Case No. 75407

IN THE SUPREME COURT OF
THE STATE OF NEVADA

CITY OF HENDERSON,
Appellant/Cross-Respondent,

vs.

LAS VEGAS REVIEW-JOURNAL,
Respondent/Cross-Appellant.

Appeal from the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark Bailus, District Judge
District Court Case No. A-16-747289-W

APPELLANT/CROSS-RESPONDENT'S OPENING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON, Appellant/Cross-Respondent, vs. LAS VEGAS REVIEW-JOURNAL, Respondent/Cross-Appellant.	Supreme Court No. 74507 District Court No. A-16-747289-W **APPELLANT/CROSS-RESPONDENT CITY OF HENDERSON'S NRAP 26.1 DISCLOSURE**

NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to Nevada Rule of Appellate Procedure 26.1, Appellant/Cross-Respondent City of Henderson submits this Disclosure Statement:

The undersigned counsel of record certifies that the following are persons and entities as described in Nevada Rule of Appellate Procedure 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Because the City of Henderson is a political subdivision of the State of Nevada (a governmental party), no NRAP 26.1 Disclosure Statement is required.

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2. The City of Henderson has been represented by the following law firm in both this action and the district court action: Bailey❖Kennedy.

DATED this 19th day of November, 2018.

BAILEY❖KENNEDY

By: __*/s/ Dennis L. Kennedy*_____
DENNIS L. KENNEDY
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-And-

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I. JURISDICTIONAL STATEMENT

This is an appeal from an order granting in part Las Vegas Review-Journal's ("LVRJ") Motion for Attorney's Fees and Costs ("Fee Order"). The District Court's Fee Order, entered on February 15, 2018, is a special order made after final judgment, and therefore is substantively appealable. NRAP 3A(b)(8); *Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006). The City of Henderson (the "City") timely filed a notice of appeal on March 16, 2018. (V JA777-788.)[1] LVRJ filed a notice of cross appeal on March 26, 2018. (V JA794-795.)

II. ROUTING STATEMENT

This case should be retained by the Nevada Supreme Court for two reasons. First, to the extent the Nevada Supreme Court retains jurisdiction over Case No. 73287, which has been fully briefed and is currently pending, then the Nevada Supreme Court should also retain jurisdiction over this case because the instant appeal pertains to an improper award of attorney fees and costs that is based on the

[1] Citations to the Joint Appendix ("JA") cite to both volume and page number(s). For example, "V JA777-778" refers to Volume 5 of the Joint Appendix at pages 777 through 778.

order from which LVRJ is appealing in Case No. 73287. (III JA445-450.) Second, this appeal raises a principal issue of statewide importance about which there are inconsistencies in the published decisions of this court. Specifically, whether a party may be deemed a "prevailing party" — and thus eligible for an award of reasonable attorney fees and costs — when it does not succeed on any of its claims for relief.

III. STATEMENT OF ISSUES PRESENTED ON APPEAL

A. Whether the District Court erred in awarding LVRJ a portion of its attorney fees and costs when LVRJ did not prevail on any of its claims for relief, the District Court found that the City complied with its obligations under the Nevada Public Records Act, and the City voluntarily agreed to give LVRJ copies of records that LVRJ had previously inspected free of charge.

B. Whether the District Court erred in awarding LVRJ a portion of its attorney fees and costs when the City is immune from damages in the form of attorney's fees under NRS 239.012.

IV. STATEMENT OF THE CASE

5,566 emails. 9,621 electronic files. 69,979 pages of documents. (II JA221.) This is what the search terms in LVRJ's broadly-worded October 2016 public records request (the "Request") to the City yielded. (*Id.*) In light of the sheer number of emails and documents matching LVRJ's search terms, the nature of the documents LVRJ requested (LVRJ specifically requested email communications protected by the attorney-client privilege), and the City's statutory responsibility to redact and safeguard confidential information, *i.e.* non-public records, the City responded that the request would require extraordinary use of City personnel to complete. (II JA227-230.) In accordance with NRS 239.055, the City estimated that the cost to complete the Request would be $5,787.89 — a significant cost savings compared to the $0.50 per page (or $34,989.50) the City could have charged under the statute to produce nearly 70,000 pages of documents — and explained that the cost was based on the amount of staff time it would take to locate, review, and redact responsive records for confidential information. (II JA230.)

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The City attempted to meet and confer with LVRJ's counsel to discuss the possibility of narrowing the search terms or other potential solutions with the goal of reducing the number of responsive documents, and thus decreasing or eliminating the extraordinary use fee. (II JA222-224.) LVRJ rebuffed these efforts. (*Id.*) Instead, despite the fact that the City never denied LVRJ's public records request, LVRJ filed a Public Records Act Application and Petition for Writ of Mandamus (the "Petition") against the City. (I JA001-022; II JA222.) The Petition falsely claimed that the City refused to provide LVRJ the requested records and that the City was improperly charging fees to complete the request. (*Id.*)

Notwithstanding the filing of the Petition, the City continued to reach out to LVRJ to work on a resolution. (II JA223.) The parties agreed that LVRJ would be permitted to inspect the documents responsive to its request free of charge on a computer at City Hall. (*Id.*) LVRJ's inspection occurred over a period of several days. (*Id.*) After completing its inspection, LVRJ did not request a single copy of any of the documents it inspected. (*Id.*)

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Hopeful that the inspection would resolve the Petition, the City also provided LVRJ with a withholding log containing a list of 91 documents for which it was asserting confidentiality or privilege (the "Withholding Log"). (I JA068-073.) However, on February 8, 2017, LVRJ filed an Amended Petition attacking the adequacy of the Withholding Log. (I JA029-167.) The Amended Petition not only asked the District Court to compel the City to produce the documents identified on the Withholding Log, but also requested injunctive and declaratory relief with respect to the way the City had calculated its estimate of extraordinary use fees. (*Id.*)

On March 30, 2017, the District Court held a hearing on LVRJ's Amended Petition. (III JA448-450.) At the hearing, LVRJ conceded that it never requested copies of any of the documents its reporter inspected at City Hall. (III JA424-425.) Nevertheless, LVRJ's counsel — for the first time — informed the Court and the City that LVRJ wanted copies of the documents it had previously inspected. (III JA425-426.) The District Court asked the City if it was "willing" to provide copies of the inspected records to LVRJ and the City replied affirmatively. (III JA427.)

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There was *never any "direction," order or other grant of judicial relief* with respect to the inspected documents to make LVRJ a prevailing party on that issue.

At the hearing, LVRJ also argued that the District Court should invalidate the way the City assessed the estimate of extraordinary use fees in its initial response to LVRJ's Request for being "at odds with the NPRA." (III JA427.) However, because the City had already allowed LVRJ to inspect the requested documents free of charge, and was willing to provide electronic copies of the inspected documents on a USB drive, also free of charge, the District Court determined that LVRJ's arguments regarding the propriety of the way the City arrived at the estimate of extraordinary use fees was *moot and did not decide them.* (III JA449.)

The sole issue the District Court decided was the adequacy of the City's Withholding Log. (III JA449.) The District Court ruled that the Withholding Log was "timely, sufficient and in compliance with the requirements of the NPRA." (III JA449.) The District Court's Order concludes: "Based on the foregoing, *LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief,*

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and any remaining request for relief in the Amended Petition is hereby DENIED." (III JA450 (emphasis added).)

