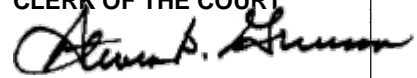


EXHIBIT C



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Nevada Bar No. 7497

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Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1 1. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in
3 attorney's fees, and \$902.84 in costs.

4 2. In its Motion and supporting exhibits the Review-Journal requested compensation at
5 the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	38.20	\$450.00	\$16,434.00
Alina M. Shell	37.60	\$300.00	\$11,280.00
Gabriel Czop	15.70	\$125.00	\$1,962.50
Pharan Burchfield	5.80	\$100.00	\$580.00

11
12 3. Henderson filed an Opposition to the Review-Journal's Motion on July 10, 2017,
13 and the Review-Journal filed a Reply on July 27, 2017.

14 4. In its Opposition, Henderson asserted the Review-Journal was not the prevailing
15 party in this matter, and even if it was, requested this Court reduce any award of fees and costs to
16 compensate the Review-Journal for only the work its attorneys performed on the original NPRS
17 petition. Henderson also disputed various line items contained in the Review-Journal's attorneys'
18 bills. Henderson did not, however, dispute the billing rates for the Review-Journal's attorneys or
19 their support staff.

20 5. Henderson also asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of
21 the NPRA which provides immunity from damages for public officials who act in good faith in
22 disclosing or refusing to disclose information—the Review-Journal had to establish Henderson
23 acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

24 6. This Court conducted a hearing on the Review-Journal's Motion for Attorney's Fees
25 and Costs on August 3, 2017. After hearing argument from counsel, the Court took the matter under
26 consideration, and conducted an additional hearing on August 10, 2017.

27 ///

28 ///

ORDER

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

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

9. The Nevada Supreme Court has explained that "...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

10. A party "prevails" for the purposes of Nev. Rev. Stat. § 239.011(2) if "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

12. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of attorneys' services:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

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

14. Although the Review-Journal did not prevail on the claims for relief set forth in its Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it was able to obtain copies of the records it requested after initiating this action.

15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as to its request for the records and therefore is entitled to attorney's fees and costs.

16. Having reviewed the papers and pleadings filed herein, including the documentation provided by the Review-Journal regarding the work performed by its counsel and support staff, and having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson

Reception

From: Josephine Baltazar
Sent: Thursday, February 15, 2018 11:39 AM
To: Reception
Subject: FW: Notification of Service for Case: A-16-747289-W, Las Vegas Review-Journal, Plaintiff(s)vs.Henderson City of, Defendant(s) for filing Order - ORDR (CIV), Envelope Number: 2148068

From: efilingmail@tylerhost.net [<mailto:efilingmail@tylerhost.net>]
Sent: Thursday, February 15, 2018 11:32 AM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-16-747289-W, Las Vegas Review-Journal, Plaintiff(s)vs.Henderson City of, Defendant(s) for filing Order - ORDR (CIV), Envelope Number: 2148068



Notification of Service

Case Number: A-16-747289-W
Case Style: Las Vegas Review-Journal,
Plaintiff(s)vs.Henderson City of, Defendant(s)
Envelope Number: 2148068

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-16-747289-W
Case Style	Las Vegas Review-Journal, Plaintiff(s)vs.Henderson City of, Defendant(s)
Date/Time Submitted	2/15/2018 10:47 AM PST
Filing Type	Order - ORDR (CIV)
Filing Description	Order
Filed By	Susan Russo
Service Contacts	Las Vegas Review-Journal: Alina Shell (alina@nvlitigation.com) Margaret McLetchie (maggie@nvlitigation.com) Other Service Contacts not associated with a party on the case:

	<p>Alina Shell . (alina@nvlitigation.com)</p> <p>Bailey Kennedy . (bkfederaldownloads@baileykennedy.com)</p> <p>Brandon P. Kemble . (Brandon.Kemble@cityofhenderson.com)</p> <p>Cheryl Boyd . (Cheryl.Boyd@cityofhenderson.com)</p> <p>Dennis L. Kennedy . (dkennedy@baileykennedy.com)</p> <p>E-File . (efile@nvlitigation.com)</p> <p>Margaret McLetchie . (maggie@nvlitigation.com)</p> <p>Susan Russo . (srusso@baileykennedy.com)</p> <p>Brian Reeve (Brian.Reeve@cityofhenderson.com)</p>
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EXHIBIT D

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3 Nevada Bar No. 7497

4 BRIAN R. REEVE, City Attorney
5 Nevada Bar No. 10197

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10 Facsimile: 702.267.1201

11 Josh.Reid@cityofhenderson.com

12 Brian.Reeve@cityofhenderson.com

13 DENNIS L. KENNEDY

14 Nevada Bar No. 1462

15 SARAH E. HARMON

16 Nevada Bar No. 8106

17 **BAILEY ♦ KENNEDY**

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22 DKennedy@BaileyKennedy.com

23 SHarmon@BaileyKennedy.com

24 *Attorneys for Respondent*

25 CITY OF HENDERSON

26 **DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W

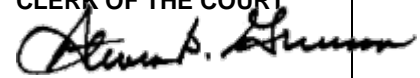
Dept. No. XVIII

**RESPONDENT CITY OF
HENDERSON'S NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that, as permitted by Nevada Rule of Appellate Procedure 3(a)(1), Respondent City of Henderson ("Henderson") appeals to the Supreme Court of Nevada from the District Court's Order granting in part and denying in part the Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review Journal") filed February 15, 2018.

///

///



1 Notice of Entry of the District Court's Order was filed on February 15, 2018, and is attached hereto
2 as Exhibit A.

3
4 DATED this 16th day of March, 2018.

5 BAILEY❖KENNEDY

6
7 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

8
9 and

10 JOSH M. REID, City Attorney
Nevada Bar No. 7497

11 BRIAN R. REEVE, City Attorney
Nevada Bar No. 10197

12 CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, NV 89015

13
14 *Attorneys for Respondent*
CITY OF HENDERSON
15
16
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28

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of March, 2018, service of the foregoing **NOTICE OF APPEAL** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE	Email: Alina@nvlitigation.com
ALINA M. SHELL	Maggie@nvlitigation.com
MCLETCHE SHELL LLC	
701 East Bridger Avenue, Suite 520	<i>Attorneys for Petitioner</i>
Las Vegas, Nevada 89101	LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

EXHIBIT A

EXHIBIT A

NEOJ
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DKennedy@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order regarding Attorneys' Fees and Costs of Petitioner
Las Vegas Review Journal was entered on February 15, 2018.

///
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///
///
///

1 A true and correct copy is attached.

2 DATED this 15th day of February, 2018.

3 BAILEY❖KENNEDY

4
5 By: /s/ Dennis L. Kennedy
6 DENNIS L. KENNEDY

7 and

8 JOSH M. REID, City Attorney
9 Nevada Bar No. 7497
10 **CITY OF HENDERSON**
11 240 Water Street, MSC 144
12 Henderson, NV 89015

13 *Attorneys for Respondent*
14 **CITY OF HENDERSON**
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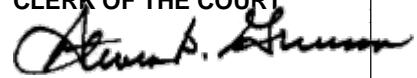
CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15th day of February, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE
ALINA M. SHELL
MCLETCHE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com
Maggie@nvlitigation.com
Attorneys for Petitioner
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY



ORDR

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Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,
Petitioner,

vs.

CITY OF HENDERSON,
Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1 1. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in
3 attorney's fees, and \$902.84 in costs.

4 2. In its Motion and supporting exhibits the Review-Journal requested compensation at
5 the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
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11
12 3. Henderson filed an Opposition to the Review-Journal's Motion on July 10, 2017,
13 and the Review-Journal filed a Reply on July 27, 2017.

14 4. In its Opposition, Henderson asserted the Review-Journal was not the prevailing
15 party in this matter, and even if it was, requested this Court reduce any award of fees and costs to
16 compensate the Review-Journal for only the work its attorneys performed on the original NPRS
17 petition. Henderson also disputed various line items contained in the Review-Journal's attorneys'
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20 5. Henderson also asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of
21 the NPRA which provides immunity from damages for public officials who act in good faith in
22 disclosing or refusing to disclose information—the Review-Journal had to establish Henderson
23 acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

24 6. This Court conducted a hearing on the Review-Journal's Motion for Attorney's Fees
25 and Costs on August 3, 2017. After hearing argument from counsel, the Court took the matter under
26 consideration, and conducted an additional hearing on August 10, 2017.

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28 ///

ORDER

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

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

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10. A party "prevails" for the purposes of Nev. Rev. Stat. § 239.011(2) if "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

12. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

1 Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

2 Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of
3 attorneys' services:

4 (1) the qualities of the advocate: his ability, his training, education, experience,
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litigation; (3) the work actually performed by the lawyer: the skill, time and attention
given to the work; (4) the result: whether the attorney was successful and what
benefits were derived.

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

10 14. Although the Review-Journal did not prevail on the claims for relief set forth in its
11 Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it
12 was able to obtain copies of the records it requested after initiating this action.

13 15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as
14 to its request for the records and therefore is entitled to attorney's fees and costs.

15 16. Having reviewed the papers and pleadings filed herein, including the documentation
16 provided by the Review-Journal regarding the work performed by its counsel and support staff, and
17 having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of
18 attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for
19 Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

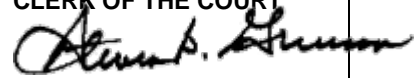
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson



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Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

CASE APPEAL STATEMENT

Pursuant to Nevada Rule of Appellate Procedure 3(f)(1), Respondent City of Henderson (“Henderson”) files its Case Appeal Statement.

1. Name of Appellant Filing This Case Appeal Statement:

Respondent City of Henderson.

2. Identify the Judge Issuing the Decision, Judgment, or Order Appealed From:

The Honorable Mark B. Bailus, District Court Judge.

3. Identify Each Appellant and the Name and Address of Counsel for Each Appellant:

Appellant: City of Henderson

Counsel for Appellant: DENNIS L. KENNEDY
Nevada Bar No. 1462
SARAH E. HARMON
Nevada Bar No. 8106
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302

JOSH M. REID, City Attorney
Nevada Bar No. 7497
BRIAN R. REEVE, City Attorney
Nevada Bar No. 10197
CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, Nevada 89015

4. Identify Each Respondent and the Name and Address of Appellate Counsel, if Known, for Each Respondent (if the Name of a Respondent's Appellate Counsel Is Unknown, Indicate as Much and Provide the Name and Address of That Respondent's Trial Counsel):

Respondent: Las Vegas Review-Journal

Counsel for Respondent: MARGARET A. MCLETHIE
Nevada Bar No. 10931
ALINA M. SHELL
Nevada Bar No. 11711
MCLETHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

5. Indicate Whether Any Attorney Identified Above in Response to Question 3 or 4 Is Not Licensed to Practice Law in Nevada, and, if so, Whether the District Court Granted That Attorney Permission to Appear Under SCR 42 (Attach a Copy of Any District Court Order Granting Such Permission):

Not Applicable.

6. Indicate Whether Appellant Was Represented by Appointed or Retained Counsel in the District Court:

Retained counsel.

7. Indicate Whether Appellant Is Represented by Appointed or Retained Counsel on Appeal:

Retained counsel.

8. Indicate Whether Appellant Was Granted Leave to Proceed in *Forma Pauperis*, and the Date of Entry of the District Court Order Granting Such Leave:

Not Applicable.

9. Indicate the Date the Proceedings Commenced in the District Court (e.g., Date Complaint, Indictment, Information, or Petition Was Filed):

The Complaint was filed on November 29, 2016.

10. Provide a Brief Description of the Nature of the Action and Result in the District Court, Including the Type of Judgment or Order Being Appealed and the Relief Granted by the District Court:

The underlying action involved the Nevada Public Records Act. That action was dismissed by order dated May 15, 2017, and is the subject of a separate appeal (No. 73287).

On August 10, 2017, the District Court held a hearing on the Motion for Attorney's Fees and Costs filed by the Las Vegas Review Journal (the "Review Journal").

On February 15, 2018, the District Court entered its Order Granting in Part and Denying in Part Motion for Attorney's Fees and Costs of the Review-Journal. Henderson appeals from that Order.

11. Indicate Whether the Case Has Previously Been the Subject of an Appeal to or Original Writ Proceeding in the Supreme Court, and, if so, the Caption and Supreme Court Docket Number of the Prior Proceeding:

Yes. *The Las Vegas Review Journal v. City of Henderson*, Case No. 73287 – the appeal of the dismissal of the underlying matter.

12. Indicate Whether This Appeal Involves Child Custody or Visitation:

Not Applicable.

///

///

13. If This Is a Civil Case, Indicate Whether This Appeal Involves the Possibility of Settlement:

Yes.

DATED this 16th day of March, 2018.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

and

JOSH M. REID, City Attorney

Nevada Bar No. 7497

BRIAN R. REEVE, City Attorney

Nevada Bar No. 10197

CITY OF HENDERSON

240 Water Street, MSC 144

Henderson, NV 89015

Attorneys for Respondent

CITY OF HENDERSON

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of March, 2018, service of the foregoing **CASE APPEAL STATEMENT** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE
ALINA M. SHELL
MCLETCHE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com
Maggie@nvlitigation.com
Attorneys for Petitioner
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

§
§
§
§
§
§

Location: **Department 18**
Judicial Officer: **Bailus, Mark B**
Filed on: **11/29/2016**
Case Number History:
Cross-Reference Case **A747289**
Number:
Supreme Court No.: **73287**

CASE INFORMATION

Case Type: **Writ of Mandamus**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-16-747289-W
Court	Department 18
Date Assigned	06/05/2017
Judicial Officer	Bailus, Mark B

PARTY INFORMATION

Plaintiff **Las Vegas Review-Journal**

Lead Attorneys
McLetchie, Margaret A.
Retained
702-728-5300(W)






Defendant **Henderson City of**

Reeve, Brian R.
Retained
702-784-5219(W)














DATE

EVENTS & ORDERS OF THE COURT











INDEX

11/29/2016	 Petition for Writ of Mandamus Filed by: Plaintiff Las Vegas Review-Journal <i>Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus</i>	
11/29/2016	 Initial Appearance Fee Disclosure Filed By: Plaintiff Las Vegas Review-Journal <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>	
12/19/2016	 Affidavit of Service Filed By: Plaintiff Las Vegas Review-Journal <i>Affidavit of Service</i>	
01/02/2017	Case Reassigned to Department 18 <i>Case reassigned from Judge Kenneth Cory Dept 01</i>	
01/26/2017	 Stipulation and Order Filed by: Defendant Henderson City of <i>Stipulation and Order to Allow Las Vegas Review Journal to File an Amended Petition</i>	
01/30/2017	 Notice of Entry Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>	










DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

01/30/2017	 Stipulation and Order Filed by: Defendant Henderson City of <i>Stipulation and Order to Allow Las Vegas Review Journal to File an Amended Petition</i>
02/08/2017	 Amended Petition Filed By: Plaintiff Las Vegas Review-Journal <i>Amended Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus / Application for Declaratory and Injunctive Relief - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
02/08/2017	 Memorandum Filed By: Plaintiff Las Vegas Review-Journal <i>Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
03/08/2017	 Notice of Association of Counsel Filed By: Defendant Henderson City of <i>Notice of Association of Counsel</i>
03/08/2017	 Response Filed by: Defendant Henderson City of <i>City of Henderson's Response to Las Vegas Review-Journal's Amended Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
03/23/2017	 Reply Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to Respondent City of Henderson's Response to Amended Public Records Act Application Pursuant To NRS 239.001/ Petition For Writ Of Mandamus/ Application For Declaratory And Injunctive Relief</i>
03/27/2017	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order for Extension to Allow Las Vegas Review-Journal to File its Reply to Respondent City of Henderson's Response to Amended Petition</i>
03/28/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/30/2017	 Petition for Writ of Mandamus (9:00 AM) (Judicial Officer: Thompson, Charles)
04/05/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings Re: Petition for Writ of Mandamus 03/30/2017</i>
05/12/2017	 Order Denying Motion Filed By: Defendant Henderson City of <i>Order</i>
05/15/2017	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
06/01/2017	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal

DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

	<i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
06/05/2017	Administrative Reassignment - Judicial Officer Change <i>From Judge David Barker to Judge Mark B. Bailus</i>
06/09/2017	 Notice of Appeal Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Appeal</i>
06/09/2017	 Case Appeal Statement Filed By: Plaintiff Las Vegas Review-Journal <i>Case Appeal Statement</i>
06/22/2017	 Stipulation and Order <i>Stipulation and Order to Modify Briefing Schedule and Move the Hearing on Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
07/10/2017	 Response Filed by: Defendant Henderson City of <i>City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
07/27/2017	 Reply to Opposition Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/03/2017	 Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Bailus, Mark B) <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/10/2017	 Decision (9:00 AM) (Judicial Officer: Bailus, Mark B) <i>Decision - Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/24/2017	 Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Extension of Time to Allow Las Vegas Review-Journal to Submit a Proposed Order Granting Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/25/2017	 Notice Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Submission of Proposed Order</i>
09/07/2017	 Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Extension of Time to Allow Las Vegas Review-Journal to Submit a Proposed Order Granting Las Vegas Review-Journal's Motion for Attorney's Fees and Costs (Second Request)</i>
11/08/2017	 Motion for Clarification Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Clarification</i>
11/29/2017	 Opposition to Motion Filed By: Defendant Henderson City of <i>City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Clarification</i>

DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

11/29/2017	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
12/05/2017	 Reply to Opposition Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to City of Henderson's Opposition to Motion for Clarification</i>
12/13/2017	 Motion for Clarification (9:00 AM) (Judicial Officer: Bailus, Mark B) <i>Plaintiff's Motion for Clarification</i>
01/03/2018	 Order Denying Motion Filed By: Defendant Henderson City of <i>Order</i>
01/04/2018	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
02/15/2018	Order (Judicial Officer: Bailus, Mark B) Debtors: Henderson City of (Defendant) Creditors: Las Vegas Review-Journal (Plaintiff) Judgment: 02/15/2018, Docketed: 02/15/2018 Total Judgment: 9,912.84
02/15/2018	 Order Filed By: Defendant Henderson City of <i>Order</i>
02/15/2018	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
03/16/2018	 Notice of Appeal Filed By: Defendant Henderson City of <i>Respondent City of Henderson's Notice of Appeal</i>
03/16/2018	 Case Appeal Statement Filed By: Defendant Henderson City of <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION																				
	<table> <tr> <td>Defendant Henderson City of</td><td></td></tr> <tr> <td>Total Charges</td><td>24.00</td></tr> <tr> <td>Total Payments and Credits</td><td>24.00</td></tr> <tr> <td>Balance Due as of 3/19/2018</td><td>0.00</td></tr> <tr> <td> Plaintiff Las Vegas Review-Journal</td><td></td></tr> <tr> <td>Total Charges</td><td>305.50</td></tr> <tr> <td>Total Payments and Credits</td><td>305.50</td></tr> <tr> <td>Balance Due as of 3/19/2018</td><td>0.00</td></tr> <tr> <td> Plaintiff Las Vegas Review-Journal</td><td></td></tr> <tr> <td>Appeal Bond Balance as of 3/19/2018</td><td>500.00</td></tr> </table>	Defendant Henderson City of		Total Charges	24.00	Total Payments and Credits	24.00	Balance Due as of 3/19/2018	0.00	 Plaintiff Las Vegas Review-Journal		Total Charges	305.50	Total Payments and Credits	305.50	Balance Due as of 3/19/2018	0.00	 Plaintiff Las Vegas Review-Journal		Appeal Bond Balance as of 3/19/2018	500.00
Defendant Henderson City of																					
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Appeal Bond Balance as of 3/19/2018	500.00																				

DEPARTMENT 18
CASE SUMMARY
CASE No. A-16-747289-W

DISTRICT COURT CIVIL COVER SHEET A-16-747289-W

County, Nevada

I

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
The Las Vegas Review-Journal	City of Henderson
c/o McLetchie Shell LLC	
701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101	
(702) 728-5300	
Attorney (name/address/phone):	Attorney (name/address/phone):
Margaret A. McLetchie and Alina M. Shell	City of Henderson, City Attorney's Office
McLetchie Shell LLC	240 Water Street; P.O. Box 95050; MSC 144
701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101	Henderson, NV 89009-5050
(702) 728-5300	(702) 267-1200

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

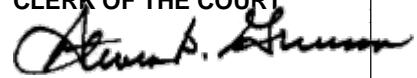
Business Court filings should be filed using the Business Court civil coversheet.

11/29/2016

Date

Signature of initiating party or representative

See other side for family-related case filings.



ORDR

JOSH M. REID, City Attorney
Nevada Bar No. 7497

CITY OF HENDERSON

240 Water Street, MSC 144
Henderson, Nevada 89015
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Josh.Reid@cityofhenderson.com

DENNIS L. KENNEDY
Nevada Bar No. 1462

BAILEY ♦ KENNEDY

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Las Vegas, Nevada 89148-1302
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DKennedy@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1 1. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in
3 attorney's fees, and \$902.84 in costs.

4 2. In its Motion and supporting exhibits the Review-Journal requested compensation at
5 the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	38.20	\$450.00	\$16,434.00
Alina M. Shell	37.60	\$300.00	\$11,280.00
Gabriel Czop	15.70	\$125.00	\$1,962.50
Pharan Burchfield	5.80	\$100.00	\$580.00

11
12 3. Henderson filed an Opposition to the Review-Journal's Motion on July 10, 2017,
13 and the Review-Journal filed a Reply on July 27, 2017.

14 4. In its Opposition, Henderson asserted the Review-Journal was not the prevailing
15 party in this matter, and even if it was, requested this Court reduce any award of fees and costs to
16 compensate the Review-Journal for only the work its attorneys performed on the original NPRS
17 petition. Henderson also disputed various line items contained in the Review-Journal's attorneys'
18 bills. Henderson did not, however, dispute the billing rates for the Review-Journal's attorneys or
19 their support staff.

20 5. Henderson also asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of
21 the NPRA which provides immunity from damages for public officials who act in good faith in
22 disclosing or refusing to disclose information—the Review-Journal had to establish Henderson
23 acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

24 6. This Court conducted a hearing on the Review-Journal's Motion for Attorney's Fees
25 and Costs on August 3, 2017. After hearing argument from counsel, the Court took the matter under
26 consideration, and conducted an additional hearing on August 10, 2017.

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ORDER

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

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

9. The Nevada Supreme Court has explained that "...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

10. A party "prevails" for the purposes of Nev. Rev. Stat. § 239.011(2) if "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

12. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of attorneys' services:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

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

14. Although the Review-Journal did not prevail on the claims for relief set forth in its Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it was able to obtain copies of the records it requested after initiating this action.

15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as to its request for the records and therefore is entitled to attorney's fees and costs.

16. Having reviewed the papers and pleadings filed herein, including the documentation provided by the Review-Journal regarding the work performed by its counsel and support staff, and having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

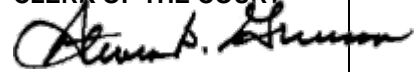
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson



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JOSH M. REID, City Attorney
Nevada Bar No. 7497
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DKennedy@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order regarding Attorneys' Fees and Costs of Petitioner
Las Vegas Review Journal was entered on February 15, 2018.

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1 A true and correct copy is attached.

2 DATED this 15th day of February, 2018.

3 BAILEY❖KENNEDY

4
5 By: /s/ Dennis L. Kennedy
6 DENNIS L. KENNEDY

7 and

8 JOSH M. REID, City Attorney
9 Nevada Bar No. 7497
10 **CITY OF HENDERSON**
11 240 Water Street, MSC 144
12 Henderson, NV 89015

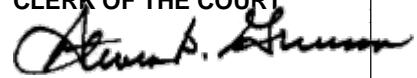
13 *Attorneys for Respondent*
14 **CITY OF HENDERSON**
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15th day of February, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE	Email: Alina@nvlitigation.com
ALINA M. SHELL	Maggie@nvlitigation.com
MCLETCHE SHELL LLC	
701 East Bridger Avenue, Suite 520	<i>Attorneys for Petitioner</i>
Las Vegas, Nevada 89101	LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY



ORDR

JOSH M. REID, City Attorney
Nevada Bar No. 7497

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DKennedy@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1 1. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in
3 attorney's fees, and \$902.84 in costs.

4 2. In its Motion and supporting exhibits the Review-Journal requested compensation at
5 the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
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Pharan Burchfield	5.80	\$100.00	\$580.00

11
12 3. Henderson filed an Opposition to the Review-Journal's Motion on July 10, 2017,
13 and the Review-Journal filed a Reply on July 27, 2017.

14 4. In its Opposition, Henderson asserted the Review-Journal was not the prevailing
15 party in this matter, and even if it was, requested this Court reduce any award of fees and costs to
16 compensate the Review-Journal for only the work its attorneys performed on the original NPRS
17 petition. Henderson also disputed various line items contained in the Review-Journal's attorneys'
18 bills. Henderson did not, however, dispute the billing rates for the Review-Journal's attorneys or
19 their support staff.

20 5. Henderson also asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of
21 the NPRA which provides immunity from damages for public officials who act in good faith in
22 disclosing or refusing to disclose information—the Review-Journal had to establish Henderson
23 acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

24 6. This Court conducted a hearing on the Review-Journal's Motion for Attorney's Fees
25 and Costs on August 3, 2017. After hearing argument from counsel, the Court took the matter under
26 consideration, and conducted an additional hearing on August 10, 2017.

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ORDER

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

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

9. The Nevada Supreme Court has explained that "...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

10. A party "prevails" for the purposes of Nev. Rev. Stat. § 239.011(2) if "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

12. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

1 Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

2 Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of
3 attorneys' services:

4 (1) the qualities of the advocate: his ability, his training, education, experience,
5 professional standing and skill; (2) the character of the work to be done: its difficulty,
6 its intricacy, its importance, time and skill required, the responsibility imposed and the
7 prominence and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill, time and attention
given to the work; (4) the result: whether the attorney was successful and what
benefits were derived.

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

10 14. Although the Review-Journal did not prevail on the claims for relief set forth in its
11 Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it
12 was able to obtain copies of the records it requested after initiating this action.

13 15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as
14 to its request for the records and therefore is entitled to attorney's fees and costs.

15 16. Having reviewed the papers and pleadings filed herein, including the documentation
16 provided by the Review-Journal regarding the work performed by its counsel and support staff, and
17 having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of
18 attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for
19 Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****March 30, 2017**

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

March 30, 2017	9:00 AM	Petition for Writ of Mandamus	Las Vegas Review-Journal's Petition for Writ of Mandamus
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HEARD BY: Thompson, Charles**COURTROOM:** Phoenix Building Courtroom - 11th Floor**COURT CLERK:** Alan Castle**RECORDER:** Jennifer Gerold**REPORTER:****PARTIES**

PRESENT:	Henderson City of	Defendant
	Kennedy, Dennis L.	Attorney
	Las Vegas Review-Journal	Plaintiff
	McLetchie, Margaret A.	Attorney
	Reeve, Brian R.	Attorney
	Reid, Josh M.	Attorney
	Shell, Alina	Attorney

JOURNAL ENTRIES

- Arguments by counsel. COURT ORDERED, USB (Universal Serial Bus) flash drive containing approximately 69,000 pages shall be turned over as agreed within five (5) days of this date. Court Finds an adequate description is contained in the privilege log prepared (Defendant's Exhibit - H) to satisfy the requirement. COURT ORDERED, request to have Henderson rescind its document policy is DENIED at this time. Mr. Kennedy to prepare the order within 10 days and distribute a filed copy to all parties involved in this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

August 03, 2017

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

August 03, 2017	9:00 AM	Motion for Attorney Fees and Costs	Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs
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HEARD BY: Bailus, Mark B **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Alan Castle

RECORDER:

REPORTER: Andrea Martin

PARTIES

PRESENT:	Henderson City of	Defendant
	Kemble, Brandon P.	Attorney
	Kennedy, Dennis L.	Attorney
	Las Vegas Review-Journal	Plaintiff
	Reeve, Brian R.	Attorney
	Reid, Josh M.	Attorney
	Shell, Alina	Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court continued matter for further consideration and decision.

08/10/17 9:00 a.m. Decision

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****August 10, 2017**

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

August 10, 2017	9:00 AM	Decision	Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs
------------------------	----------------	-----------------	---

HEARD BY: Bailus, Mark B**COURTROOM:** Phoenix Building Courtroom -
11th Floor**COURT CLERK:** Alan Castle**RECORDER:** Robin Page**REPORTER:** Andrea Martin**PARTIES**

PRESENT:	Reeve, Brian R.	Attorney
	Shell, Alina	Attorney

JOURNAL ENTRIES

- Court stated its Findings regarding Plaintiff prevailing as to obtaining records. COURT ORDERED, Plaintiff's Motion for Attorney Fees and Costs is GRANTED. Court Finds in review of brief and considering the Brunzell factors, \$9,010.00 reasonable Attorney's fees GRANTED. FURTHER, COURT ORDERS, \$902.84 Costs GRANTED. Ms. Shell to prepare the order within 10 days and distribute a filed copy to all parties involved in this matter. The order must include last known addresses and all future scheduled court dates. Both the Plaintiff and Defendant are required to be present at the next court date.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

December 13, 2017

A-16-747289-W	Las Vegas Review-Journal, Plaintiff(s) vs. Henderson City of, Defendant(s)
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December 13, 2017	9:00 AM	Motion for Clarification	Plaintiff's Motion for Clarification
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HEARD BY: Bailus, Mark B	COURTROOM: Phoenix Building Courtroom - 11th Floor
---------------------------------	---

COURT CLERK: Alan Castle

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Henderson City of Kennedy, Dennis L. Las Vegas Review-Journal Reeve, Brian R. Shell, Alina	Defendant Attorney Plaintiff Attorney Attorney
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JOURNAL ENTRIES

- Following arguments of counsel. COURT FINDS the record is sufficiently clear as to Court's findings and the factors used in making the determination with respect to fees. COURT ORDERS, Plaintiff's Motion for Clarification is DENIED. Mr. Kennedy to prepare the order within 10 days and have opposing counsel review as to form and content and distribute a filed copy to all parties involved in this matter.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

RESPONDENT CITY OF HENDERSON'S NOTICE OF APPEAL; CASE
APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER;
NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

LAS VEGAS REVIEW-JOURNAL,

Plaintiff(s),

vs.

CITY OF HENDERSON,

Defendant(s),

Case No: A-16-747289-W

Dept No: XVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 19 day of March 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

Reception

From: efiling@nvcourts.nv.gov
Sent: Thursday, March 22, 2018 9:56 AM
To: BKfederaldownloads
Subject: Notification of Electronic Filing in CITY OF HENDERSON VS. LAS VEGAS REVIEW-JOURNAL, No. 75407

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Mar 22 2018 09:55 a.m.

Case Title: CITY OF HENDERSON VS. LAS VEGAS REVIEW-JOURNAL

Docket Number: 75407

Case Category: Civil Appeal

Document Category: Notice of Appeal

Submitted by: Clark Co. Clerk

Official File Stamp: Mar 22 2018 09:54 a.m.

Filing Status: **Accepted and Filed**

Docket Text: Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel for appellant.)

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

Clerk's Office has electronically mailed notice to:

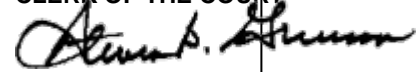
Alina Shell
Josh Reid

Dennis Kennedy
Margaret McLetchie
Brian Reeve
Sarah Harmon

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.

EXHIBIT E



1 **NOAS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE SHELL LLC**

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702)-728-5300

8 Email: alina@nvlitigation.com

9 *Counsel for Petitioner/Cross-Appellant Las Vegas Review-Journal*

Electronically Filed
Apr 03 2018 10:13 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

13 Petitioner,

Dept. No.: XVIII

14 vs.

15 **NOTICE OF CROSS-APPEAL**

16 CITY OF HENDERSON,

17 Respondent.

18 NOTICE is hereby given that Petitioner, the Las Vegas Review-Journal ("Review-
19 Journal"), pursuant to Nevada Rule of Appellate Procedure 4(a)(2), hereby timely cross-
20 appeals to the Supreme Court of Nevada from the District Court's February 15, 2018 Order
21 granting in part and denying in part the Motion for Attorney's Fees and Costs of Petitioner
22 Las Vegas Review Journal, which Respondent City of Henderson appealed on March 16,
23 2018.

