are immune…."

Montana Supreme Court held that with regard to a petition for a writ of mandamus, a statute entitling the petitioner to damages necessarily included the fees incurred. Therefore, based upon the plain language of the term "damages" in NRS 239.012 and the terms "costs" and "attorney's fees" in NRS 239.011(2), the Court should determine that the Coroner is immune from LVRJ's requested award of attorney fees and costs. Any other construction of these terms would violate the rules of statutory construction by ignoring NRS 239.012, making it a nullity.

Indeed, Nevada law recognizes that "damages" may specifically encompass attorney fees in certain circumstances, even though the American Rule generally requires each party to pay his own fees unless a statute, rule, or contract provides otherwise. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957–958, 35 P.3d 964, 970 (2001), *clarified by Horgan v. Felton*, 123 Nev. 577, 584, 170 P.3d 982, 986 (2007). Nevada has also established that where equitable relief is sought, just as in this case, an award of attorney fees is proper if awarded as an item of damages. *See Von Ehrensmann v. Lee*, 98 Nev. 335, 337–338, 647 P.2d 377, 378 (1982). Accordingly, "damages" and "attorney fees" are not mutually exclusive legal concepts.

Other states addressing this issue in the context of public records laws, have ruled that even a public entity that reasonably refuses, in good faith, to honor a public records request, is not required to pay attorney fees and costs if it is later

determined that the records sought were, in fact, public records. *See B&S Utilities, Inc. v. Bakerville-Donovan, Inc.*, 988 So.2d 17, 23 (Fla. 1st DCA 2008) (concluding that a private engineering firm did not unlawfully refuse to permit inspection and, therefore, was not subject to an award of fees and costs); *Putnam Cnty. Humane Soc'y, Inc. v. Woodward*, 740 So.2d 1238 (Fla. 5th DCA 1999) (attorney fees were inappropriate where a party acted on a good faith belief that it was not subject to public records law); *Com., Cabinet for Health and Fam. Servs. v. Lexington H-L Servs., Inc.*, 382 S.W.3d 875, 882 (Ky. App. 2012) (refusal to provide records based upon a good faith claim of exemption, later found to be incorrect, is insufficient to establish a violation of open records law); *KPNX-TV v. Sup. Court ex rel. Cnty. of Yuma*, 905 P.2d 598, 603 (Az. App. D1 1995) (requesting party not entitled to attorney fees under public records law when state had good faith basis to deny public access to crime scene and surveillance camera videotapes); *Althouse v. Palm Beach Cnty. Sheriff's Office*, 92 So.3d 899, 901 (Fla. 4th DCA 2012) (noting a good faith exception to attorney fees provision in public records law); *Friedmann v. Corrections Corp. of Am.*, 310 S.W.3d 366, 380–381 (Tenn. App. 2009) (requesting party not entitled to attorney fees when responding party acted in good faith in refusing to disclose records).

"[S]tatutes permitting the recovery of costs are to be strictly construed because they are in derogation of the common law." *Bobby Berosini, Ltd. v.*

People for the Ethical Treatment of Animals, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). Awarding fees is also in derogation of the common law, under the American Rule. Thus, it follows that any statutory scheme allowing for an award of attorney fees must be construed narrowly, against attorney fees. *See Hardisty v. Astrue*, 592 F.3d 1072, 1077 (9th Cir. 2010). At the same time, "'[w]aivers of immunity,' of course, "must be construed strictly in favor of the sovereign, and not enlarge[d]…beyond what the language requires." *Id.* (citing *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685–686 (1983)). The Legislature intended to provide immunity to governmental entities for good faith refusal to disclose information requested under the NPRA. *See* NRS 239.012. By definition, "immunity" is "[a]ny exemption from a duty, liability, or service of process; esp., such an exemption granted to a public official or governmental unit." BLACK'S LAW DICTIONARY, 867 (10th ed. 2014). Thus, the District Court erred by ignoring the stated purpose of NRS 239.012. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986).