Notwithstanding the fact that LVRJ did not succeed on any of its claims for relief, and the only issue the District Court decided — the adequacy of the City's Withholding Log — was decided in the City's favor, LVRJ filed a Motion for Attorney's Fees and Costs. (IV JA455-526.) A newly-appointed judge who did not preside over the hearing on the Amended Petition determined that even though LVRJ did not succeed on any of the claims for relief set forth in the Amended Petition, LVRJ was still a prevailing party because it obtained copies of the records it requested after initiating this action. (V JA767.) Accordingly, the District Court, after considering the *Brunzell* factors, found that LVRJ was entitled to an award of attorney's fees in the amount of $9,010.00, and costs in the amount of $902.84, resulting in a total award of $9,912.84. (V JA767-768.) This appeal ensued.

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V. STATEMENT OF THE FACTS

A. LVRJ's Public Records Request.

On October 4, 2016, the City received a public records request from LVRJ (the "Request") asking for the following documents during the date range of January 1, 2016 to October 4, 2016:

> (1) All emails to or from City of Henderson Communications Department personnel, Council members, or the Mayor that contain the words "Trosper Communications," "Elizabeth Trosper," or "crisis communications;" (2) All emails pertaining to or discussing work performed by Elizabeth Trosper or Trosper Communications on behalf of the City of Henderson; (3) All documents pertaining to or discussing contracts, agreements, or possible contracts, with Elizabeth Trosper or Trosper Communications; and (4) All documents pertaining to or discussing the terms under which Elizabeth Trosper or Trosper Communications provided, provide, or will provide services to the City of Henderson.

(II JA227-228.) The Request acknowledged the City's ability to charge fees for providing the records, and specifically requested that if the City intended "to charge any fees for obtaining copies of these records, please contact us immediately (no later than 5 days from today) if the cost will exceed $50." (*Id.*)

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B. The City's Initial Response.

On October 11, 2016, the City timely provided its initial written response as required by NRS 239.0107 (the "Initial Response"). (II JA230.) The Initial Response informed LVRJ that approximately 5,566 emails matched the search terms set forth in the Request. (*Id.*) These 5,566 emails contained approximately 9,621 electronic files and consisted of approximately 69,979 pages. (II JA221.)

In light of the enormous number of potentially responsive documents and emails, the fact that LVRJ was requesting privileged communications, and the City's responsibility to safeguard confidential information, the City explained that the Request would require extraordinary research and use of City personnel to complete. (II JA230.) The City estimated that it would take approximately 74 hours of staff time to review the emails and associated electronic files to determine whether it was necessary to withhold or redact any confidential documents or information. (*Id.*) Pursuant to NRS 239.055 — and LVRJ's own request for notice if the City intended to charge over $50 in fees — the City provided LVRJ with an estimate of $5,787.89 to complete the Request and explained how the City

arrived at its estimate. (*Id.*) In accordance with City policy,[1] the City requested a 50% deposit of the fees and informed LVRJ that it would take three weeks to complete the review once the deposit was received. (*Id.*)

The next day, October 12, 2016, LVRJ's attorney called the City to discuss the City's Initial Response. (II JA222.) LVRJ's attorney disputed the City's ability to charge fees for the extraordinary use of personnel to complete the Request. (*Id.*) During the call, the parties discussed potentially narrowing the search terms to decrease the number of email hits and whether the City would be willing to lower its fee estimate. (*Id.*) Counsel for both parties resolved to go back to their respective clients to work on a solution. (*Id.*) LVRJ's attorney represented that she would call back on October 17, 2016, to discuss the matter further. (*Id.*)

LVRJ's attorney never called the City on October 17, 2016. (*Id.*) After waiting a week with no contact from LVRJ's attorney, counsel for the City called

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[1] The City's policy is consistent with NAC 239.864(1) and (2), which provides, in pertinent part, that if a records official of an agency of the Executive Department charges a fee to provide a copy of a public record, the official:

(a) May require the person who requests a copy of a public record to pay a deposit of not more than the estimate of the actual cost of providing the copy; and

(b) Shall require the person who requests a copy of a public record to pay the fee for providing the copy, including, without limitation, postage for mailing the copy, if applicable, before the person receives the copy.

LVRJ's attorney's office on October 25, 2016, in an attempt to work out a resolution. (*Id.*) Counsel for the City learned that LVRJ's attorney was out of town until November 4, 2016, and asked for a return call once LVRJ's attorney returned to the office. (*Id.*)

C. LVRJ Prematurely Files a Public Records Act Application.

LVRJ's attorney never returned the City's phone call. (*Id.*) Nor did she otherwise attempt to contact the City to work on a resolution. (*Id.*) Instead, after more than six weeks of silence passed — and without any prior warning — LVRJ filed a Public Records Act Application and Petition for Writ of Mandamus (the "Petition") claiming that the City had refused to provide LVRJ the requested records. (*Id.*; I JA001-022.) This is false. (II JA222.) The City was prepared and fully expected to review and provide copies of all responsive public records as soon as LVRJ confirmed it wanted to proceed with the Request. (II JA230.) LVRJ's Petition asked the District Court to issue a writ of mandamus and injunctive relief to compel the City to comply with the NPRA and to force the City to immediately give LVRJ access to the requested records. (I JA7, 9.)

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On December 5, 2016, the City wrote LVRJ a letter expressing surprise at the lawsuit given LVRJ's silence with respect to the Request for over six weeks, and the fact that the City had previously always worked with LVRJ to modify the scope of records requests by using agreed upon search terms or other methods to reduce the time and cost of producing large numbers of electronic documents. (II JA232-235.) According to City records, for the years 2015 and 2016, LVRJ made 46 separate public records requests to the City and only paid a total of $241.11 in fees for these records. (*Id.*) This amounts to approximately $5.24 per request.

The December 5th letter noted that City employees had spent 72 hours processing LVRJ's Request and provided the actual cost of personnel time to complete the Request ($5,303.32). (*Id.*) As a compromise, however, the City offered to reduce the fee to $3,226.32. (*Id.*) The City arrived at this number by multiplying the total number of hours spent by City staff to fulfill the request (72) by the lowest hourly rate of the employees who worked on the Request ($44.81). (*Id.*) Had the City charged LVRJ $0.50 per page for the extraordinary use of its personnel, as authorized by NRS 239.055, the fees would have been $34,989.50 ($0.50 x 69,979 pages). (*Id.*)

D. The City Allows LVRJ to Inspect the Documents Free of Charge and Provides LVRJ With Its Withholding Log.

Subsequently, the parties' attorneys conferred about making the documents available for inspection and the City's production of a confidentiality/privilege log. (II JA223.) The City allowed LVRJ to inspect the documents on a computer at City Hall. (*Id.*) LVRJ's inspection took place over the span of several days. (*Id.*) Notably, LVRJ did not ask the City for a single copy of any of the documents it reviewed after completing the inspection. (*Id.*)

On January 9, 2017, the City provided LVRJ with a withholding log describing 91 documents — many of which it was still producing in redacted form — for which it was asserting confidentiality. (I JA061-066.) LVRJ asked the City to revise the withholding log because it did not list the actual names of attorneys and paralegals or other staff members sending or receiving correspondence. (II JA224.) The City accommodated LVRJ's request and prepared a revised version of the withholding log ("Withholding Log"). (I JA068-073; II JA224.)

The City asked LVRJ to notify the City if it had any questions or concerns regarding the Withholding Log so that the parties could discuss them and attempt

to resolve them without having to involve the Court. (II JA224.) Notwithstanding the City's request to meet and confer about any concerns LVRJ might have regarding the Withholding Log, LVRJ never contacted the City. (II JA224.)

E. LVRJ Files an Amended Petition.

Instead, on February 28, 2017, LVRJ filed an Amended Public Records Act Application and Petition for Writ of Mandamus ("Amended Petition") attacking the adequacy of the Withholding Log. (I JA029-167.)