24 DATED this 26th day of March, 2018.

25 /s/ Margaret A. McLetchie

26 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

27 ALINA M. SHELL, Nevada Bar No. 11711

28 **MCLEATCHIE SHELL LLC**

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Counsel for Petitioner/Cross-Appellant

Las Vegas Review-Journal

CERTIFICATE OF SERVICE

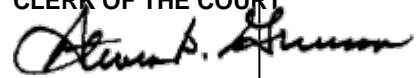
Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 26th day of March, 2018, I did cause a true copy of the foregoing NOTICE OF CROSS-APPEAL in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 26th day of March, 2018, I mailed a true and correct copy of the foregoing NOTICE OF CROSS-APPEAL by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, Brandon P. Kemble, and Brian R. Reeve
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Sarah P. Harmon, and Kelly B. Stout
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC



1 **ASTA**
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLEATCHIE SHELL LLC**
5 701 East Bridger Avenue, Suite 520
6 Las Vegas, NV 89101
7 Telephone: (702)-728-5300
8 Email: alina@nvlitigation.com
9 *Counsel for Petitioner/Cross-Appellant Las Vegas Review-Journal*

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,
10
11

12 Petitioner,
13

14 vs.
15

16 CITY OF HENDERSON,
17
18

19 Respondent.
20
21

Case No.: A-16-747289-W

Dept. No.: XVIII

CASE APPEAL STATEMENT

22 1. *Name of cross-appellant filing this case appeal statement:*

23 Petitioner Las Vegas Review-Journal.

24 2. *Identify the judge issuing the decision, judgment, or order appealed from:*

25 The Honorable Mark B. Bailus, District Court Judge.

26 3. *Identify each cross-appellant and the name and address of counsel for each*
27 *appellant:*

28 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

Counsel for Petitioner/Cross-Appellant Las Vegas Review-Journal

///
///
///

4. *Identify each cross-respondent and the name and address of appellate counsel, if known, for each cross-respondent:*

Josh M. Reid, Nevada Bar No. 7497
Brandon P. Kemble, Nevada Bar No. 11175
Brian R. Reeve, Nevada Bar No. 10197
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Nevada Bar No. 1462
Sarah P. Harmon, Nevada Bar No. 8106
Kelly B. Stout, Nevada Bar No. 12105
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Appellant/Cross-Respondent City of Henderson

5. *Indicate whether any attorney identified above in 3 or 4 is not licensed to practice law in Nevada and, if so, whether the District Court granted that attorney permission to appear under SCR 42 (and attach a copy of any District Court order granting such permission):*

Not applicable. All attorneys are licensed in Nevada.

6. *Indicate whether appellant was represented by appointed or retained counsel in the District Court:*

Appellant is represented by retained counsel.

7. *Indicate whether appellant is represented by appointed or retained counsel on appeal:*

Retained counsel.

8. *Indicate whether Appellant was granted leave to proceed in forma pauperis, and the date of entry of the District Court order granting such leave:*

No.

///

///

9. *Indicate the date the proceedings commenced in the District Court, e.g., the date the complaint, indictment, information, or petition was filed:*

The Petition for Writ of Mandamus in this action was filed on November 29, 2016.

10. *Provide a brief description of the nature of the action and result in the District Court, including the type of judgment or order being appealed and the relief granted by the District Court:*

The underlying action involved the Nevada Public Records Act. That action was dismissed by an order dated May 15, 2017 and is the subject of a separate appeal (Nevada Supreme Court Case No. 73287). On August 10, 2017, the District Court held a hearing on the Motion for Attorney's Fees and Costs filed by the Las Vegas Review Journal (the "Review Journal"). On February 15, 2018, the District Court entered its Order Granting in Part and Denying in Part Motion for Attorney's Fees and Costs of the Review-Journal. On March 16, 2018, City of Henderson appealed that Order. (Nevada Supreme Court Case No. 75407).

11. *Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:*

Undersigned counsel is aware of one related case pending before this Court, *City of Henderson v. The Las Vegas Review-Journal*, Nev. S. Ct. Case No. 73287.

12. *Indicate whether this appeal involves child custody or visitation:*

This appeal does not involve child custody or visitation.

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13. *If this is a civil case, indicate whether this appeal involves the possibility of settlement:*

The Review-Journal believes this appeal involves the possibility of settlement.
DATED this 26th day of March, 2018.

/s/ Margaret A. McLetchie
MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLEATCHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
*Counsel for Petitioner/Cross-Appellant,
Las Vegas Review-Journal*

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 26th day of March, 2018, I did cause a true copy of the foregoing CASE APPEAL STATEMENT in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 26th day of March, 2018, I mailed a true and correct copy of the foregoing CASE APPEAL STATEMENT by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, Brandon P. Kemble, and Brian R. Reeve
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Sarah P. Harmon, and Kelly B. Stout
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield
An Employee of MCLEATCHIE SHELL LLC

DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

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§
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§
§
§
§

Location: **Department 18**
Judicial Officer: **Bailus, Mark B**
Filed on: **11/29/2016**
Case Number History:
Cross-Reference Case Number: **A747289**
Supreme Court No.: **73287**
75407

CASE INFORMATION

Case Type: **Writ of Mandamus**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-16-747289-W
Court	Department 18
Date Assigned	06/05/2017
Judicial Officer	Bailus, Mark B

PARTY INFORMATION

Plaintiff **Las Vegas Review-Journal**

Lead Attorneys
McLetchie, Margaret A.
Retained
702-728-5300(W)

Defendant **Henderson City of**

Reeve, Brian R.
Retained
702-784-5219(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

11/29/2016



Petition for Writ of Mandamus
Filed by: Plaintiff Las Vegas Review-Journal
Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus

11/29/2016



Initial Appearance Fee Disclosure
Filed By: Plaintiff Las Vegas Review-Journal
Initial Appearance Fee Disclosure (NRS Chapter 19)

12/19/2016



Affidavit of Service
Filed By: Plaintiff Las Vegas Review-Journal
Affidavit of Service

01/02/2017

Case Reassigned to Department 18
Case reassigned from Judge Kenneth Cory Dept 01

01/26/2017
















Stipulation and Order
Filed by: Defendant Henderson City of
Stipulation and Order to Allow Las Vegas Review Journal to File an Amended Petition

01/30/2017



Notice of Entry
Filed By: Defendant Henderson City of
Notice of Entry of Order












DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

01/30/2017	 Stipulation and Order Filed by: Defendant Henderson City of <i>Stipulation and Order to Allow Las Vegas Review Journal to File an Amended Petition</i>
02/08/2017	 Amended Petition Filed By: Plaintiff Las Vegas Review-Journal <i>Amended Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus / Application for Declaratory and Injunctive Relief - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
02/08/2017	 Memorandum Filed By: Plaintiff Las Vegas Review-Journal <i>Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
03/08/2017	 Notice of Association of Counsel Filed By: Defendant Henderson City of <i>Notice of Association of Counsel</i>
03/08/2017	 Response Filed by: Defendant Henderson City of <i>City of Henderson's Response to Las Vegas Review-Journal's Amended Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief</i>
03/23/2017	 Reply Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to Respondent City of Henderson's Response to Amended Public Records Act Application Pursuant To NRS 239.001/ Petition For Writ Of Mandamus/ Application For Declaratory And Injunctive Relief</i>
03/27/2017	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order for Extension to Allow Las Vegas Review-Journal to File its Reply to Respondent City of Henderson's Response to Amended Petition</i>
03/28/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/30/2017	 Petition for Writ of Mandamus (9:00 AM) (Judicial Officer: Thompson, Charles)
04/05/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings Re: Petition for Writ of Mandamus 03/30/2017</i>
05/12/2017	 Order Denying Motion Filed By: Defendant Henderson City of <i>Order</i>
05/15/2017	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
06/01/2017	 Motion for Attorney Fees and Costs

DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

	Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
06/05/2017	Administrative Reassignment - Judicial Officer Change <i>From Judge David Barker to Judge Mark B. Bailus</i>
06/09/2017	 Notice of Appeal Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Appeal</i>
06/09/2017	 Case Appeal Statement Filed By: Plaintiff Las Vegas Review-Journal <i>Case Appeal Statement</i>
06/22/2017	 Stipulation and Order <i>Stipulation and Order to Modify Briefing Schedule and Move the Hearing on Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
07/10/2017	 Response Filed by: Defendant Henderson City of <i>City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
07/27/2017	 Reply to Opposition Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/03/2017	 Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Bailus, Mark B) <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/10/2017	 Decision (9:00 AM) (Judicial Officer: Bailus, Mark B) <i>Decision - Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/24/2017	 Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Extension of Time to Allows Las Vegas Review-Journal to Submit a Proposed Order Granting Las Vegas Review-Journal s Motion for Attorney s Fees and Costs</i>
08/25/2017	 Notice Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Submission of Proposed Order</i>
09/07/2017	 Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Extension of Time to Allow Las Vegas Review-Journal to Submit a Proposed Order Granting Las Vegas Review-Journal's Motion for Attorney's Fees and Costs (Second Request)</i>
11/08/2017	 Motion for Clarification Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Clarification</i>
11/29/2017	 Opposition to Motion Filed By: Defendant Henderson City of <i>City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Clarification</i>

DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

11/29/2017	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
12/05/2017	 Reply to Opposition Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to City of Henderson's Opposition to Motion for Clarification</i>
12/13/2017	 Motion for Clarification (9:00 AM) (Judicial Officer: Bailus, Mark B) <i>Plaintiff's Motion for Clarification</i>
01/03/2018	 Order Denying Motion Filed By: Defendant Henderson City of <i>Order</i>
01/04/2018	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
02/15/2018	Order (Judicial Officer: Bailus, Mark B) Debtors: Henderson City of (Defendant) Creditors: Las Vegas Review-Journal (Plaintiff) Judgment: 02/15/2018, Docketed: 02/15/2018 Total Judgment: 9,912.84
02/15/2018	 Order Filed By: Defendant Henderson City of <i>Order</i>
02/15/2018	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
03/16/2018	 Notice of Appeal Filed By: Defendant Henderson City of <i>Respondent City of Henderson's Notice of Appeal</i>
03/16/2018	 Case Appeal Statement Filed By: Defendant Henderson City of <i>Case Appeal Statement</i>
03/26/2018	 Notice of Appeal Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Cross-Appeal</i>
03/26/2018	 Case Appeal Statement Filed By: Plaintiff Las Vegas Review-Journal <i>Case Appeal Statement</i>

DATE

FINANCIAL INFORMATION

Defendant Henderson City of	
Total Charges	24.00
Total Payments and Credits	24.00
Balance Due as of 3/28/2018	0.00

DEPARTMENT 18
CASE SUMMARY
CASE NO. A-16-747289-W

Plaintiff Las Vegas Review-Journal

Total Charges

329.50

Total Payments and Credits

329.50

Balance Due as of 3/28/2018

0.00

Plaintiff Las Vegas Review-Journal

Appeal Bond Balance as of 3/28/2018

500.00

DISTRICT COURT CIVIL COVER SHEET A-16-747289-W

County, Nevada

I

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
The Las Vegas Review-Journal	City of Henderson
c/o McLetchie Shell LLC	
701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101	
(702) 728-5300	
Attorney (name/address/phone):	Attorney (name/address/phone):
Margaret A. McLetchie and Alina M. Shell	City of Henderson, City Attorney's Office
McLetchie Shell LLC	240 Water Street; P.O. Box 95050; MSC 144
701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101	Henderson, NV 89009-5050
(702) 728-5300	(702) 267-1200

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

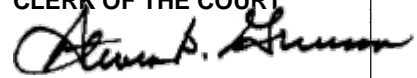
Business Court filings should be filed using the Business Court civil coversheet.

11/29/2016

Date

Signature of initiating party or representative

See other side for family-related case filings.



ORDR

JOSH M. REID, City Attorney
Nevada Bar No. 7497

CITY OF HENDERSON

240 Water Street, MSC 144
Henderson, Nevada 89015
Telephone: 702.267.1200
Facsimile: 702.267.1201
Josh.Reid@cityofhenderson.com

DENNIS L. KENNEDY
Nevada Bar No. 1462

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
DKennedy@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1 1. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in
3 attorney's fees, and \$902.84 in costs.

4 2. In its Motion and supporting exhibits the Review-Journal requested compensation at
5 the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	38.20	\$450.00	\$16,434.00
Alina M. Shell	37.60	\$300.00	\$11,280.00
Gabriel Czop	15.70	\$125.00	\$1,962.50
Pharan Burchfield	5.80	\$100.00	\$580.00

11
12 3. Henderson filed an Opposition to the Review-Journal's Motion on July 10, 2017,
13 and the Review-Journal filed a Reply on July 27, 2017.

14 4. In its Opposition, Henderson asserted the Review-Journal was not the prevailing
15 party in this matter, and even if it was, requested this Court reduce any award of fees and costs to
16 compensate the Review-Journal for only the work its attorneys performed on the original NPRS
17 petition. Henderson also disputed various line items contained in the Review-Journal's attorneys'
18 bills. Henderson did not, however, dispute the billing rates for the Review-Journal's attorneys or
19 their support staff.

20 5. Henderson also asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of
21 the NPRA which provides immunity from damages for public officials who act in good faith in
22 disclosing or refusing to disclose information—the Review-Journal had to establish Henderson
23 acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

24 6. This Court conducted a hearing on the Review-Journal's Motion for Attorney's Fees
25 and Costs on August 3, 2017. After hearing argument from counsel, the Court took the matter under
26 consideration, and conducted an additional hearing on August 10, 2017.

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ORDER

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

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

9. The Nevada Supreme Court has explained that "...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

10. A party "prevails" for the purposes of Nev. Rev. Stat. § 239.011(2) if "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

12. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

1 Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

2 Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of
3 attorneys' services:

4 (1) the qualities of the advocate: his ability, his training, education, experience,
5 professional standing and skill; (2) the character of the work to be done: its difficulty,
6 its intricacy, its importance, time and skill required, the responsibility imposed and the
7 prominence and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill, time and attention
given to the work; (4) the result: whether the attorney was successful and what
benefits were derived.

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

10 14. Although the Review-Journal did not prevail on the claims for relief set forth in its
11 Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it
12 was able to obtain copies of the records it requested after initiating this action.

13 15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as
14 to its request for the records and therefore is entitled to attorney's fees and costs.

15 16. Having reviewed the papers and pleadings filed herein, including the documentation
16 provided by the Review-Journal regarding the work performed by its counsel and support staff, and
17 having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of
18 attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for
19 Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

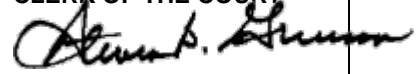
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson



NEOJ
JOSH M. REID, City Attorney
Nevada Bar No. 7497
CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, Nevada 89015
Telephone: 702.267.1200
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Josh.Reid@cityofhenderson.com

DENNIS L. KENNEDY
Nevada Bar No. 1462
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
DKennedy@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order regarding Attorneys' Fees and Costs of Petitioner
Las Vegas Review Journal was entered on February 15, 2018.

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A true and correct copy is attached.

DATED this 15th day of February, 2018.

BAILEY❖KENNEDY

By: /s/ Dennis L. Kennedy
DENNIS L. KENNEDY

and

JOSH M. REID, City Attorney
Nevada Bar No. 7497
CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, NV 89015

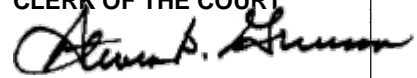
Attorneys for Respondent
CITY OF HENDERSON

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15th day of February, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE	Email: Alina@nvlitigation.com
ALINA M. SHELL	Maggie@nvlitigation.com
MCLETCHE SHELL LLC	
701 East Bridger Avenue, Suite 520	<i>Attorneys for Petitioner</i>
Las Vegas, Nevada 89101	LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY



ORDR

JOSH M. REID, City Attorney
Nevada Bar No. 7497
CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, Nevada 89015
Telephone: 702.267.1200
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Josh.Reid@cityofhenderson.com

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DKennedy@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

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The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

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3 attorney's fees, and \$902.84 in costs.

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ORDER

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

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

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11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

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13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of attorneys' services:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

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

14. Although the Review-Journal did not prevail on the claims for relief set forth in its Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it was able to obtain copies of the records it requested after initiating this action.

15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as to its request for the records and therefore is entitled to attorney's fees and costs.