2. <u>The Legislative History Clarifies that the Legislature Intended for Governmental Entities, Like the Coroner, to Enjoy Immunity from Attorney Fees and Costs for Good Faith Refusals to Provide Requested Information Under the NPRA.</u>

Since the construction of NRS 239.011(2) together with NRS 239.012 creates an ambiguity, the legislative history must be consulted to determine the

Legislature's intent. In reviewing the legislative history for Assembly Bill 365 (1993) ("A.B. 365") on May 3, 2003, the language of what is now codified as NRS 239.011 and NRS 239.012 is discussed at length. Prior to the legislative session, the Legislative Counsel Bureau ("LCB") published a bulletin that explained the overhaul of the NPRA. 3 JA 507–544. The bulletin fully explained the benefits of the writ process, the purpose of the fee and cost-shifting provision, and the purpose of the immunity provision. *Id.* The subcommittee recommended repealing the criminal penalty and enacting legislation to provide an appeal process to the courts and allow the requester to recover court costs and fees if the requester prevails:

> Testimony before the subcommittee and discussions in the advisory committee meetings raised the issue of whether criminal penalties are appropriate in public records cases. . . .
>
> One option suggested during the course of the hearings was that the criminal penalties should be replaced with civil penalties. As discussed in the section on access to records, the subcommittee elected to establish an expedited procedure in court that grants attorneys fees and court costs to a requesting party that prevails. Because of this provision, the subcommittee determined not to recommend civil penalties, and to repeal the criminal penalties. Therefore, the subcommittee recommended that the Legislature:
>
> Repeal the existing criminal penalty relative to the failure to disclose a public record. (BDR 19-393)
>
> Enact legislation that prescribes the procedures for direct appeal to a court of law seeking an order compelling access and giving such proceedings priority on the court's calendar. Provide for court costs

> and attorneys' fees if the requester prevails. (BDR 19-393) (also discussed in Section IV regarding access.)

3 JA 543–544. As a result of the complexity associated with modern public records and the sensitive information contained within the records, the subcommittee determined a good faith standard for liability was appropriate:

> Because of the complexity associated with modern public records and the sensitive information that is contained in some records, the subcommittee determined a need for a liability standard that could be applied to the actions of government employees. The subcommittee elected to base the standard on "good faith." Therefore, the subcommittee recommended the following:
>
> Enact legislation providing that governmental entities and employees are immune from suit and liability if they act in good faith in disclosing or refusing to disclose information. (BDR 19-393).

3 JA 544. The preamble of the bill further supports a finding of immunity from attorney fees and costs:

> AN ACT relating to public information; substituting civil enforcement of access to public books and records for a criminal penalty for denial of access; conferring immunity upon public officers and employees for certain actions in good faith; and providing other matters properly relating thereto.

3 JA 549. Third, the portion of the bill that provides immunity to governmental entities immediately follows the portion of the bill that provides for the civil writ process and for attorney fees. In other words, in the same bill, the two provisions appear back-to back:

> **Sec. 2.** If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, he is entitled to recover his costs and reasonable attorney's fees in the proceeding from the agency whose officer has custody of the book or record. [Now codified at NRS 239.011].
>
> **Sec. 3.** A public officer or employee who acts in good faith in disclosing or refusing to disclose information and his employer are immune from liability for damages, either to the requester or to the person whom the information concerns. [Now codified at NRS 239.012].

3 JA 549. While these provisions are now under separate statutes, it is important for the Court to recognize that the provisions were, nonetheless, part of the same bill. At the time A.B. 365 was enacted, there were several other bills before the Legislature that also pertained to the overhaul of the NPRA. If the statutes were wholly unrelated, and damages did not encompass attorney fees and costs, there would be no reason to draft and enact these statutes through the same bill.

The conversation on the good faith exception continually overlaps with the discussion on what is now NRS 239.011. Ande Englemen of the Nevada Press Association stated:

> Taxpayers were also paying the fees for the agency Mr. Bennett observed. The question was, should the taxpayers, in general, have to cover those costs when the suit might be rather frivolous. Ms. Engleman noted the bill did not grant court costs and attorneys' fees if a suit was over a record everyone had thought to be 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.