The Amended Petition differed from the original Petition. (I JA001-22; I JA029-167.) The Amended Petition requested the following: (1) that the Court decide the Amended Petition on an expedited basis; (2) that the Court issue a writ of mandamus requiring the City to immediately make available all records LVRJ had previously requested but had been withheld and/or redacted; (3) injunctive relief prohibiting the City from applying the provisions of Henderson Municipal Code § 2.47.085 ("Code") and the City's Public Records Policy (the "Policy"); (4) declaratory relief invalidating HMC § 2.47.085 and the Policy for conflicting with the NPRA; and (5) declaratory relief limiting the City to charging fees for

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extraordinary use of personnel to fifty cents per page and prohibiting the City from requesting fees for attorney review of responsive records. (*Id.*)

After having already inspected the non-confidential records at City Hall over the course of several days, the Amended Petition focused on obtaining mandamus relief to gain access to the records the City withheld and/or redacted, *i.e.*, the documents on the Withholding Log. (*Id.*) On March 8, 2017, the City filed a Response to LVRJ's Amended Petition. (II JA190-295.) LVRJ filed a Reply on March 23, 2017. (III JA296-418.)

F. The District Court Denies the Amended Petition.

On March 30, 2017, the Honorable J. Charles Thompson, the presiding judge in Department 18 at the time, held a hearing on LVRJ's Amended Petition. (III JA420-444.) At the hearing, LVRJ took the position that it's three-day inspection of the non-confidential documents at City Hall was insufficient, and that it now wanted the City to provide copies of the requested documents. (III JA423-425.) The District Court probed LVRJ to see if it had asked the City for copies of the documents it inspected and LVRJ conceded that it had not:

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> THE COURT: But when your reporter went to the City and reviewed them I guess online; is that right? Some computer or something?
>
> MS. SHELL: They had made a computer available specifically for just the review.
>
> THE COURT: And did your reporter ask for copies of any of the documents your reporter saw?
>
> MS. SHELL: She did not because we still had this issue — or Ms. McLetchie may have an answer to that.
>
> THE COURT: I think that they'll give those to you or I thought that they would have.
>
> MR. KENNEDY: Just for the record, that's correct. No copies were requested or made.
>
> THE COURT: Okay.

The Court then asked the City: "Are you — are you willing to give them a USB drive with all the documents?" (III JA427.) The City responded affirmatively. (*Id.*)

Notwithstanding the City's willingness to provide copies of the documents on a USB drive, free of charge, LVRJ pressed the District Court to invalidate the City's Code and Policy for being "at odds with the NPRA." (III JA427.) The District Court denied LVRJ's request for injunctive and declaratory relief. (III JA450.) Because the City had already allowed LVRJ to inspect the requested documents free of charge, and was willing to provide electronic copies of the

inspected documents on a USB drive, also free of charge, the District Court determined that LVRJ's arguments regarding the propriety of charging fees was moot and did not decide them. (III JA449.)

The sole matter decided by the District Court pertained to LVRJ's request for mandamus relief, *i.e.* whether the City should be compelled to provide LVRJ records that it deemed confidential in its Withholding Log. (III JA449.) The District Court ruled that the Withholding Log was "timely, sufficient and in compliance with the requirements of the NPRA," and, therefore, denied LVRJ's Amended Petition with respect to the withheld documents. (III JA449.) The District Court's Order (the "Substantive Order") concludes: "Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition is hereby DENIED." (III JA450.)

Notwithstanding the fact that the District Court denied each of LVRJ's claims for relief — either on the merits or as moot — and the only issue the District Court decided, the adequacy of the Withholding Log, was decided in the City's favor, LVRJ filed a Motion for Attorney's Fees and Costs ("Motion for

Fees"). (IV JA455-526.) LVRJ contended that it was a "prevailing party" and thus entitled to attorney's fees and costs because, despite the fact it had already reviewed all the requested records, the City "did not produce a substantial amount of the records the Review-Journal had sought until the Court directed it to do so." (IV JA463.) LVRJ requested attorney's fees in the amount of $30,931.50 and costs in the amount of $902.84. (IV JA469.)

The City filed an Opposition to the Motion for Fees on July 10, 2017. (IV JA530-642.) The City contended that LVRJ was not a prevailing party because it did not succeed on any of its claims for relief and the City voluntarily agreed to provide copies of the already-inspected documents to LVRJ without any mandate by the District Court. (IV JA531.) The City also argued that it was immune from damages in the form of attorney fees under NRS 239.012 and that, even if it was not immune, the Court should significantly reduce any award of fees and costs. (IV JA532.) On July 27, 2017, LVRJ filed its Reply in support of the Motion for Fees. (IV JA643-659.)

On August 3, 2017, the Honorable Mark B. Bailus, who had just been assigned to Department 18 relieving Judge Thompson, held a hearing on the

Motion for Fees. (IV JA661-686.) Judge Bailus acknowledged that he had not presided over the hearing on the Amended Petition and did not issue the Substantive Order which served as the basis for the Motion for Fees. (IV JA664.) Judge Bailus entertained the arguments of counsel and instructed the parties to return a week later for his decision. (IV JA685.)

On August 10, 2017, Judge Bailus notified the parties of his decision in open court. (IV JA688-702.) Relying on *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005), Judge Bailus determined that even though LVRJ did not succeed on any of the claims for relief set forth in the Amended Petition, LVRJ was still a prevailing party because it was able to obtain copies of the records it requested after initiating this action. (V JA767.) The District Court concluded, after reviewing the *Brunzell* factors, that LVRJ was entitled to an award of attorney fees in the amount of $9,010.00 and costs in the amount of $902.84 for a total award of $9,912.84 (the "Fee Order"). (V JA767-768.) This timely appeal followed. (V JA777-788.)

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VI. SUMMARY OF THE ARGUMENT

The Court should reverse Judge Bailus' Fee Order awarding LVRJ a portion of its attorney fees and costs for two reasons.

First, only a prevailing party may be awarded attorney fees under NRS 239.011, and LVRJ is not a prevailing party. LVRJ did not succeed on any of its claims for relief and therefore cannot qualify for prevailing party status under *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d 103, 107 (2016).

In addition, the City's willingness to provide LVRJ copies of the records it had already spent days reviewing did not constitute a judicially sanctioned, material alteration in the parties' legal relationship, which is the touchstone of the prevailing party analysis. The District Court did not compel or otherwise order the City to provide copies of the inspected documents. Instead, the court simply asked the City if it was willing to provide copies of the documents and the City responded affirmatively.

Further, the City's willingness to provide electronic copies of the already-inspected documents was not a significant issue in the case. LVRJ's Amended

Petition sought mandamus, injunctive and declaratory relief with respect to the documents the City *redacted and/or withheld* (not the documents it had already reviewed), and regarding the propriety of the way the City charged the extraordinary use fee authorized by NRS 239.055. Again, the Substantive Order denied these claims for relief, either on the merits or as being moot, and determined that the City's Withholding Log was "timely, sufficient and in compliance with the requirements of the NPRA[.]" (III JA449.) LVRJ should not be deemed a prevailing party for "succeeding" on a token issue.

Finally, Judge Bailus' prevailing party determination was erroneous because it implied that LVRJ's filing of the Petition was necessary for LVRJ to obtain the records, which is not true. The parties' past history of successfully working together on public records requests, the fact that the City never denied LVRJ's Request in this matter (it simply provided an estimate of fees, as required under NRS 239.055, that LVRJ did not want to pay), and the fact that the City attempted to meet and confer with LVRJ about the Request contradict the speculative and self-serving notion that LVRJ had to file this suit to gain access to the records.