16. Having reviewed the papers and pleadings filed herein, including the documentation provided by the Review-Journal regarding the work performed by its counsel and support staff, and having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****March 30, 2017**

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

March 30, 2017	9:00 AM	Petition for Writ of Mandamus	Las Vegas Review-Journal's Petition for Writ of Mandamus
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HEARD BY: Thompson, Charles**COURTROOM:** Phoenix Building Courtroom - 11th Floor**COURT CLERK:** Alan Castle**RECORDER:** Jennifer Gerold**REPORTER:****PARTIES**

PRESENT:	Henderson City of	Defendant
	Kennedy, Dennis L.	Attorney
	Las Vegas Review-Journal	Plaintiff
	McLetchie, Margaret A.	Attorney
	Reeve, Brian R.	Attorney
	Reid, Josh M.	Attorney
	Shell, Alina	Attorney

JOURNAL ENTRIES

- Arguments by counsel. COURT ORDERED, USB (Universal Serial Bus) flash drive containing approximately 69,000 pages shall be turned over as agreed within five (5) days of this date. Court Finds an adequate description is contained in the privilege log prepared (Defendant's Exhibit - H) to satisfy the requirement. COURT ORDERED, request to have Henderson rescind its document policy is DENIED at this time. Mr. Kennedy to prepare the order within 10 days and distribute a filed copy to all parties involved in this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

August 03, 2017

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

August 03, 2017	9:00 AM	Motion for Attorney Fees and Costs	Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs
------------------------	----------------	---	---

HEARD BY: Bailus, Mark B

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Alan Castle

RECORDER:

REPORTER: Andrea Martin

PARTIES

PRESENT:	Henderson City of	Defendant
	Kemble, Brandon P.	Attorney
	Kennedy, Dennis L.	Attorney
	Las Vegas Review-Journal	Plaintiff
	Reeve, Brian R.	Attorney
	Reid, Josh M.	Attorney
	Shell, Alina	Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court continued matter for further consideration and decision.

08/10/17 9:00 a.m. Decision

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****August 10, 2017**

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

August 10, 2017	9:00 AM	Decision	Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs
------------------------	----------------	-----------------	---

HEARD BY: Bailus, Mark B**COURTROOM:** Phoenix Building Courtroom -
11th Floor**COURT CLERK:** Alan Castle**RECORDER:** Robin Page**REPORTER:** Andrea Martin**PARTIES**

PRESENT:	Reeve, Brian R.	Attorney
	Shell, Alina	Attorney

JOURNAL ENTRIES

- Court stated its Findings regarding Plaintiff prevailing as to obtaining records. COURT ORDERED, Plaintiff's Motion for Attorney Fees and Costs is GRANTED. Court Finds in review of brief and considering the Brunzell factors, \$9,010.00 reasonable Attorney's fees GRANTED. FURTHER, COURT ORDERS, \$902.84 Costs GRANTED. Ms. Shell to prepare the order within 10 days and distribute a filed copy to all parties involved in this matter. The order must include last known addresses and all future scheduled court dates. Both the Plaintiff and Defendant are required to be present at the next court date.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

December 13, 2017

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

December 13, 2017 9:00 AM Motion for Clarification Plaintiff's Motion for Clarification

HEARD BY: Bailus, Mark B **COURTROOM:** Phoenix Building Courtroom - 11th Floor

COURT CLERK: Alan Castle

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Henderson City of	Defendant
	Kennedy, Dennis L.	Attorney
	Las Vegas Review-Journal	Plaintiff
	Reeve, Brian R.	Attorney
	Shell, Alina	Attorney

JOURNAL ENTRIES

- Following arguments of counsel. COURT FINDS the record is sufficiently clear as to Court's findings and the factors used in making the determination with respect to fees. COURT ORDERS, Plaintiff's Motion for Clarification is DENIED. Mr. Kennedy to prepare the order within 10 days and have opposing counsel review as to form and content and distribute a filed copy to all parties involved in this matter.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MARGARET A. MCLEATCHIE
701 E. BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101

DATE: March 28, 2018
CASE: A-16-747289-W

RE CASE: LAS VEGAS REVIEW-JOURNAL vs. CITY OF HENDERSON

NOTICE OF APPEAL FILED: MARCH 28, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF CROSS-APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

LAS VEGAS REVIEW-JOURNAL,

Plaintiff(s),

vs.

CITY OF HENDERSON,

Defendant(s),

Case No: A-16-747289-W

Dept No: XVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 28 day of March 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

Reception

From: efiling@nvcourts.nv.gov
Sent: Tuesday, April 03, 2018 10:16 AM
To: BKfederaldownloads
Subject: Notification of Electronic Filing in CITY OF HENDERSON VS. LAS VEGAS REVIEW-JOURNAL, No. 75407

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Apr 03 2018 10:15 a.m.

Case Title: CITY OF HENDERSON VS. LAS VEGAS REVIEW-JOURNAL

Docket Number: 75407

Case Category: Civil Appeal

Document Category: Notice of Cross-Appeal

Submitted by: Clark Co. Clerk

Official File Stamp: Apr 03 2018 10:13 a.m.

Filing Status: **Accepted and Filed**

Docket Text: Filed Notice of Cross-Appeal. (Docketing statement mailed to counsel for cross-appellant.) LVRJ VS. HENDERSON - A747289

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

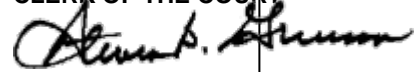
Clerk's Office has electronically mailed notice to:

Alina Shell
Josh Reid

Dennis Kennedy
Margaret McLetchie
Israel Kunin
Brian Reeve
Sarah Harmon

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.



1 **OPPM**

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Counsel for Petitioner

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

10 Petitioner,

11 vs.

12 CITY OF HENDERSON,

13 Respondent.

Case No.: A-16-747289-W

Dept. No.: XVIII

14 **PETITIONER'S OPPOSITION TO**
15 **RESPONDENT'S MOTION FOR**
16 **STAY PENDING APPEAL AND**
17 **COUNTERMOTION FOR**
18 **ORDER TO SHOW CAUSE**

Hearing Date: April 11, 2018

Hearing Time: 9:00 a.m.

19 Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through
20 its undersigned counsel, hereby opposes Respondent City of Henderson's ("Henderson")
21 Motion for Stay Pending Appeal. The Review-Journal also moves this Court to order
22 Henderson to show cause why it should not be held in contempt of court for failure to comply
23 with this Court's Order dated February 15, 2018 mandating payment of fees and costs to the
24 Review-Journal.

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This Opposition and Countermotion is based on the following Memorandum of Points and Authorities, any attached exhibits, the papers and pleadings already on file herein, and any oral argument the Court may permit at the hearing of this Motion.

Respectfully submitted this the 10th day of April, 2018.

/s/ Alina M. Shell

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In its Motion for a Stay of proceedings (the “Motion”), Henderson asserts that it is entitled to a stay pursuant to Rule 8(c) of the Nevada Rules of Appellate Procedure. It is not. Rather, Henderson fails to carry the heavy burden of demonstrating that the circumstances merit such an exercise of this Court’s discretion. First, immediate payment of fees and costs to the Review-Journal would not defeat the purpose of the appeal; it would merely delay a return to the status quo ante if Henderson prevails on appeal. Second, denial of a stay will not irreparably harm either party—at worst, it will cost the losing party extra money spent on prolonging this litigation. This is the opposite of irreparable harm. Any argument that Henderson—a city with a budget of over five hundred million dollars (\$500,000,000.00)¹—will be “irreparably harmed” by immediately paying the Review-Journal \$9,912.84 in fees and costs is unsupportable.

Henderson is also unlikely to prevail on appeal. Relying on inapposite statutes and case law, Henderson asserts that the Review-Journal was not a prevailing party in this Nevada Public Records Act (“NPRA”) litigation because “it did not succeed on any of its claims for relief or on any significant issue in this case.” (Motion, p. 13:26-27.) This argument ignores this Court’s finding in its February 15 Order that the Review-Journal was “a prevailing party because it was able to obtain copies of the records it requested after initiating this action.” (Order, p. 4, ¶ 14; *see also id.* at ¶ 15 (“Thus, the Court finds that the Review-Journal is the prevailing party in this matter as to its request for the records and therefore is entitled to attorney’s fees and costs.”).) This finding is consistent with both the language and intent of Nev. Rev. Stat. § 239.011(2), as well as the overall purpose of the NPRA.

¹ See <http://www.cityofhenderson.com/docs/default-source/finance-docs/budget-reports/current-year/2017-2018-budget-brief.pdf?sfvrsn=4> (City of Henderson Fiscal Year 2017-2018 Budget Brief reflecting a total budget of \$549,983,645.00) (last accessed April 10, 2018).

Moreover, Henderson’s motion is untimely. Pursuant to Nevada Rule of Civil Procedure 62(a), a judgment such as this Court’s February 15 attorney fees order is automatically stayed for ten days. The purpose of that ten-day stay is to permit “the party against whom judgment has been entered to determine what course of action to follow.” 11 Fed. Prac. & Proc. Civ. § 2902 (3d ed.) Those ten days came and went, and Henderson made no move to pay the Review-Journal’s attorney fees and costs as ordered by the Court. Instead, Henderson waited until after the Review-Journal inquired about Henderson’s intent to make payment—which in turn was nearly two weeks after Henderson filed Notice of Appeal—to move for a stay pending appeal. Because Henderson has willfully failed to comply with this Court’s order by paying the Review-Journal, this Court should issue an order to show cause for why Henderson should not be held in contempt.

II. PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS

A. The Request

On or around October 4, 2016, Review-Journal reporter Natalie Bruzda sent Henderson a request pursuant to the NPRA seeking certain documents dated from January 1, 2016 pertaining to Trospen Communications and its principal, Elizabeth Trospen. Trospen Communications is a communications firm that had a contract with the City of Henderson and has assisted with the campaigns of elected officials in Henderson. The request was directed to Henderson’s Chief Information Officer and the Director of Intergovernmental Relations. (*See* Exh. 1 to Amended Petition, filed with this Court on February 8, 2017.)

On October 11, 2016, Henderson provided a partial response which failed to provide timely notice regarding any specific confidentiality or privilege claim that would limit Henderson in producing (or otherwise making available) all responsive documents. (*See* Exh. 2 to Amended Petition.) Instead, Henderson indicated that it was “in the process of searching for and gathering responsive e-mails and other documents” but that “[d]ue to the high number of potentially responsive documents that meet your search criteria (we have

approximately 5,566 emails alone)² and the time required to review them for privilege and confidentiality, we estimate that your request will be completed in three weeks from the date we commence our review.” (*Id.*) In addition to stating that it would need additional time, Henderson demanded payment of almost \$6,000.00 to continue its review. (*Id.*)

Henderson also demanded the Review-Journal pay its assistant city attorneys to review documents to determine whether they could even be released. The Response made clear that Henderson would not continue searching for responsive documents and reviewing them for privilege without payment, and demanded a “deposit” of \$2,893.94, explaining that this was its policy:

Under the City’s Public Records Policy, a fifty percent deposit of fees is required before we can start our review. Therefore, please submit a check payable to the City of Henderson in the amount of \$2,893.94. **Once the City receives the deposit, we will begin processing your request.**

(*Id.*)

Henderson informed the Review-Journal that it would not release any records until the total final fee was paid. The Response also stated:

When your request is completed, we will notify you and, once the remained [sic] of the fee is received, the records and any privilege log will be released to you.

(*Id.*) Henderson’s pertinent policy—Henderson Municipal Code § 2.47.085—appeared as Exhibit 4 to the Amended Petition.

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² During the course of litigation and discussions with Henderson regarding the records request after the Petition in this matter was filed, Henderson determined it had 69,979 pages of documents that were responsive to the Review-Journal’s request. (*See* Henderson Response to Amended Petition (the “Response”) *on file with this Court*, at p. 2:3.)

1 **B. The Litigation**

2 When an informal effort to resolve this dispute failed, the Review-Journal filed a
3 Petition for Writ of Mandamus with this Court on November 29, 2016.³ After the Review-
4 Journal filed its initial Petition, counsel for the Review-Journal and attorneys with the
5 Henderson City Attorney’s Office conferred extensively regarding the NPRA request. (See
6 Declaration of Margaret A. McLetchie in Support of Motion for Attorney Fees and Costs, *on*
7 *file with this Court*, at ¶ 2.)

8 On December 20, 2016, Henderson provided the Review-Journal with an initial list
9 of documents it was redacting or withholding. (*See* Exh. 4 to Amended Petition.) After
10 negotiations with counsel for the Review-Journal, Henderson also agreed to make the
11 requested documents available to the Review-Journal reporter for inspection. (*See*
12 Declaration of Margaret A. McLetchie in Support of Amended Petition, *on file with this*
13 *Court*, at ¶ 9.) It did so free of charge. (*Id.*) That inspection took place on over the course of
14 several days. (*See id.* at ¶ 20.) On December 21, 2016, while the reporter was still conducting
15 her review, counsel for the Review-Journal sent Henderson an email noting that the laptop
16 Henderson had put the documents on was slow and suggested that the reporter “could also
17 just pick up a CD and review from the [Review-Journal] offices.” (Exh. 16 to Reply to
18 Response to Amended Position, p. 1.) Henderson rejected that suggestion. (*Id.*)

19 After requests from the undersigned, Henderson provided an additional privilege
20 log on January 9, 2017. (*See* Exh. 5 to Amended Petition.) In that log, Henderson provided
21 a description of the documents being withheld or redacted, and the putative authority for
22 withholding or redaction. (*Id.*) The log also indicated who sent and received the emails
23 responsive to the NPRA request, but in instances where the sender or recipient was a city

24 ³ Henderson makes much of the fact that the Review-Journal filed suit without “work[ing]
25 on a resolution” to the records dispute. (Motion, pp. 7:26-8:4.) However, as described in the
26 Review-Journal’s Reply to Henderson’s Response to its Amended Petition and supporting
27 Memorandum, counsel for the Review-Journal exchanged numerous emails with Henderson
28 City Attorneys, and also conferred extensively with City Attorneys regarding the records
 request. (See Declaration of Margaret A. McLetchie in Support of Reply to Response to
 Amended Petition, *on file with this Court*, at ¶¶ 8-22.)

attorney or legal staff, the log did not identify the attorney or staff person. (*Id.*) That same day, counsel for the Review-Journal, after reviewing the privilege log, asked Henderson to revise its log to include the names of the attorneys and legal staff, and to also include the identities of all recipients of the communications. (*See* Declaration of Margaret A. McLetchie in Support of Amended Petition, *on file with this Court*, at ¶¶ 12, 13.)

On January 10, 2017, Henderson provided the Review-Journal with a revised privilege log (Exh. 6 to Amended Petition, the “Revised Log”), as well as a number of redacted documents corresponding to the log (Exh. 7 to Amended Petition.) In the Revised Log, Henderson included a description of the senders and recipients of withheld or redacted documents.

The Review-Journal filed an Amended Petition and a supporting Memorandum on February 8, 2017. In the Amended Petition and Memorandum, the Review-Journal asserted that Henderson’s attempt to charge it for a privilege review of the requested documents violated the NPRA because the Act does not permit a governmental entity to charge a requestor for a privilege review. (*See* Memorandum in Support of Amended Petition, *on file with this Court*, at pp. 5:23-6:22.) The Review-Journal additionally asserted that Henderson Municipal Code § 2.47.085 and Henderson’s Public Records Policy conflicted with the NPRA’s limitations in Nev. Rev. Stat. § 239.055(1) on the fees a governmental entity can charge for extraordinary use of personnel. (*Id.* at pp. 6:23-7:22.)

In its Amended Petition, Review-Journal requested (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 are 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. (Amended Petition at pp. 12:7-13:3.) Henderson filed a response to the Amended Petition and Memorandum on March 8, 2017. The Review-Journal filed a reply on March 23, 2017.

Subsequently, on March 30, 2017, this Court conducted a hearing on the Review-Journal's Amended Petition. At that hearing, at the request of ***both counsel for the Review-Journal and the Court***, counsel for Henderson finally agreed to provide the Review-Journal a USB drive with copies of the requested documents. (Exh. A to Motion (Transcript of March 30, 2017 hearing) at p. 8:8-10 (emphasis added).) At the conclusion of the hearing, this Court directed Henderson to provide the Review-Journal with a "USB drive with the 69,000 pages [of requested documents] on it," and then noted that it would be denying "***the rest of the petition.***" (*Id.* at p. 24:15-20) (emphasis added).

On May 15, 2017, the Court entered an order denying the Review-Journal's request for a writ of mandamus, injunctive relief, and declaratory relief. In that order, however, the Court noted that at the hearing, Henderson finally agreed to provide electronic copies of 69,979 pages of documents that were responsive to the Review-Journal's public records request. (May 15, 2017 Order, *on file with this Court*, at p. 2, ¶ 2.)