Assembly Committee on Government Affairs Minutes: Hearing on AB 365 Before the Assembly Committee on Government Affairs, 1993 67th Sess. May 3, 1993 (emphasis added).

The legislative history certainly demonstrates that the replacement of the criminal penalty with an award of fees and costs to the requester is specifically exempted in cases of good faith. Fees can only be granted if the governmental entity initially denies the record in bad faith. This approach is fair, and it is consistent with other fee-shifting provisions in the law. A major exception under the American Rule for the recovery of attorney fees is bad faith. *See, e.g.*, NRS 7.085 (permitting award of fees when an attorney acts in bad faith); NRS 18.010(2)(b) (permitting award of fees when a litigant acts in bad faith); *see also* NRCP 68 and *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983) (granting courts the discretion to award fees when a party rejects an offer of judgment, but only after balancing the relative good faith of the parties). Certainly, the harmonization of these statutes requires the Court to look to the 1993 legislative history of both of these statutes, which supports the Coroner's reading of these statutes together. *See Nuleaf CLV Dispensary, LLC*, 134 Nev. Adv. Op. No. 17, at *8. Therefore, the Court should determine that the Coroner is immune from

LVRJ's requested attorney fees and costs based upon NRS 239.012, as well as the legislative history.

D. THE DISTRICT COURT ERRED BY AWARDING CERTAIN ATTORNEY FEES AND COSTS TO LVRJ WITHOUT PROPER SUPPORTING INFORMATION.

The District Court erred by awarding certain attorney fees and costs to LVRJ without proper supporting information. Even if the Court were allow LVRJ to recover attorney fees and costs based upon an analysis of the competing statutory provisions, the Court should vacate $165.00 in attorney fees for "administrative support" (5 JA 757) since no time keeper was identified or analyzed under the *Brunzell* factors. *See LVMPD v. Yeghiazarian*, 129 Nev. 760, 770, 312 P.3d 503, 510 (2013).

The Court should also vacate the $825.02 award of costs to LVRJ since no memorandum of costs was filed. *See Gunderson v. D.R. Horton, Inc.*, 319 P.3d 606, 616 n.6 (Nev. 2014) ("Even if the homeowners were not precluded from recovering costs by NRS 17.115 and NRCP 68, they would be for their failure to file a memorandum of costs pursuant to NRS 18.110(1)."). Notably, a motion for costs does not substitute for a memorandum of costs required by NRS 18.110(1). *See Village Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 277, 112 P.3d 1082, 1092 (2005).

Additionally, LVRJ did not provide any documentation for its single-page spreadsheet. 2 JA 480. As a matter of law, LVRJ cannot recover any costs due to the lack of supporting documentation. *See Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385–386 (1998) (costs must be reasonable and properly documented to be recoverable); *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1054 (Nev. 2015) ("It is clear, then, that 'justifying documentation' must mean something more than a memorandum of costs."). Therefore, at a minimum, the Court should vacate $165.00 in attorney fees awarded to LVRJ for an unknown time keeper, and $825.02 in costs due to the absence of a memorandum of costs or any supporting documentation.

VIII. CONCLUSION

In summary, the Coroner asks this Court to summarily resolve this appeal by vacating the award of attorney fees and costs to LVRJ if the Coroner prevails in Supreme Court Case No. 74604, which would remove LVRJ's prevailing party status for purposes of NRS 239.011(2).

Even if the Court reaches the substance of the issues in this appeal, the Coroner asks this Court to determine that NRS 239.011(2) cannot be construed in isolation. When NRS 239.011(2) is construed with NRS 239.012, along with the legislative history, the Court should determine that NRS 239.012 provides

immunity to the Coroner from LVRJ's requested attorney fees and costs since the Coroner acted in "good faith" in refusing to disclose information.

Finally, the Court should vacate $165.00 in attorney fees awarded to LVRJ for an unknown time keeper, and $825.02 in costs due to the absence of a memorandum of costs or any supporting documentation.

Dated this 18th day of July, 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 8,687 words; or

☐ does not exceed _____ pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 18th day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 18th day of July, 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.

/s/ Leah Dell
Leah Dell, an employee of
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