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The second reason this Court should reverse the Fee Order awarding LVRJ a portion of its attorney fees and costs is because the City is immune from having to pay attorney fees and costs under NRS 239.012. The City acted in good faith in responding to the Request, and, pursuant to 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." The use of the term "damages" in NRS 239.012 is ambiguous because it is not defined in the NPRA and is susceptible to more than one reasonable meaning. *Edgington v. Edgington*, 119 Nev. 577, 583, 80 P.3d 1282, 1286-87 (2003) (explaining that where "a statute is susceptible to more than one reasonable meaning, it is ambiguous, and the plain meaning rule does not apply").

In *Las Vegas Review Journal v. Steven Wolfson*, Case No. A-14-711233-W, a district court decision, the court determined that attorney fees were a part of the damages from which Clark County District Attorney Steven Wolfson was immune under NRS 239.012 and further determined that Wolfson acted in good faith in producing and withholding documents. (IV JA637-642.) Acknowledging that the

term "damages" was not defined, the district court considered legislative history and determined that the concepts of immunity and attorney fees were directly linked in the committee notes. (IV JA639.) The District Court in *Wolfson* found that "based on a review of the legislative minutes, fees and costs were intended to be linked with the 'good faith' immunity exception of what is now NRS 239.012." (IV JA640.) Judge Bailus erred in awarding LVRJ a portion of its fees and costs because the City was immune from such an award under NRS 239.012.

VII. STANDARD OF REVIEW

Generally, this Court "review[s] decisions awarding or denying attorney fees for 'a manifest abuse of discretion.'" *Thomas v. City of North Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006). "But when the attorney fees matter implicates questions of law, the proper review is de novo." *Id.*; *see also Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215, 197 P.3d 1051, 1057 (2008) (explaining that while awards of attorney fees are generally reviewed for abuse of discretion, "when issues raised on appeal involve purely legal questions, we review those issue de novo."). "An abuse of discretion occurs when no

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reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Siems*, 130 Nev. Adv. Op. 54, 330 P.3d 1, 5 (2014).

VIII. ARGUMENT

This Court should reverse the District Court's Fee Order granting LVRJ a portion of its attorney fees and costs for two reasons. First, only a prevailing party may be awarded attorney fees under NRS 239.011, and LVRJ is not a prevailing party. Second, the City is immune from having to pay attorney fees under NRS 239.012 because it acted in good faith in responding to the Request.

To the extent the Court affirms the District Court's determination that LVRJ was entitled to attorney fees and costs, the City does not dispute the amount the District Court awarded to LVRJ.

A. LVRJ Is Not a Prevailing Party And Therefore Is Not Entitled to Attorney Fees and Costs.

The Court should reverse Judge Bailus' decision to award LVRJ attorney fees and costs because LVRJ did not prevail on any significant issue in the case. The Substantive Order ***denied all of LVRJ's claims for relief***, found that the ***City complied with its obligations*** under the NPRA, and ***ruled in the City's favor*** on the

one issue it decided — the adequacy of the City's Withholding Log. (III JA448-450.) These facts are indisputable. There is no language in the Substantive Order providing that LVRJ succeeded on any significant (or insignificant) issue in the case. Judge Bailus erred in concluding otherwise.

A court may not award attorney fees unless it is authorized by statute, agreement or rule. *State Dept. of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993). Under the NPRA, a requester is entitled to recover his or her costs and reasonable attorney fees in the proceeding from the governmental entity that has custody of the book or record if the requester ***prevails***. NRS 239.011(2).

In *LVMPD v. Blackjack Bonding*, this Court explained that "[a] party prevails 'if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.'" 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015). In that case, the Court found that Blackjack was a prevailing party because it "obtained a writ compelling the production of the telephone records with CCDC's inmates' identifying information redacted[.]" *Id.* at 615. The court's decision to grant mandamus relief compelling LVMPD to produce the requested

records, which LVMPD had previously refused to do, resulted in a court-ordered material alteration in the parties' legal relationship. Thus, the court concluded that Blackjack was entitled to recover its reasonable attorney fees and costs. *Id.*

The prevailing party analysis articulated in *Blackjack* is rooted in federal case law. *See Hornwood v. Smith's Food King No. 1*, 105 Nev. 188, 192, 772 P.2d 1284, 1287 (1989) (quoting federal case law); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (stating that "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.") Federal courts have since clarified that the "touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties[.]" *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-93 (1989). Thus, "[a] fee-seeking party must show that (1) there has been a material alteration in the legal relationship of the parties and (2) it was judicially sanctioned." *Wood v. Burwell*, 837 F.3d 969, 973 (9th Cir. 2016). A litigant whose "success on a legal claim can be characterized as purely technical or de minimis" is not entitled to attorney fees. *Irvine Unified Sch. Dist. v. K.G.*, 853 F.3d 1087, 1093 (9th Cir. 2017).

Since deciding *Blackjack*, this Court likewise provided additional clarification for the term "prevailing party" in *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d 103, 107 (2016). In that case, the law firm Golightly & Vannah ("G&V") filed an interpleader action seeking a ruling that its attorney lien had priority and that it receive its contingency fee from the recovery. *Id.* One defendant argued that G&V's lien was not properly perfected and therefore had no priority. *Id.* The court ruled in favor of the defendant finding that the attorney lien was not properly perfected and proceeded to award the defendant a full pro-rata share of the recovery at the expense of G&V's requested recovery. *Id.* Although G&V received some money — which achieved some of the benefit it sought in bringing suit — this Court determined that because G&V did not prevail on its sole claim of priority, it was not a prevailing party and therefore was not entitled to recover its costs. *Id.* The Court explained that "***a prevailing party must win on at least one of its claims***." *Id.* (emphasis added).

Here, Judge Bailus concluded that LVRJ was a prevailing party "because it was able to obtain copies of the records it requested after initiating this action." (V JA767.) This finding is erroneous for at least four reasons.

1. LVRJ did not win on any of its claims for relief.

Judge Bailus' prevailing party determination ignores the fact that LVRJ did not win on any of its claims for relief as required under *Golightly*. LVRJ's Amended Petition contained four claims for relief: "(1) that the Court issue a writ of mandamus requiring Henderson to immediately make available all records the Review-Journal had previously requested ***but had been withheld and/or redacted***; (2) injunctive relief prohibiting Henderson from applying the provisions of Henderson Municipal Code § 2.47.085 and the Henderson Public Records Policy to demand fees in excess of those permitted by the NPRA; (3) declaratory relief stating that Henderson Municipal Code § 2.47.085 and the City of Henderson's Public Records Policy invalid to the extent they provide for fees in excess of those permitted by the NPRA; and (4) declaratory relief limiting Henderson to charging fees for extraordinary use of personnel to fifty cents per page and limiting Henderson from demanding fees for attorney review." (IV JA461.) The District Court denied each of these claims for relief. (III JA450.) ("Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief,

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and any remaining request for relief in the Amended Petition is hereby DENIED.").

The Substantive Order made clear that the only issue the District Court decided was LVRJ's request for mandamus relief, which sought to compel the City to make available the records the City had withheld and/or redacted, as identified on the Withholding Log. (III JA449.) Judge Thompson found the City's Withholding Log was "timely, sufficient and in compliance with the requirements of the NPRA" and therefore denied LVRJ's request for a writ of mandamus to force the City to turn over the documents identified on the Withholding Log. (*Id.*) Judge Thompson determined that LVRJ's remaining claims for relief were moot and denied them on that basis. (III JA449-450.) LVRJ cannot be a prevailing party — it cannot show it succeed on any issue, let alone a ***significant issue*** in the case — when it lost on the "***sole issue*** decided by the Court." (III JA449 (emphasis added).) In short, because LVRJ did not succeed on any of its claims for relief, it cannot be a prevailing party. *Golightly*, 373 P.3d at 107.