C. The Motion for Attorney Fees and Costs

On June 1, 2017, the Review-Journal filed a motion seeking \$30,931.50 in fees and \$902.84 in costs. After briefing, the court conducted hearings on August 3 and 10, 2017. The court found the Review-Journal was entitled to full compensation for its costs (\$902.84) but only awarded \$9,010.00 of the \$30,931.50 fees requested. The court noted it considered the *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969) factors, but did not explain how they influenced its decision. The court did award fees based on the Review-Journal's requested rates. (February 15, 2018 Order, *on file with this Court*, p. 4, ¶ 16.) Further, part of the reduction of the award to the Review-Journal was the result of counsel's in-court offer at the August 3, 2017 hearing on its motion for attorney fees to reduce the request for fees by \$1,867.50 for time expended by a law clerk and for time expended by counsel reviewing Henderson's privilege log. However, the court did not explain which

entries it reduced and why, or if it had applied any sort of across-the-board reduction. Thus, it was not possible to discern the basis for the court’s calculation. On November 8, 2017, the Review-Journal filed a motion for clarification. The court denied the motion, finding it had sufficiently articulated its reasoning. (*See* January 3, 2018 Order Denying Motion for Clarification, *on file with this Court*.) The court then entered a written order on the fees award on February 15, 2018. Henderson filed a notice of appeal on March 16, 2018, and the Review-Journal filed a notice of cross-appeal on March 26, 2018.

Pursuant to Nevada Rule of Civil Procedure 62(a), Henderson was required to pay the Review-Journal the attorney fees and costs within ten days of the notice of entry of the order—February 26, 2018. As the Nevada Supreme Court has noted, filing a notice of appeal does not act as an automatic stay; instead, a party seeking review of a judgment must file a timely motion for a stay of the judgment pending. *See State ex rel. Pub. Serv. Comm’n v. First Judicial Dist. Court, in & for Carson City*, 94 Nev. 42, 46, 574 P.2d 272, 274 (1978), *abrogated on other grounds by Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005).⁴ Rather than filing a timely motion for a stay, however, Henderson waited until April 5, 2018—39 days after payment was due and only after counsel for the Review-Journal inquired as to the delay in payment—to file the instant motion to stay the Court’s February 15, 2018 judgment.

III. LEGAL ARGUMENT – OPPOSITION TO MOTION TO STAY

A. Legal Standard for a Motion to Stay Pending Appeal.

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

⁴ *See Nelson*, 121 Nev. at 834 n. 4, 122 P.3d 1253 n.4 (noting that “PSC’s requirement that the State or a state agency file a motion for stay pending appeal is not in any way affected by this opinion”).

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

The Nevada Supreme Court has “not indicated that any one factor carries more weight than the others,” and instead “recognizes that if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38 (citing *Hansen*, 116 Nev. 650, 6 P.3d 982 (2000)).⁵ Taken as a whole, the factors of NRAP 8(c) weigh against a stay of this Court’s Order. Moreover, the balance of the equities does not weigh in favor of stay. Instead, the NPRA and the case law interpreting its provisions demonstrate that the public interest lies with immediate payment to the Review-Journal.

B. Henderson’s Motion for a Stay is Untimely.

In addition to not meeting the standard for stay pending relief under NRAP 8(c) as discussed below, Henderson’s motion for is untimely. Pursuant to NRCP 62(a), judgments are automatically stayed until 10 days have passed after the entry of judgment. See NRCP

⁵ For example, the Review-Journal concedes that it will not suffer irreparable harm or serious injury if the stay is granted, as the Court can impose mechanisms, such as adding interest the fees and costs award, to fully compensate the Review-Journal at the conclusion of the appeals process. *See infra*. Despite this concession, the other factors demonstrate that Henderson cannot meet its heavy burden in showing that a stay is warranted.

62(a). As one court has noted, a “judgment by which a court ends a cause does not hang in limbo pending appeal. If not stayed or otherwise suspended, it becomes final 10 days after issuance.” *United States v. Verlinsky*, 459 F.2d 1085, 1089 (5th Cir. 1972). Thus, this Court’s order awarding fees and costs to the Review-Journal became effective ten days after its entry—February 26, 2018. Had Henderson wanted to seek relief from the Court’s order, it should have filed a motion for a stay before that date. However, rather than timely moving the Court for a stay pending appeal prior to the date when payment was due, Henderson waited until April 5, 2018—39 days after payment was due—to move this Court for a stay. This timing evinces that Henderson’s Motion to Stay is about little more than forestalling, at the taxpayers’ expense, payment of attorney’s fees and costs to the Review-Journal. The Court should not permit this.

C. The NRAP 8(c) Factors and the Public Interest Weigh Against a Stay.

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

Henderson states that the object of its appeal is “for the Supreme Court to determine that the City is the proper ‘prevailing party’ in this action and to obtain a reversal of the Fees & Costs Order in its entirety.” (Motion, p. 11:18-20.) Henderson argues that if “the [Review-Journal] attempts to collect the award, then the object of the Appeal will be completely defeated.” (Motion, p. 11:22-23.) This is simply not true, and Henderson essentially admits so one sentence later, stating that if a stay is not granted, it “will then be forced to waste further resources in attempting to recover the unnecessary and premature payment of fees and costs to the [Review-Journal].” (Motion, p. 11:23-24.)

Nowhere does Henderson allege that by paying attorney’s fees and costs now—rather than whenever it feels like it—it will somehow lose its right to continue its appeal. At worst, paying the Review-Journal would delay, not defeat, a purpose of the appeal. Regardless of when Henderson pays the Review-Journal, the Supreme Court will be able to determine who is the “prevailing party” in this litigation and whether this Court’s Fees and Costs Order will stand as written. As the Supreme Court has explained, “payment of a judgment only waives the right to appeal or renders the matter moot when the payment is

intended to compromise or settle the matter.” *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 265, 71 P.3d 1258, 1261 (2003); *accord Jones v. McDaniel*, 717 F.3d 1062, 1069 (9th Cir. 2013). Under this precedent, compliance with the Court’s Order would not moot Henderson’s appeal, as the Order makes no mention of settlement, compromise, or waiver of the right to appeal. Henderson’s insinuation—that if it pays attorney’s fees and costs now, the Review-Journal will defy court orders to repay in the unlikely event Henderson prevails on its appeal—is both insulting and untrue. Because denial of Henderson’s motion to stay will not affect the ultimate outcome of this appeal (or the Review-Journal’s cross-appeal) one way or the other, this factor weighs in favor of denying a stay.

2. Henderson Will Not Suffer Irreparable Harm or Serious Injury if the Stay is Denied.

As a threshold matter, the mere possibility of irreparable injury is not sufficient to warrant a stay. *See Nken*, 556 U.S. at 435 (citing *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 22 (2008)); *accord In re R & S St. Rose Lenders, LLC*, No. 2:17-CV-01322-MMD, 2017 WL 2405368, at *3 (D. Nev. June 2, 2017). In the instant case, Henderson does not even argue that there is a possibility of irreparable harm or serious injury absent a stay. Instead, Henderson argues that it will suffer harm—not irreparable harm—because, if the motion to stay is not granted, its “taxpayers will have to shoulder the burden of paying the award of fees and costs [and other potential litigation expenses].” (Motion, p. 12:15-18.)

This simply does not suffice to carry the heavy burden Henderson bears in justifying a stay. The prospect of spending money on hypothetical future litigation is, if it even comes to pass, extremely reparable. This is particularly true for the City of Henderson—a municipality with a budget of several hundred million dollars—which by its own admission “has the ability and funds to pay the award of fees and costs.” (Motion, p.12:18-19.) The harm alleged is that Henderson will have to pay fees now, rather than in the future. “Simply put, the alleged harm is wholly monetary . . . [i]n other words, the harm is not irreparable.” *In re Capability Ranch, LLC*, No. 2:13-CV-1812 JCM, 2013 WL 6058198, at *3 (D. Nev. Nov. 15, 2013) (holding that forcing losing party to pay attorney’s fees does not constitute

irreparable harm); *see also Orquiza v. Walldesign, Inc.*, No. 2:11-CV-1374 JCM CWH, 2013 WL 4039409, at *2 (D. Nev. Aug. 6, 2013) (“Monetary damages alone do not amount to irreparable harm”); *Taddeo v. Am. Invsco Corp.*, No. 2:12-CV-01110 APG NJK, 2014 WL 12708859, at *1 (D. Nev. Sept. 19, 2014) (“simple monetary damages generally are not considered to be irreparable harm”). The Nevada Supreme Court has also held that “litigation costs, even if potentially substantial, are not irreparable harm.” *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39 (citing *Hansen*, 116 Nev. at 658, 6 P.3d at 986-7). Because paying attorney’s fees earlier than a party prefers is the exact opposite of an “irreparable harm,” this factor weighs in favor of denying a stay.

3. Henderson is Unlikely to Prevail on the Merits in its Appeal.

In its Motion, Henderson claims that it is likely to prevail on appeal on the strength of its argument that the Review-Journal is not a “prevailing party” in this litigation. Under the NPRA, the Review-Journal is in fact the prevailing party, as it has achieved much of its objective in initiating this litigation: gaining access to public records produced by Henderson. Henderson’s definition of “prevailing party,” based on statutes and litigation unrelated to public records, is inapplicable to NPRA litigation. Adopting Henderson’s narrow definition of “prevailing party” would create a massive loophole for governmental entities to shirk their duties under the NPRA without compensating the parties who fight tooth-and-nail for access to public records. This would severely undermine the NPRA’s purpose of “fostering democratic principles by providing members of the public with access to inspect and copy public books and records.” Nev. Rev. Stat. § 239.001(1).

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

29, 2015), *reconsideration en banc denied* (July 6, 2015). The Court went on to explain that a party need only prevail on “any significant issue:”

A party prevails “if it succeeds on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted). To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”).

Id. at 615; *see also DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628–29, 6 P.3d 465, 473 (2000) (reversing an order denying access and remanding to district court to award fees).⁶

Here, the Review-Journal had to seek judicial intervention to obtain the records Henderson was withholding. This is exactly what the NPRA created a judicial mechanism to achieve, and exactly what the attorney’s fees provision of the NPRA is designed to compensate. As discussed above, the record demonstrates that the Review-Journal repeatedly requested *copies* of the withheld record, and that Henderson would only produce those records upon payment of an illegal, exorbitant, and impermissible fee.⁷ Although the Review-Journal did not obtain all the information or the injunctive and declaratory relief it sought in this litigation, Henderson did not produce a substantial amount of the records until after the Review-Journal submitted and fully briefed its petition, then prepared for and attended a hearing on said petition. The Review-Journal succeeded on the most significant issue in this

⁶ Other Nevada Supreme Court cases likewise make clear that a party who substantially prevailed is entitled to recoup all attorney’s fees and costs, even if the party did not ultimately succeed on all claims. *See, e.g., University of Nevada v. Tarkanian*, 110 Nev. 581, 595-598, 879 P.2d 1180, 1189-90 (1994).

⁷ Counsel for the Review-Journal and Henderson City Attorney Josh Reid agreed to allow inspection of the requested records as an interim measure. Mr. Reid, however, refused to provide copies of the documents even in electronic form, and indicated that Henderson was “interested in having the courts provide clarity to the meaning and application of NRS 239.055.” (Exh. 12 to Reply to Response to Amended Position, p. 5.)

case—gaining access to 69,979 pages of public records which Henderson was unwilling to grant absent litigation. Moreover, as noted above, the Court indicated at the hearing that it was granting the Review-Journal’s request for the production of the documents when it stated that Henderson must produce copies of the records on a USB drive, but that it was “going to deny *the rest* of the petition.” (Exh. A to Motion (Transcript of March 30, 2017 hearing) at p. 24:15-20 (emphasis added).)

As Henderson noted in its Motion, the Nevada Supreme Court has held that “a prevailing party must win on at least one of its claims.” *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d 103, 107 (2016). However, Henderson conveniently omitted the Supreme Court’s previous sentence, in which the Court explicitly based its decision “on the definition of prevailing party *as used in NRS 18.020(3) and NRS 18.050*.” *Id.* (emphasis added). Those are not the statutes authorizing fees and costs in this case. Fees and costs in this case are authorized by Nev. Rev. Stat. § 239.011(2). Chapter 18 is agnostic regarding the definition “prevailing party,” allowing the Supreme Court to define it as it did in *Golightly*. By contrast, Chapter 239 by its own terms “*must be construed liberally* to carry out [its] important purpose [of fostering democratic principles by providing access to public records].” Nev. Rev. Stat. § 239.001(2) (emphasis added). A liberal construction of “prevailing party” necessarily includes parties like the Review-Journal which achieve the objective of accessing public records via litigation despite not obtaining the specific relief it requested from the Court. Because the Supreme Court’s definition of “prevailing party” in *Golightly* is inapplicable to NPRA petitioners, Henderson is unlikely to prevail on its appeal.

The United States Supreme Court’s decision in *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dept. of Health & Human Res.*, 532 U.S. 598 (2001) regarding the definition of “prevailing party” is unavailing to Henderson for similar reasons. Henderson faithfully quotes the decision that a litigant can qualify as a prevailing party if it obtains a “court-ordered ‘chang[e] [in] the legal relationship between [the plaintiff] and the defendant’” and that a “defendant’s voluntary change in conduct, although perhaps accomplishing what

the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial imprimatur on the change.” *Id.* at 604. However, Henderson again fails to account for the context of this decision. Far from applying this narrow definition of “prevailing party” to all cases, the Supreme Court held that the “‘catalyst theory’ is not a permissible basis for the award of attorney’s fees ***under the FHAA, 42 U.S.C. § 3613(c)(2), and ADA, 42 U.S.C. § 12205.***” *Id.* at 610 (emphasis added). The United States Supreme Court did not issue in *Buckhannon* any ruling on whether the “catalyst theory”—i.e., that a plaintiff is a “prevailing party” when it achieves a desired result because its lawsuit caused the defendant to voluntarily change its conduct—is a permissible basis for the award of attorney’s fees under state statutes such as the NPRA.

Although Nevada Courts have not yet had occasion to decide whether the NPRA defines “prevailing party” as only a plaintiff who obtains a court-ordered change in its legal relationship with the defendant, other states’ courts have not restricted their analogous public records statutes in that way. For instance, the California Court of Appeal has held that a plaintiff under California’s Public Record Act⁸ is the “prevailing party,” and thus entitled to attorney’s fees and costs, “when he or she files an action which results in defendant releasing a copy of a previously withheld document.” *Sukumar v. City of San Diego*, 14 Cal. App. 5th 451, 453, 221 Cal.Rptr.3d 418, 427 (Cal. App. August 15, 2017). *See also Mason v. City of Hoboken*, 196 N.J. 51, 951 A.2d 1017 (N.J. 2008) (rejecting *Buckhannon* definition of “prevailing party” and adopting catalyst theory of “prevailing party” for attorney’s fees awards pursuant to New Jersey’s Open Public Records Act).

Applying the *Buckhannon* standard of “prevailing party” to public records requests would have a devastating effect on the public’s ability to access public records. For that reason, Congress amended the federal Freedom of Information Act in 2007 to explicitly

⁸ In language similar to that of the NPRA, California Code § 6259(d) mandates that the court “award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section.” *Compare* Nev. Rev. Stat. § 239.011(2) (“If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney’s fees in the proceeding”).

allow for an award of attorney’s fees based on “a voluntary or unilateral change in position by the agency, if the complainant’s claim is not insubstantial”—i.e. the catalyst theory. *See First Amendment Coal. v. United States Dep’t of Justice*, 878 F.3d 1119, 1126 (9th Cir. 2017). In closing this loophole, Congress recognized that under the *Buckhannon* holding, “Federal agencies ha[d] an incentive to delay compliance with FOIA requests until just before a court decision [was] made that [was] favorable to a FOIA requester.” *Id.* at 1127.

This is precisely what Henderson hopes to accomplish in the instant case. The NPRA does not countenance using these litigation tactics to limit or restrict the public’s access: “[a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Nev. Rev. Stat. § 239.001(3). Henderson’s gambit—delaying compliance with the NPRA, attempting to charge exorbitant fees for access to public records, forcing the Review-Journal to petition this Court for access, then “voluntarily” allowing the Review-Journal to inspect public records at the eleventh hour—is exactly the behavior that the NPRA was enacted to prevent. It should not be authorized Supreme Court, Henderson is unlikely to prevail on its appeal, and therefore this factor weighs against a stay.

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

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

As mentioned above, governmental entities face strong incentives to resist transparency. As seen in this case, it takes the hard work of several attorneys and staff, as well as the resources of the largest newspaper in the state, to gain access to public records

produced by Henderson. Entitling a prevailing requestor to attorney’s fees and costs creates incentives that further the NPRA’s important purpose. First, it incentivizes attorneys to fight for public records on behalf of the public (or journalistic outlets that are both part of and proxies for the public, such as the Review-Journal). Without the prospect of recouping fees, many important quests for public records would undoubtedly be aborted *ab initio*. Second, entitling prevailing requestors to attorney’s fees incentivizes governmental entities to provide public records efficiently, without the type of needless resistance that not only reduces the public’s confidence in its government, but results in protracted litigation and hefty bills that are ultimately shouldered by taxpayers. Thus, the balance of equities, and upholding the mandate of the NPRA to hold public bodies accountable to the public, weighs in favor of denying a stay.