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2. The City's voluntary agreement to provide copies of the already-inspected records was not a judicially sanctioned, material alteration in the parties' legal relationship.

Judge Bailus' prevailing party determination is also erroneous because the Substantive Order did not bring about a judicially sanctioned, material alteration in the parties' legal relationship, which is the "touchstone" of the prevailing party analysis. *Texas State Teachers Ass'n*, 489 U.S. at 791-93. Judge Thompson found that except for the items identified on the City's Withholding Log, all requested files and documents were prepared by the City, and "LVRJ had access to and inspected the Prepared Documents prior to the hearing." (III JA449.) Thus, the status of the parties' relationship at the time of the March 30th hearing was that the City had already given LVRJ access to the requested records and LVRJ had already spent several days inspecting them. (III JA449; II JA223.) "Following its inspection, LVRJ made no request for copies of the Prepared Documents" — until the March 30th hearing. (III JA449.)

Once LVRJ's counsel revealed that LVRJ wanted electronic copies of the documents it had previously inspected, the City ***agreed*** to provide the documents on a USB drive. (III JA449 ("[F]ollowing LVRJ's counsel's representations at the

hearing that it also wanted electronic copies of the Prepared Documents, the City agreed to provide electronic copies of the Prepared Documents.")). There was no court order or mandate compelling the City to provide copies of the inspected documents like the writ of mandamus issued in *Blackjack*. There was no ruling on the merits. Rather, the District Court simply asked the City if it was willing to provide copies of the inspected documents on a USB drive and the City responded affirmatively. (III JA427.) The City's willingness to provide electronic copies of documents LVRJ had already inspected does not constitute a judicially sanctioned, material alteration in the parties' legal relationship. To the contrary, the City's agreement to provide electronic copies of records LVRJ had already reviewed and had not requested post-inspection can only be characterized as a purely technical or de minimis "success,"[2] and thus insufficient for purposes of recovering attorney's fees and costs. *Irvine Unified Sch. Dist.*, 853 F.3d at 1093.

3. LVRJ cannot be a prevailing party on a token issue.

Judge Bailus' prevailing party determination is further problematic because it rewarded LVRJ for "succeeding" on a token issue, not a significant issue in the

[2] The City disputes that this should be considered a "success" at all.

case. After conducting its inspection of the requested records, LVRJ filed its Amended Petition. (*See* I JA026-28; I JA029-167.) While the Amended Petition was similar to the original Petition, with respect to gaining access to records, the relief sought in the Amended Petition differed from the relief sought in the original Petition. The original Petition asked the Court to order the City "to immediately make available complete copies of all records requested[.]" (I JA009.) The Amended Petition sought to compel the City to provide access to the records "previously withheld and/or redacted (other than the documents that were redacted to protect personal identifiers)." (I JA040.) In other words, the Amended Petition sought access to the documents identified on the City's Withholding Log.

Given the change in requested relief from the original Petition to the Amended Petition and the fact that LVRJ never requested copies of the inspected documents before the March 30th hearing, LVRJ's revelation at the hearing that it wanted electronic copies of the inspected documents was nothing more than a straw man. In fact, Judge Thompson commented during the hearing that "I was – I was led to believe that our hearing today was to argue over the redacted documents that you have in — that you attached to your petition." (III JA429.)

Notwithstanding, the City agreed to provide electronic copies of inspected records. (III JA427.)

The City's willingness to provide electronic copies of documents that LVRJ had already spent days reviewing was not a significant issue in the case. Whether the City had properly withheld and/or redacted the documents identified on its Withholding Log was. Indeed, the adequacy of the City's confidentiality designations was the *only* issue Judge Thompson decided, and he decided the issue in the City's favor. (III JA449.) LVRJ should not be deemed a prevailing party for "succeeding" on a token issue.

4. The filing of the action was not necessary to receive access to the inspected documents.

Finally, Judge Bailus' decision that LVRJ is a prevailing party "because it was able to obtain copies of the records it requested after initiating this action" is erroneous because it implies that the filing of the action was necessary for LVRJ to obtain the records. This is inaccurate.

First, the record demonstrates that before LVRJ filed this action the parties had a history of working together to provide LVRJ access to records with a *de*

minimis cost. (II JA232-235.) For the years 2015 and 2016, LVRJ made 46 separate public records requests to the City and only paid $241.11 in fees for these records. (*Id.*) This averages out to approximately $5.24 per request. The parties' history of meeting and conferring about public records requests had previously produced positive results without the need for court involvement. (*Id.*) The parties' history of cooperation alone undercuts the notion that LVRJ never would have received access to the documents but for the filing of a lawsuit.

Second, the City's Initial Response to the Request ***was not a denial of the records***, and, therefore, LVRJ's filing of this action was premature. NRS 239.011 ("If a request for inspection, copying or copies of a public book or record open to inspection and copying is denied, the requester may apply to the district court . . . ."). The City's Initial Response notified LVRJ that the City had received the Request and was in the process of searching for and gathering responsive documents, provided an estimated date of completion given the huge number of responsive documents, notified LVRJ there was a fee required for the extraordinary use of its personnel to complete the request and explained the manner in which it calculated the estimated fee under NRS 239.055, and asked for

a deposit to confirm that LVRJ wanted to proceed with the Request. (II JA230.) Put simply, the City never denied LVRJ's Request. For that reason, LVRJ should be required to shoulder the financial burden of filing a premature and unnecessary lawsuit.

Third, the City attempted to meet and confer with LVRJ to work out a solution whereby LVRJ could have access to the records without exacting a significant toll on the City's resources. (II JA222.) LVRJ not only rebuffed the City's efforts, but also argued to the District Court that "there is no meet and confer requirement in the NPRA." (*Id.*; III JA299.) LVRJ's argument that it was necessary to file the lawsuit to gain access to the records is both misplaced and speculative. How could LVRJ know that it would not have received the records but for the filing of a lawsuit when it refused to meet and confer with the City to even determine whether there was an impasse? While there may be no express statutory requirement in the NPRA to meet and confer prior to filing suit, a party who rushes to court without engaging in a meet and confer process, can't argue that it would not have received the records but for the filing of a lawsuit as a basis for claiming prevailing party status. A party should not be awarded attorney fees

for simply hurrying to court. Condoning such tactics will serve as a disincentive for parties to engage in the meet and confer process on public records issues (like they are required to do for discovery disputes), which will result in an increase of unnecessarily-filed public records actions and a commensurate increase of judicial time and resources to handle those actions.

Based on the foregoing, the Court should reject LVRJ's self-serving assertion that it was necessary to file this lawsuit to gain access to the requested records. The parties' past history of working together on public records requests, coupled with the fact that the City never denied LVRJ's Request and tried to meet and confer with LVRJ about the Request contradict the speculative notion that this action was necessary. Accordingly, the Court should reverse Judge Bailus' Fee Order granting LVRJ a portion of its attorney fees and costs.

B. The City Is Immune From Having to Pay Attorney Fees Pursuant to NRS 239.012 Because It Acted in Good Faith.

The NPRA is an important part of ensuring transparency in government, but Nevada's legislators have long recognized that while providing access to public records is essential, it can also be an expensive proposition for the public. (IV

JA616-621.) Likewise, government employees and their employers have important, but competing responsibilities under the NPRA. Governments and their employees are responsible for locating and producing public records, but they are also responsible for safeguarding and preventing disclosure of the confidential information they hold on behalf of the public, which may otherwise be responsive to a public records request. *See* NRS 239.010; NRS 239.0105.