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

Nevada statute mandates that a judgment “draws interest from the time of service of the summons and complaint until satisfied ... at a rate equal to the prime rate at the largest bank in Nevada ... plus 2 percent.” Nev. Rev. Stat. § 17.130(2). If this Court grants Henderson’s Motion, and the Henderson subsequently loses on appeal, the Review-Journal will move to seek interest pursuant to the above. Thus, in addition to making its own taxpayers “shoulder the burden” of protracted litigation, Henderson may be forced to pay a significantly larger sum by virtue of its repeated delays in payment. For this reason, this Court should not grant a stay.

IV. LEGAL ARGUMENT—COUNTERMOTION FOR ORDER TO SHOW CAUSE.

As the Nevada Supreme Court articulated, “parties are not at liberty to disobey notice, orders or any other directives” issued by district courts. *Weddell v. Stewart*, 127 Nev. 645, 652, 261 P.3d 1080, 1085 (2011). Nevada statute deems contempt “[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.” Nev. Rev. Stat. § 22.010(3). In the instant case, this Court entered a written order on February

15, 2018 awarding fees and costs to the Review-Journal. (*See* February 15, 2018 Order, p. 5, ¶ 17.) Although Henderson filed notice of appeal of that order on March 16, 2018, it is not entitled to a stay of these proceedings as a matter of right. Still, Henderson has not complied with this Court’s order that entitles the Review-Journal to an award of \$9912.84. Therefore, the Review-Journal now moves this Court for an order to show cause why Henderson should not be held in contempt for failure to obey this Court’s order.

“An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him. *Cunningham v. Eighth Judicial Dist. Court of State of Nev., In & For Clark Cty.*, 102 Nev. 551, 559–60, 729 P.2d 1328, 1333–34 (1986) (citing *Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 659 P.2d 861 (1983)). In the instant case, this Court did not give Henderson a deadline or date certain on which payment to the Review-Journal was expected. That, however, does not excuse Henderson from its defiance of this Court’s order. As the Fifth Circuit has held, pursuant to the Federal Rules of Civil Procedure⁹, “[i]n the absence of a specific compliance deadline in a court order, parties must comply with the order within a reasonable time.” *United States v. Petal*, 464 F. App’x 342 (5th Cir. 2012).

Waiting over a month to comply with the clear and unambiguous order mandating payment from Henderson to the Review-Journal is unreasonable. As noted in Brian Reeve’s Declaration, attached to Henderson’s Motion, the undersigned phoned Henderson on or about March 27, 2018, “inquiring as to when the City was going to pay her attorney’s fees and costs pursuant to the Fees & Costs Order[.]” (Motion, p. 4:17-19.) This delayed payment is especially unreasonable in light of Henderson’s planned appeal and motion to stay this case pending the appeal. By Henderson’s admission, it is able to make this payment. Instead of

⁹ *See Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (“Federal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.’”) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 paying, Henderson chooses to abuse its statutory exemption from posting an appeal bond to
2 forestall paying while it takes a free gamble on a longshot appeal. For these reasons, the
3 Review-Journal moves that this Court issue an order to show cause for why Henderson
4 should not be held in contempt for its continuing, willful failure to obey this Court's order
5 and pay the Review-Journal.

6 **V. CONCLUSION**

7 For these reasons, this Court should deny Henderson's request for a stay of the
8 February 15, 2018 Order granting the Review-Journal \$9,912.84 in fees and costs. Further,
9 this Court should order Henderson to show cause for why it should not be held in contempt
10 for its failure to comply with the February 15, 2018 Order.

11 Respectfully submitted this the 10th day of April, 2018.

12
13 /s/ Alina M. Shell

14 Margaret A. McLetchie, Nevada Bar No. 10931

15 Alina M. Shell, Nevada Bar No. 11711

16 MCLETCHIE SHELL LLC

17 701 East Bridger Ave., Suite 520

18 Las Vegas, Nevada 89101

19 (702) 728-5300

20 maggie@nvlitigation.com

21 *Counsel for Petitioner*

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 10th day of April, 2018, I did cause a true copy of the foregoing PETITIONER’S OPPOSITION TO RESPONDENT’S MOTION FOR STAY PENDING APPEAL AND COUNTERMOTION FOR ORDER TO SHOW CAUSE in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 10th day of April, 2018, I mailed a true and correct copy of the foregoing PETITIONER’S OPPOSITION TO RESPONDENT’S MOTION FOR STAY PENDING APPEAL AND COUNTERMOTION FOR ORDER TO SHOW CAUSE by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, City Attorney
Brandon P. Kemble, Asst. City Attorney
Brian R. Reeve, Asst. City Attorney
CITY OF HENDERSON’S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Sarah P. Harmon, and Kelly B. Stout
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield
An Employee of MCLETSCHIE SHELL LLC

Writ of Mandamus

COURT MINUTES

April 11, 2018

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

April 11, 2018 09:00 AM City of Henderson's Motion for Stay Pending Resolution of
Nevada Supreme Court Appeal, on Application for Order
Shortening Time

HEARD BY: Bailus, Mark B

COURTROOM: Phoenix Building 11th Floor 110

COURT CLERK: Castle, Alan

RECORDER: Page, Robin

REPORTER:

PARTIES PRESENT:

Alina Shell

Attorney for Plaintiff

Dennis L. Kennedy

Attorney for Defendant

Henderson City of

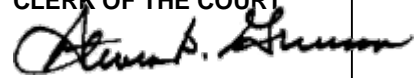
Defendant

Las Vegas Review-Journal

Plaintiff

JOURNAL ENTRIES

Court notes both parties have appealed this matter. Having considered the pleadings, COURT ORDERS, City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal is GRANTED.



ORDR

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Attorneys for Respondent

CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W

Dept. No. XVIII

ORDER

The City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time (the "Motion for Stay") and the Las Vegas Review-Journal's Countermotion for Order to Show Cause ("Countermotion to Show Cause") came on for hearing at 9:00 a.m. on April 11, 2018, the Honorable Mark B. Bailus presiding, the Las Vegas Review-Journal ("Review Journal") appearing by and through its counsel, Alina M. Shell, and the City of Henderson ("Henderson"), appearing by and through its counsel, Dennis L. Kennedy and Andrea M. Champion of Bailey Kennedy. The Court having read and considered all of the papers and pleadings on file, having heard the argument of counsel, and having considered all of the factors set forth in NRAP 8(c), hereby GRANTS Henderson's Motion for Stay. The Court

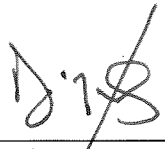
1 having read and considered all of the papers and pleadings on file hereby DENIES the Review
2 Journal's Countermotion to Show Cause.

3 IT IS SO ORDERED this 17 day of ^{May}~~April~~, 2018.

4
5 
6 HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE L.A.

7 Submitted by:

8 **BAILEY ♦ KENNEDY**

9
10 By 
11 Dennis L. Kennedy, Nevada Bar No. 1462

12 and

13 Josh M. Reid, Nevada Bar No. 7497

14 Brandon P. Kemble, Nevada Bar No. 11175

15 Brian R. Reeve, Nevada Bar No. 10197

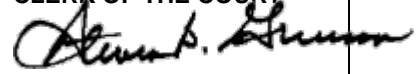
16 **CITY OF HENDERSON'S ATTORNEY OFFICE**

17 *Counsel for Respondent, City of Henderson*

18 Approved/Disapproved
as to form and substance:

19 **MCLETCHIE SHELL LLC**

20
21 By 
22 Alina M. Shell, Nevada Bar No. 11711
23
24
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26
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NEOJ
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DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order granting the City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time, and denying the Las Vegas Review-Journal's Countermotion for Order to Show Cause, was entered on May 21, 2018.

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1 A true and correct copy is attached as “Exhibit A.”

2 DATED this 21st day of May, 2018.

3 BAILEY❖KENNEDY

4
5 By: /s/ Sarah E. Harmon
6 DENNIS L. KENNEDY

7 and

8 JOSH M. REID, City Attorney
9 Nevada Bar No. 7497
10 **CITY OF HENDERSON**
11 240 Water Street, MSC 144
12 Henderson, NV 89015

13 *Attorneys for Respondent*
14 **CITY OF HENDERSON**
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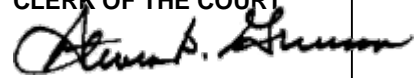
CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 21st day of May, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE	Email: Alina@nvlitigation.com
ALINA M. SHELL	Maggie@nvlitigation.com
MCLETCHE SHELL LLC	
701 East Bridger Avenue, Suite 520	<i>Attorneys for Petitioner</i>
Las Vegas, Nevada 89101	LAS VEGAS REVIEW-JOURNAL

/s/ Josephine Baltazar
Employee of BAILEY❖KENNEDY

EXHIBIT A



ORDR

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Attorneys for Respondent

CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W

Dept. No. XVIII

ORDER

The City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time (the "Motion for Stay") and the Las Vegas Review-Journal's Countermotion for Order to Show Cause ("Countermotion to Show Cause") came on for hearing at 9:00 a.m. on April 11, 2018, the Honorable Mark B. Bailus presiding, the Las Vegas Review-Journal ("Review Journal") appearing by and through its counsel, Alina M. Shell, and the City of Henderson ("Henderson"), appearing by and through its counsel, Dennis L. Kennedy and Andrea M. Champion of Bailey Kennedy. The Court having read and considered all of the papers and pleadings on file, having heard the argument of counsel, and having considered all of the factors set forth in NRAP 8(c), hereby GRANTS Henderson's Motion for Stay. The Court

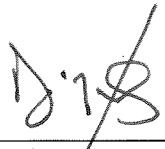
1 having read and considered all of the papers and pleadings on file hereby DENIES the Review
2 Journal's Countermotion to Show Cause.

3 IT IS SO ORDERED this 17 day of ^{May} April, 2018.

4
5 
6 HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE L.A.

7 Submitted by:

8 **BAILEY ♦ KENNEDY**

9
10 By 
11 Dennis L. Kennedy, Nevada Bar No. 1462

12 and

13 Josh M. Reid, Nevada Bar No. 7497

14 Brandon P. Kemble, Nevada Bar No. 11175

15 Brian R. Reeve, Nevada Bar No. 10197

16 **CITY OF HENDERSON'S ATTORNEY OFFICE**

17 *Counsel for Respondent, City of Henderson*

18 Approved/Disapproved
as to form and substance:

19 **MCLETCHE SHELL LLC**

20
21 By 
Alina M. Shell, Nevada Bar No. 11711

Case No. 75407

IN THE SUPREME COURT OF
THE STATE OF NEVADA

Electronically Filed
Nov 20 2018 11:14 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CITY OF HENDERSON,
Appellant/Cross-Respondent,

vs.

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

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

APPELLANT/CROSS-RESPONDENT'S JOINT APPENDIX VOLUME V

Nicholas G. Vaskov
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Assistant City Attorney
Nevada Bar No. 10197
Brandon P. Kemble
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BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Appellant/Cross-Respondent CITY OF HENDERSON

November 19, 2018

CERTIFICATE OF SERVICE

I certify that I am an employee of Bailey❖Kennedy, and that on November 19, 2018, the JOINT APPENDIX VOLUME V was filed electronically with the Clerk of the Nevada Supreme Court, and therefore, electronic service was made in accordance with the Master Service List as follows:

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
MCLEATCHIE LAW
701 E. Bridger Avenue, Suite 520
Las Vegas, NV 89101

Attorneys for Respondent/Cross-Appellant
Las Vegas Review-Journal

/s/ Susan Russo

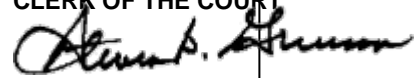
An Employee of Bailey❖Kennedy

VOL.	DOCUMENT	DATE	BATES NUMBER
I	Affidavit of Service	12/29/2016	JA023 – JA024
I	Amended Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus / Application for Declaratory and Injunctive Relief - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011	02/08/2017	JA026 – JA167
V	City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time	4/05/2018	JA0813 – JA0950
IV	City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs	7/10/2017	JA0530 – JA0642
II	City of Henderson's Response to Las Vegas Review-Journal's Amended Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus/Application for Declaratory	03/08/2017	JA0190 – JA0295
IV	COH's Opposition to LVRJ's Motion for Clarification	11/29/2017	JA0721 – JA0744

VOL.	DOCUMENT	DATE	BATES NUMBER
V	Las Vegas Review-Journal's Case Appeal Statement	3/26/2018	JA0796 – JA0799
V	Las Vegas Review-Journal's Notice of Cross Appeal	3/26/2018	JA0794 – JA0795
IV	LVRJ's Motion for Clarification	11/08/2017	JA0716 – JA0720
IV	LVRJ's Motion for Extension of Time to Submit Proposed Order Granting for Attorney's Fees and Costs	8/24/2017	JA0703 – JA0708
IV	LVRJ's Motion for Extension of Time to Submit Proposed Order Granting for Attorney's Fees and Costs (Second Request)	9/7/2017	JA0713 – JA0715
I	Memorandum in Support of Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus/ Application for Declaratory and Injunctive Relief	02/08/2017	JA0168 – JA0189
V	Minutes from Hearing on City of Henderson's Motion to Stay	4/11/2018	JA0972
IV	Minutes from Hearing on Motion for Attorney Fees and Costs	8/03/2017	JA0660
V	Minutes from Hearing on Motion for Clarification	12/13/2017	JA0751
IV	Minutes from Hearing on Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs	8/10/2017	JA0687
III	Minutes of Hearing Re: Petition for Writ of Mandamus	03/30/2017	JA0419
III	Notice of Appeal	06/09/2017	JA0451 – JA0452

VOL.	DOCUMENT	DATE	BATES NUMBER
IV	Notice of Change of Hearing	11/29/2017	JA0745 – JA0746
V	Notice of Entry of Order Denying LVRJ's Motion for Clarification	1/04/2018	JA0759 – JA0763
III	Notice of Entry of Order Denying Petition for Writ of Mandamus	05/15/2017	JA0445 – JA0450
V	Notice of Entry of Order Granting City of Henderson's Motion for Stay Pending Resolution Nevada Supreme Court Appeal	5/21/2018	JA0975 – JA0980
V	Notice of Entry of Order on Las Vegas Review-Journal's Motion for Attorneys' Fees and Costs	2/15/2018	JA0769 – JA0766
I	Notice of Entry of Stipulation and Order to Allow Las Vegas Review Journal to File an Amended Petition	01/03/2017	JA025 – JA028
IV	Notice of Submission of Proposed Order	8/25/2017	JA0709 – JA0712
V	Notice of Submission of Proposed Order	3/28/2018	JA0800 – JA0812
V	Order Denying LVRJ's Motion for Clarification	1/03/2018	JA0757 – JA0758
V	Order on August 10, 2017, Hearing on LVRJ's Motion for Attorney's Fees and Costs	2/15/2018	JA0764 – JA0768
V	Order on City of Henderson's Motion for Stay Pending Resolution of NV Supreme Court Appeal	5/21/2018	JA0973 – JA0974
IV	Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs	6/01/2017	JA0455 – JA0526
V	Petitioner's Opposition to Respondent's Motion for Stay Pending Appeal and Countermotion for Order to Show Cause	4/10/2018	JA0951 – JA0971

VOL.	DOCUMENT	DATE	BATES NUMBER
I	Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus	11/29/2016	JA001 – JA022
III	Register of Actions	01/17/2018	JA0453 – JA0454
IV	Reply to City of Henderson's Opposition to LVRJ's Motion for Attorney's Fees and Costs	7/27/2017	JA0643 – JA0659
V	Reply to City of Henderson's Opposition to Motion for Clarification	12/05/2017	JA0747 – JA0750
III	Reply to Respondent City of Henderson's Response to Amended Public Records Act Application Pursuant To NRS 239.001/ Petition For Writ Of	03/23/2017	JA0296 – JA0418
V	Respondent City of Henderson's Case Appeal Statement	3/16/2018	JA0789 – JA0793
V	Respondent City of Henderson's Notice of Appeal	3/16/2018	JA0777 – JA0788
IV	Stipulation and Order to Modify Briefing Schedule and Move the Hearing on LVRJ's Motion for Attorney's Fees and Costs	6/22/2017	JA0527 – JA0529
IV	Transcript - Decision on August 3, 2017, Hearing	8/10/2017	JA0688 – JA0702
IV	Transcript – Hearing on Motion for Attorney’s Fees and Costs	8/03/2017	JA0661 – JA0686
V	Transcript - Hearing on Plaintiff's Motion for Clarification	12/13/2017	JA0752 – JA0756
III	Transcript of Proceedings Re: Petition for Writ of Mandamus	03/30/2017	JA0420 – JA0444



1 **RPLY**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE SHELL LLC**

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

Telephone: (702)-728-5300

Email: alina@nvlitigation.com

Counsel for Petitioner

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

10 Petitioner,

Dept. No.: XVIII

11 vs.

12 **REPLY TO CITY OF**
13 **HENDERSON'S OPPOSITION TO**
14 **MOTION FOR CLARIFICATION**

15 CITY OF HENDERSON,

16 Respondent.

17 Petitioner Las Vegas Review-Journal ("Review-Journal"), by and through its
18 undersigned counsel, Margaret A. McLetchie and Alina M. Shell, hereby submits this Reply
19 to Respondent City of Henderson's ("Henderson") Opposition to the Review-Journal's
20 motion for clarification of this Court's order granting the Review-Journal \$9,910.84 in
21 attorney's fees and costs in this matter. This reply is supported by the attached memorandum
22 of points and authorities, and any argument that the Court may entertain at the hearing on
23 this motion.

24 DATED this 5th day of December, 2017.

25 /s/ Alina M. Shell

26 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

27 ALINA M. SHELL, Nevada Bar No. 11711

28 **MCLEATCHIE SHELL LLC**

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Counsel for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

“[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).” *Haley v. Dist. Ct.*, 128 Nev. Adv. Op. 16, 273 P.3d 855, 860 (2012) (quoting *Shuette v. Beazer Home Holdings Corp.*, 121 Nev. 837, 864–65, 124 P.3d 530, 549 (2005)) (internal punctuation omitted). While the Nevada Supreme Court has noted that express findings on each *Brunzell* factor “are not necessary for a district court to properly exercise its discretion,” it must still “demonstrate that it considered the required factors, and the award must be supported by substantial evidence.” *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1143 (2015) (citations omitted).

The Review-Journal requested \$30,931.50 in attorney’s fees for the work performed in this matter. (See June 1, 2017 Motion for Attorney’s Fees, pp. 1:4; 15:14.) At the August 10, 2017 continuation of the hearing on the Review-Journal’s motion for attorney’s fees, the Court stated it had considered the *Brunzell* factors and arguments Henderson had made regarding a reduced award for the work performed by Review-Journal counsel, and had determined the Review-Journal was entitled to \$9,010.00 in attorney’s fees. (See Exh. A to Opposition, pp. 6:16-7:2.) However, aside from stating that it had considered *Brunzell*, the Court did not explain how its consideration of the *Brunzell* factors had resulted in an approximately 70% reduction of the Review-Journal’s fees request.

In its Opposition, Henderson asserts that neither a hearing nor clarification of this Court’s order awarding the Review-Journal attorney’s fees are necessary because the Court “obviously [] knows the basis for its decision.” (Opposition, p. 3:14.) While the Court undoubtedly does know the bases for its award of fees, that is not relevant should either the Review-Journal or Henderson decide to appeal the Court’s order, or should the Review-Journal be entitled to additional fees and costs after the completion of its appeal. *Compare Haley v. Dist. Ct.*, 128 Nev. Adv. Op. 16, 273 P.3d 855, 860 (2012) (affirming award of

attorney's fees where the record demonstrated the district court's detailed consideration of the *Brunzell* factors, including the attorney's experience, the complex nature of the claims, and other factors). Absent detail from the Court regarding how the *Brunzell* factors influenced its award to the Review-Journal, the Supreme Court cannot make a determination of whether the Court properly exercised its discretion. *See Logan*, 350 P.3d at 1143 ("We review an award of attorney fees for an abuse of discretion.")

Henderson also complains that the Review-Journal did not timely file its request for clarification. (Opposition, p. 3:5-10.) This, however, is irrelevant given that the Court has not yet entered an order. The Review-Journal's motion for clarification is therefore neither improper nor untimely.

Accordingly, to provide the parties and any reviewing court with the requisite information regarding the Court's award of attorney's fees, clarification is needed.

Respectfully submitted this 5th day of December, 2017.

/s/ Alina M. Shell

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Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 5th day of December, 2017, I did cause a true copy of the foregoing REPLY TO CITY OF HENDERSON'S OPPOSITION TO MOTION FOR CLARIFICATION in *Las Vegas Review-Journal v. City of Henderson*., Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 5th day of December, 2017, I mailed a true and correct copy of the foregoing REPLY TO CITY OF HENDERSON'S OPPOSITION TO MOTION FOR CLARIFICATION by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, City Attorney
Brandon P. Kemble, Asst. City Attorney
Brian R. Reeve, Asst. City Attorney
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy
Sarah P. Harmon
Kelly B. Stout
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC

Writ of Mandamus

COURT MINUTES

December 13, 2017

A-16-747289-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Henderson City of, Defendant(s)

December 13, 2017 09:00 AM Plaintiff's Motion for Clarification

HEARD BY: Bailus, Mark B COURTROOM: Phoenix Building Courtroom - 11th Floor

COURT CLERK: Castle, Alan

RECORDER: Page, Robin

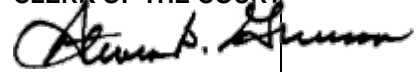
REPORTER:

PARTIES PRESENT:

Alina Shell	Attorney for Plaintiff
Brian R. Reeve	Attorney for Defendant
Dennis L. Kennedy	Attorney for Defendant
Henderson City of	Defendant
Las Vegas Review-Journal	Plaintiff

JOURNAL ENTRIES

Following arguments of counsel. COURT FINDS the record is sufficiently clear as to Court's findings and the factors used in making the determination with respect to fees. COURT ORDERS, Plaintiff's Motion for Clarification is DENIED. Mr. Kennedy to prepare the order within 10 days and have opposing counsel review as to form and content and distribute a filed copy to all parties involved in this matter.



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 LAS VEGAS REVIEW-
9 JOURNAL,

10 Plaintiff,

11 vs.

12 CITY OF HENDERSON,

13 Defendant.

CASE NO: A-16-747289-W

DEPT. XVIII

14 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE
15 WEDNESDAY, DECEMBER 13, 2017

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **PLAINTIFF'S MOTION FOR CLARIFICATION**

18 APPEARANCES:

19 For the Plaintiff:

ALINA SHELL, ESQ.

20
21
22 For the Defendant:

BRIAN R. REEVE, ESQ.

DENNIS L. KENNEDY, ESQ.

23
24
25 RECORDED BY: ROBIN PAGE, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, December 13, 2017

2
3 [Proceeding commenced at 9:52 a.m.]

4 THE COURT: On page 14, Las Vegas Review-Journal versus
5 Henderson, City of Henderson, Case Number A-16-747289.

6 Counsel, state -- counsel, state your appearances, please.

7 MS. SHELL: Good morning, Your Honor, Alina Shell on
8 behalf of the petitioner the Review Journal.

9 MR. KENNEDY: On behalf of the Defendant, City of
10 Henderson, Dennis Kennedy and Assistant City Attorney, Brian Reeve.

11 THE COURT: And this is on for a motion for clarification. I
12 will advise counsel I have reviewed the competing orders that have been
13 submitted. I don't know if I'm going to sign either one. I'm -- I'm making
14 that determination right now or I may just do my own order, quite frankly,
15 unless the parties can submit an order that is acceptable to both of
16 them.

17 Counsel, this is on for your motion for clarification.

18 MS. SHELL: Yes, Your Honor.

19 And -- and I just would like start out by apologizing to the
20 Court and to opposing counsel. When we were here on August 10th, in
21 front of Your Honor, and you made your decision regarding an award of
22 attorney's fees, you did indicate that you were reducing the fees based
23 on *Brunzell*. And I -- I -- it's my understanding, based on reading the
24 transcript now, that you also apportioned the award based on the fact
25 that we didn't prevail in all of our claims that we had raised.

1 And upon consideration later, and as Your Honor knows, we
2 filed a notice of appeal relating to the substantive issues in the case.
3 And when we were doing that and looked at the -- what was going on
4 with the attorney's fees, I realized that we needed a clarification. And so
5 that's why we came to Your Honor, to just get some clarity as to how
6 Your Honor used the *Brunzell* factors to reduce our award from a little
7 over 30,000 to just over 9,000.

8 THE COURT: Counsel, your position on the motion for
9 clarification?

10 MR. KENNEDY: Simple and straightforward, reading the
11 transcript from the August 10th announcement of your decision, pages 6
12 and 7, the Court gives a very thorough and reasoned explanation as to
13 what it was doing and why. And, specifically, says, I considered all the
14 *Brunzell* factors; here's what I am doing. So the competing order that
15 we submitted, we tried to just take that and put it in the order at -- as a
16 substantive part of the order, saying here's what I -- here's what the
17 Court's doing and why. There's really no reason for clarification.

18 In fact, at the conclusion of the announcement of the Court's
19 decision, and this is on page 7 of the transcript, Court says any
20 questions about what I just did. And there was one request for
21 clarification. Court said that's fine, then submit the order. Here we are
22 four months later.

23 THE COURT: Any rebuttal?

24 MS. SHELL: Well, Your Honor, just to address -- and -- and I
25 do acknowledge that you do talk about *Brunzell* in -- at the hearing.

1 However, I would disagree with opposing counsel that it was a thorough
2 review.

3 And I cited this in my reply, there's a case, *Logan versus Abe*,
4 from the Supreme Court that says, okay, so a Court in making a decision
5 about an award of attorney's fees, doesn't have to exhaustively talk
6 about each factor of *Brunzell*, but still has to provide a -- the award has
7 to be supported by substantial evidence.

8 And -- and, again, Your Honor, I should have asked for
9 clarification, at that point, and I recognize that. But in reviewing this, I
10 realize that the courts -- in court statements didn't fulfill the need to
11 provide substantial evidence supporting the award, so.

12 THE COURT: And, quite frankly, Counsel, I disagree. I
13 thought I was very clear on how I came up with my ruling.

14 I'm going to deny your motion for clarification.

15 MS. SHELL: Thank you, Your Honor.

16 THE COURT: Counsel, prepare the appropriate order --

17 MR. KENNEDY: I will prepare the order for this hearing, Your
18 Honor.

19 THE COURT: Thank you, I appreciate that.

20 MS. SHELL: And, Your Honor, if I could just --

21 THE COURT: Approval as to content and form with opposing
22 counsel, please submit it within ten days.

23 I'm looking at your competing orders. Unless you can resolve
24 this issue and send a new order over that you both agree on, either I'll
25 sign one of the competing orders or I'll do my own order.

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MS. SHELL: Thank you, Your Honor.


MR. KENNEDY: That's great. Thank you, Your Honor.

THE COURT: Thank you, counsel.

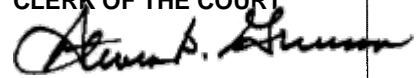
[Proceeding concluded at 9:57 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Robin Page
Court Recorder/Transcriber



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Attorneys for Respondent

CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W

Dept. No. XVIII

ORDER

The Motion for Clarification of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on December 13, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through its counsel, Dennis L. Kennedy of Bailey Kennedy, and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all

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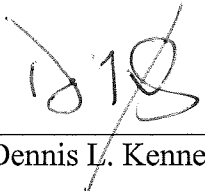
1 of the papers and pleadings on file, and having heard the argument of counsel, hereby denies the
2 Review-Journal's Motion for Clarification.

3 IT IS SO ORDERED this 21 day of December, 2017.

4
5 
6 HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

7 Submitted by:

8 **BAILEY ♦ KENNEDY**

9 
10 By _____
11 Dennis L. Kennedy, Nevada Bar No. 1462

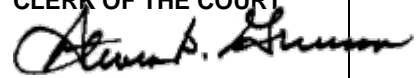
12 and
13 Josh M. Reid, Nevada Bar No. 7497
14 Brandon P. Kemble, Nevada Bar No. 11175
15 Brian R. Reeve, Nevada Bar No. 10197
16 **CITY OF HENDERSON'S ATTORNEY OFFICE**

17 *Counsel for Respondent, City of Henderson*

18 Approved/Dissapproved
as to form and substance:

19 **MCLETHIE SHELL LLC**

20 
21 By _____
22 Alina M. Shell, Nevada Bar No. 11711



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CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order denying Petitioner's Motion for Clarification was entered on January 3, 2018.

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1 A true and correct copy is attached.

2 DATED this 4th day of January, 2018.

3 BAILEY❖KENNEDY

4
5 By: /s/ Dennis L. Kennedy
6 DENNIS L. KENNEDY

7 and

8 JOSH M. REID, City Attorney
9 Nevada Bar No. 7497
10 **CITY OF HENDERSON**
11 240 Water Street, MSC 144
12 Henderson, NV 89015

13 *Attorneys for Respondent*
14 **CITY OF HENDERSON**
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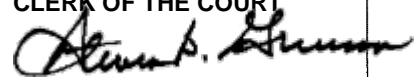
CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 4th day of January, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE
ALINA M. SHELL
MCLETCHE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com
Maggie@nvlitigation.com
Attorneys for Petitioner
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY



ORDR

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Attorneys for Respondent

CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Clarification of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on December 13, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through its counsel, Dennis L. Kennedy of Bailey Kennedy, and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all

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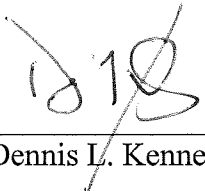
1 of the papers and pleadings on file, and having heard the argument of counsel, hereby denies the
2 Review-Journal's Motion for Clarification.

3 IT IS SO ORDERED this 21 day of December, 2017.

4
5 
6 HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

7 Submitted by:

8 **BAILEY ♦ KENNEDY**

9 
10 By
11 Dennis L. Kennedy, Nevada Bar No. 1462

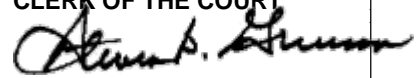
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14 Brandon P. Kemble, Nevada Bar No. 11175
15 Brian R. Reeve, Nevada Bar No. 10197
16 **CITY OF HENDERSON'S ATTORNEY OFFICE**

17 *Counsel for Respondent, City of Henderson*

18 Approved/Dissapproved
as to form and substance:

19 **MCLETCHE SHELL LLC**

20 
21 By
22 Alina M. Shell, Nevada Bar No. 11711



ORDR

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Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,
Petitioner,

vs.

CITY OF HENDERSON,
Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1 1. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in
3 attorney's fees, and \$902.84 in costs.

4 2. In its Motion and supporting exhibits the Review-Journal requested compensation at
5 the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
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26 consideration, and conducted an additional hearing on August 10, 2017.

27 ///

28 ///

ORDER

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

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

9. The Nevada Supreme Court has explained that "...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

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13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

1 Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

2 Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of
3 attorneys' services:

4 (1) the qualities of the advocate: his ability, his training, education, experience,
5 professional standing and skill; (2) the character of the work to be done: its difficulty,
6 its intricacy, its importance, time and skill required, the responsibility imposed and the
7 prominence and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill, time and attention
given to the work; (4) the result: whether the attorney was successful and what
benefits were derived.

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10 14. Although the Review-Journal did not prevail on the claims for relief set forth in its
11 Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it
12 was able to obtain copies of the records it requested after initiating this action.

13 15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as
14 to its request for the records and therefore is entitled to attorney's fees and costs.

15 16. Having reviewed the papers and pleadings filed herein, including the documentation
16 provided by the Review-Journal regarding the work performed by its counsel and support staff, and
17 having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of
18 attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for
19 Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

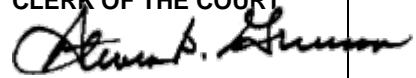
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson



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Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order regarding Attorneys' Fees and Costs of Petitioner
Las Vegas Review Journal was entered on February 15, 2018.

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1 A true and correct copy is attached.

2 DATED this 15th day of February, 2018.

3 BAILEY❖KENNEDY

4
5 By: /s/ Dennis L. Kennedy
6 DENNIS L. KENNEDY

7 and

8 JOSH M. REID, City Attorney
9 Nevada Bar No. 7497
10 **CITY OF HENDERSON**
11 240 Water Street, MSC 144
12 Henderson, NV 89015

13 *Attorneys for Respondent*
14 **CITY OF HENDERSON**
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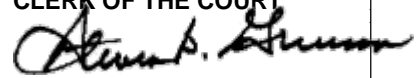
CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15th day of February, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE
ALINA M. SHELL
MCLETCHE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com
Maggie@nvlitigation.com
Attorneys for Petitioner
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY



ORDR

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Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and for an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

1 1. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs
2 pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in
3 attorney's fees, and \$902.84 in costs.