Until 1993, government employees faced civil liability and even criminal penalties if they made the wrong decision in determining whether to disclose or withhold information pursuant to a public records request. In 1992, because legislators (and the public) were concerned about the high cost of public records, and because legislators recognized the precarious position government employees and their employers faced in choosing to withhold or disclose information, the Nevada Legislature made significant amendments to the NPRA. Prior to opening the Sixty-Seventh Legislative Session, the Legislative Counsel Bureau Published a comprehensive study of the Nevada Laws Governing Public Books and Records. (IV JA623-633.) Among other proposed changes were recommendations from the Legislative Counsel Bureau to:

> 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.
>
> 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.

(*Id.*)

Consistent with these recommendations, the Legislature amended the NPRA and, as a result, NRS 239.011 now reads:

> 1. If a request for inspection, copying or copies 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:
>
> (a) Permitting the requester to inspect or copy the book or record; or
>
> (b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester, as applicable.
>
> 2. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. 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.

In addition, NRS 239.012 now provides:

> 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.

Under NRS 239.011(2), a prevailing requestor has the ability to recover attorney fees, but that ability is limited by NRS 239.012, which provides that so

long as a public officer or employee acts in good faith in determining whether to withhold or disclose information, they (and their employer) are immune from damages to requestors or other parties whom the information concerns. *Id.*

The use of the term "damages" in NRS 239.012 is ambiguous because it is not defined in the NPRA[3] and is susceptible to more than one reasonable meaning. *Edgington v. Edgington*, 119 Nev. 577, 583, 80 P.3d 1282, 1286-87 (2003) (explaining that where "a statute is susceptible to more than one reasonable meaning, it is ambiguous, and the plain meaning rule does not apply."). When a statute is ambiguous, courts "look to the legislative history and construe the statute in a manner that is consistent with reason and public policy." *State v. Lucero*, 127 Nev. 92, 95-96, 249 P.3d 1226, 1228 (2011).

It appears the only statutory definition of the term "damages" is found in NRS Chapter 616A pertaining to Industrial Insurance Administration. *See* NRS 616A.095 (defining "damages" as "the recovery allowed in an action at law as contrasted with compensation."). This Court, in a different context, has previously defined "damages" as:

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[3] *See* NRS 239.001-239.330

> A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another. Money compensation sought or awarded as a remedy for a breach of contract or for tortious acts.

LVMPD v. Yeghiazarian, 129 Nev. 760, 768, 312 P.3d 503, 509 (2013) (internal citations omitted). Given the breadth and susceptibility of the term, "damages" can be reasonably used to cover a range of "losses", including sub-categories such as punitive damages, compensatory damages, liquidated damages, and consequential damages. Courts have also determined the term "damages" can include attorney fees. *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957-58, 35 P.3d 964, 970 (2001), clarified by *Horgan v. Felton*, 123 Nev. 577, 584, 170 P.3d 982, 986 (2007); *Pearson v. Clucas*, 89 Nev. 179, 180, 510 P.2d 629, 629-30 (1973) (upholding award of attorney fees in the form of damages.); *Swaner v. Union Mortg. Co.*, 105 P.2d 342, 345-46 (Utah 1940); *State ex rel. O'Sullivan v. District Court*, 256 P.2d 1076, 1078 (Mont. 1953) (holding that for a petition for a writ of mandamus, a statute entitling petitioner to damages necessarily included the fees incurred).

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Notably, awards for attorney fees are generally associated with bad faith or wrongful conduct. *Sandy Valley Assocs.*, 117 Nev. at 957, 35 P.3d at 970 (2001) ("Attorney fees may also be awarded as damages in those cases in which a party incurred the fees in recovering real or personal property acquired through the wrongful conduct of the defendant . . . .") (citing *Michelsen v. Harvey*, 110 Nev. 27, 29–30, 866 P.2d 1141, 1142 (1994) (attorney fees permissible as an element of damages in slander of title action)); *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); NRS 7.085 (permitting award of fees when attorney acts in bad faith); NRS 18.010(2)(b) (permitting award of fees when litigant acts in bad faith). Because the term "damages" can encompass compensation or indemnity for a range of "losses," including losses in the form of attorney fees, the Court should refer to legislative history, reason and public policy in determining the legislative intent behind NRS 239.012.

"[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, 385-386 (1998). Awarding fees is also a deviation from the common law under the American Rule. Any statutory scheme awarding fees must be construed narrowly against fees. *Hardisty v. Astrue*, 592 F.3d 1072, 1077 (9th Cir. 2010). In contrast, "'[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.* (quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685-86 (1983)).

Under NRS 239.012, an award of attorney fees (damages) against a government employee and his or her employer is not permissible where the government employee acts in good faith. Rather, the governmental agency and its employee are immune from any *monetary liability*. This interpretation makes sense because attorney fees are the only likely damages available to a party who has been denied a public record by a governmental entity. In the context of public records requests, the cost of hiring an attorney to obtain a court order mandating the production of a public record that has been withheld in bad faith is the "damage" or loss for which a prevailing party should be compensated.

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The City's interpretation of NRS 239.012 was adopted by the district court in *Las Vegas Review Journal v. Steven Wolfson*, Case No. A-14-711233-W. (IV JA637-642.) In *Wolfson*, the district court determined that attorney fees were a part of the damages from which Clark County District Attorney Steven Wolfson was immune under NRS 239.012 and further determined that Wolfson acted in good faith in producing and withholding documents. Of particular import to the district court was the fact that the legislative history of A.B. 365 continually overlapped the "good faith" exception with discussion of attorney fees. (IV JA639.) The district court determined that the "Committee Notes [for A.B. 365] directly link immunity with fees" and quoted the following testimony from the Nevada Press Association:

> 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 though [sic] 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.

(IV JA639.)

The district court in *Wolfson* found that "based on a review of the legislative minutes, fees and costs were intended to be linked with the 'good faith' immunity exception of what is now NRS 239.012." (IV JA640.) The court also noted that "in cases of public records requests, 'fees' would be the only likely 'damages' available to a party who prevails on a wrongfully withheld disclosure of public record under NRS 239.011." (*Id.*)

This Court should reach the same result as the district court in *Wolfson* and reverse the Fee Order. The City is immune from an award of attorney fees and costs because it acted in good faith in responding to the Request. From the City's Initial Response, to its attempts to meet and confer with LVRJ, to the inspection it invited LVRJ to conduct, to the Withholding Log that Judge Thompson found was "timely, sufficient and in compliance with the requirements of the NPRA", the record amply demonstrates the City acted in good faith. (III JA449.) Judge Bailus erred in awarding LVRJ a portion of its fees and costs because the City was immune from such an award under NRS 239.012.

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IX. CONCLUSION

Based on the foregoing, this Court should reverse the District Court's decision to grant LVRJ a portion of its attorney fees and costs. LVRJ is not entitled to attorney fees because it was not a prevailing party and the City is immune from having to pay attorney fees and costs under NRS 239.012.

DATED this 19th day of November, 2018.

BAILEY❖KENNEDY

By: */s/ Dennis L. Kennedy*
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Appellant/Cross-Respondent's Opening 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:

[x] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman font 14.

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

[x] Proportionally spaced, has a typeface of 14 points or more, and contains 8,728 words.

3. Finally, I hereby certify that I have read this Appellant/Cross-Respondent's Opening 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 19th day of November, 2018.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Bailey❖Kennedy, and that on the 19th day of November, 2018, service of the foregoing **APPELLANT/CROSS-RESPONDENT'S OPENING BRIEF** was made by electronic service through the Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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ADDENDUM

West's Nevada Revised Statutes Annotated
Title 1. State Judicial Department (Chapters 1-7)
Chapter 7. Attorneys and Counselors at Law (Refs & Annos)
General Provisions

N.R.S. 7.085

7.085. Payment of additional costs, expenses and attorney's fees by attorney who files, maintains or defends certain civil actions or extends civil actions in certain circumstances

Currentness

1. If a court finds that an attorney has:

(a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or

(b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State,

the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.

2. The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Credits

Added by Laws 1995, p. 1707. Amended by Laws 2002 (18th ss), c. 3, § 16, eff. Oct. 1, 2002; Laws 2003, c. 508, § 152, eff. July 1, 2003.

7.085. Payment of additional costs, expenses and attorney's fees by..., NV ST 7.085

Notes of Decisions (29)

N. R. S. 7.085, NV ST 7.085
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

West's Nevada Revised Statutes Annotated
Title 2. Civil Practice (Chapters 10-22)
Chapter 18. Costs and Disbursements (Refs & Annos)

N.R.S. 18.010

18.010. Award of attorney's fees

Currentness

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than $20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

18.010. Award of attorney's fees, NV ST 18.010

Credits

Added by CPA (1911), § 434. Amended by Laws 1951, p. 59; NRS amended by Laws 1957, p. 129; Laws 1967, p. 1254; Laws 1969, pp. 435, 667; Laws 1971, pp. 165, 802; Laws 1975, p. 309; Laws 1977, p. 774; Laws 1985, p. 327; Laws 1999, c. 183, § 1, eff. May 20, 1999; Laws 2003, c. 508, § 153, eff. July 1, 2003.

Notes of Decisions (235)

N. R. S. 18.010, NV ST 18.010
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.010

239.010. Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested

Effective: July 2, 2018

Currentness

<Section effective on the date the Department of Motor Vehicles has sufficient resources to carry out the amendatory provisions of Laws 2015, c. 119, and all required notifications of that fact are promulgated by the Department and until Jan. 1, 2019. See also, sections effective until Jan. 1, 2019; Jan. 1, 2019, to Jan. 1, 2020; and Jan. 1, 2020, all absent the requirements specified in Laws 2015, c. 119 having occurred.>

1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.558, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.16925, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.035, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449A.112, 450.140, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.940, 481.063, 481.091, 481.093, 482.170,

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239.010. Public books and public records open to inspection;..., NV ST 239.010

482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.583, 584.655, 587.877, 598.0964, 598.098, 598A.110, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159, 711.600, and sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Credits

239.010. Public books and public records open to inspection;..., NV ST 239.010

Added by Laws 1911, c. 149, § 1. NRS amended by Laws 1963, p. 26; Laws 1965, p. 69; Laws 1993, pp. 1230, 2307, 2623; Laws 1995, pp. 503, 716; Laws 1997, c. 497, § 7; Laws 1999, c. 291, § 6, eff. May 26, 1999; Laws 2007, c. 435, § 8; Laws 2013, c. 98, § 1; Laws 2013, c. 414, § 3; Laws 2013, c. 414, § 3.5, eff. July 1, 2015; Laws 2015, c. 32, § 2, eff. May 6, 2015; Laws 2015, c. 119, § 21; Laws 2015, c. 123, § 8, eff. May 20, 2015; Laws 2015, c. 147, § 2.5, eff. Jan. 1, 2016; Laws 2015, c. 183, § 2, eff. May 25, 2015; Laws 2015, c. 201, § 7, eff. July 1, 2015; Laws 2015, c. 203, § 2, eff. May 27, 2015; Laws 2015, c. 226, § 1, eff. May 27, 2015; Laws 2015, c. 262, § 10, eff. July 1, 2015; Laws 2015, c. 279, § 2.5, eff. May 29, 2015; Laws 2015, c. 293, § 3, eff. Oct. 1, 2015; Laws 2015, c. 378, § 9.5, eff. Jan. 1, 2016; Laws 2015, c. 404, § 63, eff. Oct. 1, 2015; Laws 2015, c. 409, § 52, eff. Oct. 1, 2015; Laws 2015, c. 430, § 14.5, eff. Jan. 1, 2016; Laws 2015, c. 457, § 8, eff. July 1, 2015; Laws 2015, c. 494, § 3.7, eff. June 9, 2015; Laws 2015, c. 503, § 7, eff. Jan. 1, 2016; Laws 2015, c. 511, § 4, eff. June 10, 2015; Laws 2015, c. 521, § 6, eff. July 1, 2015; Laws 2015, c. 522, § 314, eff. July 1, 2015; Laws 2015, c. 533, § 2.5, eff. Jan 1, 2017; Laws 2015 (29th ss), c. 1, § 15, eff. Dec. 19, 2015; Laws 2017, c. 12, § 28, eff. Jan. 1, 2018; Laws 2017, c. 92, § 5, eff. July 1, 2017; Laws 2017, c. 99, § 7, eff. Oct. 1, 2017; Laws 2017, c. 114, § 2.7, eff. Oct. 1, 2017; Laws 2017, c. 119, § 10, eff. May 24, 2017; Laws 2017, c. 129, § 1.7, eff. July 1, 2018; Laws 2017, c. 157, § 6, eff. July 1, 2017; Laws 2017, c. 164, § 9, eff. Jan. 1, 2018; Laws 2017, c. 166, § 8, eff. Oct. 1, 2017; Laws 2017, c. 172, § 198, eff. July 1, 2017; Laws 2017, c. 183, § 10, eff. July 1, 2017; Laws 2017, c. 190, § 3, eff. May 27, 2017; Laws 2017, c. 212, § 4, eff. Oct. 1, 2017; Laws 2017, c. 275, § 41, eff. July 1, 2017; Laws 2017, c. 294, § 16, eff. Oct. 1, 2017; Laws 2017, c. 307, § 19, eff. July 1, 2017; Laws 2017, c. 314, § 42, eff. July 1, 2017; Laws 2017, c. 327, § 137, eff. June 3, 2017; Laws 2017, c. 338, § 23, eff. July 1, 2017; Laws 2017, c. 341, § 32, eff. July 1, 2017; Laws 2017, c. 363, § 33, eff. Jan. 1, 2018; Laws 2017, c. 376, § 163, eff. July 1, 2017; Laws 2017, c. 384, § 28, eff. July 1, 2017; Laws 2017, c. 401, § 17, eff. Jan. 1, 2018; Laws 2017, c. 461, § 18, eff. July 1, 2017; Laws 2017, c. 500, § 25, eff. July 1, 2017; Laws 2017, c. 506, § 29, eff. July 1, 2017; Laws 2017, c. 548, § 97, eff. Jan. 1, 2018; Laws 2017, c. 556, § 34, eff. July 1, 2017; Laws 2017, c. 568, § 11, eff. Jan. 1, 2018.

N. R. S. 239.010, NV ST 239.010
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

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239.0105. Confidentiality of certain records of local governmental entities, NV ST 239.0105

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.0105

239.0105. Confidentiality of certain records of local governmental entities

Effective: October 1, 2007

Currentness

1. Records of a local governmental entity are confidential and not public books or records within the meaning of NRS 239.010 if:

(a) The records contain the name, address, telephone number or other identifying information of a natural person; and

(b) The natural person whose name, address, telephone number or other identifying information is contained in the records provided such information to the local governmental entity for the purpose of:

(1) Registering with or applying to the local governmental entity for the use of any recreational facility or portion thereof that the local governmental entity offers for use through the acceptance of reservations; or

(2) On his or her own behalf or on behalf of a minor child, registering or enrolling with or applying to the local governmental entity for participation in an instructional or recreational activity or event conducted, operated or sponsored by the local governmental entity.

2. The records described in subsection 1 must be disclosed by a local governmental entity only pursuant to:

(a) A subpoena or court order, lawfully issued, requiring the disclosure of such records;

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(b) An affidavit of an attorney setting forth that the disclosure of such records is relevant to an investigation in anticipation of litigation;

(c) A request by a reporter or editorial employee for the disclosure of such records, if the reporter or editorial employee is employed by or affiliated with a newspaper, press association or commercially operated, federally licensed radio or television station; or

(d) The provisions of NRS 239.0115.

3. Except as otherwise provided by specific statute or federal law, a natural person shall not provide, and a local governmental entity shall not require, the social security number of any natural person for the purposes described in subparagraphs (1) and (2) of paragraph (b) of subsection 1.

4. As used in this section, unless the context otherwise requires, "local governmental entity" has the meaning ascribed to it in NRS 239.121.

Credits

Added by Laws 2005, c. 304, § 1. Amended by Laws 2007, c. 435, § 9.

N. R. S. 239.0105, NV ST 239.0105
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

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West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.0107

239.0107. Requests for inspection or copying of public books or records: Actions by governmental entities

Effective: October 1, 2013

Currentness

1. Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity shall do one of the following, as applicable:

(a) Except as otherwise provided in subsection 2, allow the person to inspect or copy the public book or record or, if the request is for the person to receive a copy of the public book or record, provide such a copy to the person.

(b) If the governmental entity does not have legal custody or control of the public book or record, provide to the person, in writing:

(1) Notice of that fact; and

(2) The name and address of the governmental entity that has legal custody or control of the public book or record, if known.

(c) Except as otherwise provided in paragraph (d), if the governmental entity is unable to make the public book or record available by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request, provide to the person, in writing:

(1) Notice of that fact; and

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(2) A date and time after which the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person. If the public book or record or the copy of the public book or record is not available to the person by that date and time, the person may inquire regarding the status of the request.

(d) If the governmental entity must deny the person's request because the public book or record, or a part thereof, is confidential, provide to the person, in writing:

(1) Notice of that fact; and

(2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

2. If a public book or record of a governmental entity is readily available for inspection or copying, the person who has legal custody or control of the public book or record shall allow a person who has submitted a request to inspect, copy or receive a copy of a public book or record.

Credits

Added by Laws 2007, c. 435, § 4. Amended by Laws 2013, c. 98, § 2.

Notes of Decisions (2)

N. R. S. 239.0107, NV ST 239.0107
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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239.011. Application to court for order allowing inspection or..., NV ST 239.011

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.011

239.011. Application to court for order allowing inspection or copying, or requiring that copy be provided, of public book or record in legal custody or control of governmental entity for less than 30 years

Effective: October 1, 2013

Currentness

1. If a request for inspection, copying or copies 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:

(a) Permitting the requester to inspect or copy the book or record; or

(b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester,

as applicable.

2. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. 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.

Credits

Added by Laws 1993, p. 1230. Amended by Laws 1997, c. 497, § 8; Laws 2013, c. 98, § 3.

Notes of Decisions (4)

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239.011. Application to court for order allowing inspection or..., NV ST 239.011

N. R. S. 239.011, NV ST 239.011
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

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239.012. Immunity for good faith disclosure or refusal to disclose..., NV ST 239.012

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
in General

N.R.S. 239.012

239.012. Immunity for good faith disclosure or refusal to disclose information

Currentness

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.

Credits

Added by Laws 1993, p. 1230.

N. R. S. 239.012, NV ST 239.012
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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239.055. Additional fee when extraordinary use of personnel or..., NV ST 239.055

West's Nevada Revised Statutes Annotated
Title 19. Miscellaneous Matters Related to Government and Public Affairs (Chapters 234-242)
Chapter 239. Public Records (Refs & Annos)
Reproduction of Records

N.R.S. 239.055

239.055. Additional fee when extraordinary use of personnel or resources is required; limitation

Effective: October 1, 2013

Currentness

1. Except as otherwise provided in NRS 239.054 regarding information provided from a geographic information system, 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. Such a request must be made in writing, and upon receiving such a request, the governmental entity shall inform the requester, in writing, of the amount of the fee before preparing the requested information. The fee charged by the governmental entity must be reasonable and must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources. The governmental entity shall not charge such a fee if the governmental entity is not required to make extraordinary use of its personnel or technological resources to fulfill additional requests for the same information.

2. As used in this section, "technological resources" means any information, information system or information service acquired, developed, operated, maintained or otherwise used by a governmental entity.

Credits

Added by Laws 1997, c. 497, § 3. Amended by Laws 2013, c. 98, § 4.5.

Notes of Decisions (2)

N. R. S. 239.055, NV ST 239.055
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

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239.055. Additional fee when extraordinary use of personnel or..., NV ST 239.055

West's Nevada Revised Statutes Annotated
Title 53. Labor and Industrial Relations (Chapters 606-618)
Chapter 616A. Industrial Insurance: Administration
General Provisions

N.R.S. 616A.095

616A.095. "Damages" defined

Currentness

"Damages" means the recovery allowed in an action at law as contrasted with compensation.

Credits

Added by Laws 1947, c. 168, § 20. Substituted in 1995 revision for NRS 616.050.

N. R. S. 616A.095, NV ST 616A.095
Current through the end of the 79th Regular Session (2017) of the Nevada Legislature subject to change from the reviser of the Legislative Counsel Bureau.

End of Document

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239.864. Fee for providing copy of public record: Estimate of fee;..., NV ADC 239.864

Nevada Administrative Code
Chapter 239. Public Records
Availability and Inspection of Public Records

NAC 239.864

239.864. Fee for providing copy of public record: Estimate of fee; deposit. (NRS 239.008, 378.255)

Currentness

If an agency of the Executive Department charges a fee for providing a copy of a public record:

1. A records official shall provide a person who requests a copy of a public record with an estimate of the fee for the copy, if the estimated actual cost is more than $25. The estimate of the fee must include, without limitation, the amount of postage that the agency will charge the person if the person requested to have the copy delivered by mail.

2. A records official:

(a) May require the person who requests a copy of a public record to pay a deposit of not more than the estimate of the actual cost of providing the copy; and

(b) Shall require the person who requests a copy of a public record to pay the fee for providing the copy, including, without limitation, postage for mailing the copy, if applicable, before the person receives the copy.

Credits

(Added to NAC by Library & Archives Admin'r by R107-13, eff. 12-22-2014)

Current with amendments included in the State of Nevada Register of Administrative Regulations, Volume 248, dated August 31, 2018 and Supplement 2018-3, dated August 31, 2018.

Nev. Admin. Code 239.864, NV ADC 239.864

End of Document

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239.864. Fee for providing copy of public record: Estimate of fee;..., NV ADC 239.864

2.47.085 - City-wide fee schedule for public records and document services.

A. The records committee shall approve and update a city-wide fee schedule for public records and document services applicable to all city departments and divisions of the city in compliance with state and federal law and the policy goals of the city.

B. The city-wide fee schedule for public records and document services shall provide for a mechanism whereby city officials may waive some or all of a fee to provide copies of public records.

C. The city-wide fee schedule for public records and document services may contain a fee for the extraordinary use of personnel or technological resources pursuant to NRS 239.055 if the public records request will require more than ten hours of city personnel time to search for, compile, segregate, redact, remove, scan and/or reproduce records responsive to the records request, which hourly rate charged for the extraordinary use of personnel time shall not exceed $35.00 per hour. The total fee under this provision shall not exceed $0.50 per page contained in the records request.

D. The city-wide fee schedule for public records and document services shall be posted on the city website and in all other locations required by NRS chapter 239.

(Ord. No. 3450 , § 1, 10-17-2017)