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14 to its request for the records and therefore is entitled to attorney's fees and costs.

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16 provided by the Review-Journal regarding the work performed by its counsel and support staff, and
17 having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of
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19 Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

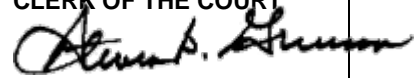
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson



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BRIAN R. REEVE, City Attorney
Nevada Bar No. 10197

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SARAH E. HARMON

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SHarmon@BaileyKennedy.com

Attorneys for Respondent

CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W

Dept. No. XVIII

**RESPONDENT CITY OF
HENDERSON'S NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that, as permitted by Nevada Rule of Appellate Procedure 3(a)(1), Respondent City of Henderson ("Henderson") appeals to the Supreme Court of Nevada from the District Court's Order granting in part and denying in part the Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review Journal") filed February 15, 2018.

///

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1 Notice of Entry of the District Court's Order was filed on February 15, 2018, and is attached hereto
2 as Exhibit A.

3
4 DATED this 16th day of March, 2018.

5 BAILEY❖KENNEDY

6
7 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

8
9 and

10 JOSH M. REID, City Attorney
Nevada Bar No. 7497

11 BRIAN R. REEVE, City Attorney
Nevada Bar No. 10197

12 CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, NV 89015

13
14 *Attorneys for Respondent*
CITY OF HENDERSON
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of March, 2018, service of the foregoing **NOTICE OF APPEAL** was made by mandatory electronic service through the Eighth Judicial District 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:

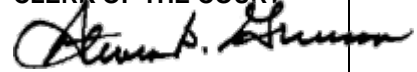
MARGARET A. MCLETCHE
ALINA M. SHELL
MCLETCHE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com
Maggie@nvlitigation.com
Attorneys for Petitioner
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

EXHIBIT A

EXHIBIT A



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Attorneys for Respondent
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8 JOSH M. REID, City Attorney
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10 **CITY OF HENDERSON**
11 240 Water Street, MSC 144
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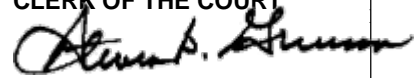
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MARGARET A. MCLETCHE	Email: Alina@nvlitigation.com
ALINA M. SHELL	Maggie@nvlitigation.com
MCLETCHE SHELL LLC	
701 East Bridger Avenue, Suite 520	<i>Attorneys for Petitioner</i>
Las Vegas, Nevada 89101	LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY



ORDR

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

9. The Nevada Supreme Court has explained that "...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

10. A party "prevails" for the purposes of Nev. Rev. Stat. § 239.011(2) if "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

11. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

12. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

13. "Whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors" announced by the Nevada

1 Supreme Court in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *Id.* at 865.

2 Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of
3 attorneys' services:

4 (1) the qualities of the advocate: his ability, his training, education, experience,
5 professional standing and skill; (2) the character of the work to be done: its difficulty,
6 its intricacy, its importance, time and skill required, the responsibility imposed and the
7 prominence and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill, time and attention
given to the work; (4) the result: whether the attorney was successful and what
benefits were derived.

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

10 14. Although the Review-Journal did not prevail on the claims for relief set forth in its
11 Amended Petition, the Court finds the Review-Journal is nevertheless a prevailing party because it
12 was able to obtain copies of the records it requested after initiating this action.

13 15. Thus, the Court finds that the Review-Journal is the prevailing party in this matter as
14 to its request for the records and therefore is entitled to attorney's fees and costs.

15 16. Having reviewed the papers and pleadings filed herein, including the documentation
16 provided by the Review-Journal regarding the work performed by its counsel and support staff, and
17 having considered the *Brunzell* factors, the Court finds the Review-Journal is entitled to an award of
18 attorney's fees in the amount of \$9,010.00, based on the hourly rates set forth on its Motion for
19 Attorney's Fees and Costs, and the work performed in this matter.

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17. The Court further finds the Review-Journal is entitled to \$902.84 in costs, resulting in a total award of \$9,912.84.

IT IS SO ORDERED this 8 day of FEBRUARY, ²⁰¹⁸~~2017~~.


HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

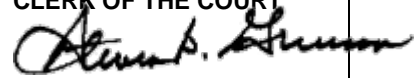
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

CITY OF HENDERSON'S ATTORNEY OFFICE

Counsel for Respondent, City of Henderson



ASTA
JOSH M. REID, City Attorney
Nevada Bar No. 7497
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Nevada Bar No. 10197
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Josh.Reid@cityofhenderson.com
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DENNIS L. KENNEDY
Nevada Bar No. 1462
SARAH E. HARMON
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DKennedy@BaileyKennedy.com
SHarmon@BaileyKennedy.com

Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

CASE APPEAL STATEMENT

Pursuant to Nevada Rule of Appellate Procedure 3(f)(1), Respondent City of Henderson (“Henderson”) files its Case Appeal Statement.

1. Name of Appellant Filing This Case Appeal Statement:

Respondent City of Henderson.

2. Identify the Judge Issuing the Decision, Judgment, or Order Appealed From:

The Honorable Mark B. Bailus, District Court Judge.

3. Identify Each Appellant and the Name and Address of Counsel for Each Appellant:

Appellant: City of Henderson

Counsel for Appellant: DENNIS L. KENNEDY
Nevada Bar No. 1462
SARAH E. HARMON
Nevada Bar No. 8106
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302

JOSH M. REID, City Attorney
Nevada Bar No. 7497
BRIAN R. REEVE, City Attorney
Nevada Bar No. 10197
CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, Nevada 89015

4. Identify Each Respondent and the Name and Address of Appellate Counsel, if Known, for Each Respondent (if the Name of a Respondent's Appellate Counsel Is Unknown, Indicate as Much and Provide the Name and Address of That Respondent's Trial Counsel):

Respondent: Las Vegas Review-Journal

Counsel for Respondent: MARGARET A. MCLETHIE
Nevada Bar No. 10931
ALINA M. SHELL
Nevada Bar No. 11711
MCLETHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

5. Indicate Whether Any Attorney Identified Above in Response to Question 3 or 4 Is Not Licensed to Practice Law in Nevada, and, if so, Whether the District Court Granted That Attorney Permission to Appear Under SCR 42 (Attach a Copy of Any District Court Order Granting Such Permission):

Not Applicable.

6. Indicate Whether Appellant Was Represented by Appointed or Retained Counsel in the District Court:

Retained counsel.

7. Indicate Whether Appellant Is Represented by Appointed or Retained Counsel on Appeal:

Retained counsel.

8. Indicate Whether Appellant Was Granted Leave to Proceed in *Forma Pauperis*, and the Date of Entry of the District Court Order Granting Such Leave:

Not Applicable.

9. Indicate the Date the Proceedings Commenced in the District Court (e.g., Date Complaint, Indictment, Information, or Petition Was Filed):

The Complaint was filed on November 29, 2016.

10. Provide a Brief Description of the Nature of the Action and Result in the District Court, Including the Type of Judgment or Order Being Appealed and the Relief Granted by the District Court:

The underlying action involved the Nevada Public Records Act. That action was dismissed by order dated May 15, 2017, and is the subject of a separate appeal (No. 73287).

On August 10, 2017, the District Court held a hearing on the Motion for Attorney's Fees and Costs filed by the Las Vegas Review Journal (the "Review Journal").

On February 15, 2018, the District Court entered its Order Granting in Part and Denying in Part Motion for Attorney's Fees and Costs of the Review-Journal. Henderson appeals from that Order.

11. Indicate Whether the Case Has Previously Been the Subject of an Appeal to or Original Writ Proceeding in the Supreme Court, and, if so, the Caption and Supreme Court Docket Number of the Prior Proceeding:

Yes. *The Las Vegas Review Journal v. City of Henderson*, Case No. 73287 – the appeal of the dismissal of the underlying matter.

12. Indicate Whether This Appeal Involves Child Custody or Visitation:

Not Applicable.

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13. If This Is a Civil Case, Indicate Whether This Appeal Involves the Possibility of Settlement:

Yes.

DATED this 16th day of March, 2018.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

and

JOSH M. REID, City Attorney

Nevada Bar No. 7497

BRIAN R. REEVE, City Attorney

Nevada Bar No. 10197

CITY OF HENDERSON

240 Water Street, MSC 144

Henderson, NV 89015

Attorneys for Respondent

CITY OF HENDERSON

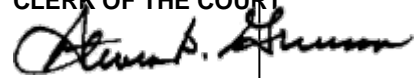
CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of March, 2018, service of the foregoing **CASE APPEAL STATEMENT** was made by mandatory electronic service through the Eighth Judicial District 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:

MARGARET A. MCLETCHE
ALINA M. SHELL
MCLETCHE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

Email: Alina@nvlitigation.com
Maggie@nvlitigation.com
Attorneys for Petitioner
LAS VEGAS REVIEW-JOURNAL

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY



1 **NOAS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE SHELL LLC**

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702)-728-5300

8 Email: alina@nvlitigation.com

9 *Counsel for Petitioner/Cross-Appellant Las Vegas Review-Journal*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

13 Petitioner,

Dept. No.: XVIII

14 vs.

NOTICE OF CROSS-APPEAL

15 CITY OF HENDERSON,

16 Respondent.

17 NOTICE is hereby given that Petitioner, the Las Vegas Review-Journal ("Review-
18 Journal"), pursuant to Nevada Rule of Appellate Procedure 4(a)(2), hereby timely cross-
19 appeals to the Supreme Court of Nevada from the District Court's February 15, 2018 Order
20 granting in part and denying in part the Motion for Attorney's Fees and Costs of Petitioner
21 Las Vegas Review Journal, which Respondent City of Henderson appealed on March 16,
22 2018.

23 DATED this 26th day of March, 2018.

24 /s/ Margaret A. McLatchie

25 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

26 ALINA M. SHELL, Nevada Bar No. 11711

27 **MCLEATCHIE SHELL LLC**

28 701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Counsel for Petitioner/Cross-Appellant

Las Vegas Review-Journal

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CERTIFICATE OF SERVICE

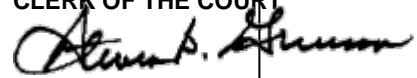
Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 26th day of March, 2018, I did cause a true copy of the foregoing NOTICE OF CROSS-APPEAL in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 26th day of March, 2018, I mailed a true and correct copy of the foregoing NOTICE OF CROSS-APPEAL by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, Brandon P. Kemble, and Brian R. Reeve
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Sarah P. Harmon, and Kelly B. Stout
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC



1 **ASTA**
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLEATCHIE SHELL LLC**
5 701 East Bridger Avenue, Suite 520
6 Las Vegas, NV 89101
7 Telephone: (702)-728-5300
8 Email: alina@nvlitigation.com
9 *Counsel for Petitioner/Cross-Appellant Las Vegas Review-Journal*

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

10
11 Petitioner,

Dept. No.: XVIII

12 vs.

CASE APPEAL STATEMENT

13 CITY OF HENDERSON,

14 Respondent.

15
16 1. *Name of cross-appellant filing this case appeal statement:*

17 Petitioner Las Vegas Review-Journal.

18 2. *Identify the judge issuing the decision, judgment, or order appealed from:*

19 The Honorable Mark B. Bailus, District Court Judge.

20 3. *Identify each cross-appellant and the name and address of counsel for each*
21 *appellant:*

22 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

23 ALINA M. SHELL, Nevada Bar No. 11711

24 MCLEATCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

Counsel for Petitioner/Cross-Appellant Las Vegas Review-Journal

26 ///

27 ///

28 ///

4. *Identify each cross-respondent and the name and address of appellate counsel, if known, for each cross-respondent:*

Josh M. Reid, Nevada Bar No. 7497
Brandon P. Kemble, Nevada Bar No. 11175
Brian R. Reeve, Nevada Bar No. 10197
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Nevada Bar No. 1462
Sarah P. Harmon, Nevada Bar No. 8106
Kelly B. Stout, Nevada Bar No. 12105
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Appellant/Cross-Respondent City of Henderson

5. *Indicate whether any attorney identified above in 3 or 4 is not licensed to practice law in Nevada and, if so, whether the District Court granted that attorney permission to appear under SCR 42 (and attach a copy of any District Court order granting such permission):*

Not applicable. All attorneys are licensed in Nevada.

6. *Indicate whether appellant was represented by appointed or retained counsel in the District Court:*

Appellant is represented by retained counsel.

7. *Indicate whether appellant is represented by appointed or retained counsel on appeal:*

Retained counsel.

8. *Indicate whether Appellant was granted leave to proceed in forma pauperis, and the date of entry of the District Court order granting such leave:*

No.

///

///

9. *Indicate the date the proceedings commenced in the District Court, e.g., the date the complaint, indictment, information, or petition was filed:*

The Petition for Writ of Mandamus in this action was filed on November 29, 2016.

10. *Provide a brief description of the nature of the action and result in the District Court, including the type of judgment or order being appealed and the relief granted by the District Court:*

The underlying action involved the Nevada Public Records Act. That action was dismissed by an order dated May 15, 2017 and is the subject of a separate appeal (Nevada Supreme Court Case No. 73287). On August 10, 2017, the District Court held a hearing on the Motion for Attorney's Fees and Costs filed by the Las Vegas Review Journal (the "Review Journal"). On February 15, 2018, the District Court entered its Order Granting in Part and Denying in Part Motion for Attorney's Fees and Costs of the Review-Journal. On March 16, 2018, City of Henderson appealed that Order. (Nevada Supreme Court Case No. 75407).

11. *Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:*

Undersigned counsel is aware of one related case pending before this Court, *City of Henderson v. The Las Vegas Review-Journal*, Nev. S. Ct. Case No. 73287.

12. *Indicate whether this appeal involves child custody or visitation:*

This appeal does not involve child custody or visitation.

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13. *If this is a civil case, indicate whether this appeal involves the possibility of settlement:*

The Review-Journal believes this appeal involves the possibility of settlement.

DATED this 26th day of March, 2018.

/s/ Margaret A. McLetchie

MARGARET A. MCLETSCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETSCHIE SHELL LLC

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Counsel for Petitioner/Cross-Appellant,

Las Vegas Review-Journal

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 26th day of March, 2018, I did cause a true copy of the foregoing CASE APPEAL STATEMENT in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 26th day of March, 2018, I mailed a true and correct copy of the foregoing CASE APPEAL STATEMENT by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, Brandon P. Kemble, and Brian R. Reeve

CITY OF HENDERSON'S ATTORNEY OFFICE

240 Water Street, MSC 144

Henderson, NV 89015

Dennis L. Kennedy, Sarah P. Harmon, and Kelly B. Stout

BAILEY KENNEDY

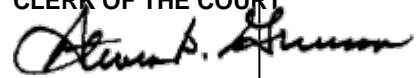
8984 Spanish Ridge Avenue

Las Vegas, NV 89148

Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield

An Employee of MCLETSCHIE SHELL LLC



1 **NOTC**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE SHELL LLC**

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

Telephone: (702)-728-5300

Email: maggie@nvlitigation.com

Counsel for Petitioner

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

10 Petitioner,

Dept. No.: XVIII

11 vs.

12 **NOTICE OF SUBMISSION OF**
13 **PROPOSED ORDER**

14 CITY OF HENDERSON,

15 Respondent.

16 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

17 On September 21, 2017 Petitioner Las Vegas Review-Journal submitted the
18 attached Proposed Order in support of it Motion for Attorney's Fees and Costs. This
19 Honorable Court signed Respondent City of Henderson's competing Proposed Order, which
20 was filed and entered on February 15, 2018

21 DATED this 28th day of March, 2018.

22 /s/ Margaret A. McLetchie

23 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

24 ALINA M. SHELL, Nevada Bar No. 11711

25 **MCLEATCHIE SHELL LLC**

26 701 East Bridger Avenue, Suite 520

27 Las Vegas, NV 89101

28 Telephone: (702)-728-5300

Email: maggie@nvlitigation.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 28th day of March, 2018, I did cause a true copy of the foregoing NOTICE OF SUBMISSION OF PROPOSED ORDER in *Las Vegas Review-Journal v. City of Henderson*., Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 28th day of March, 2018, I mailed a true and correct copy of the foregoing NOTICE OF SUBMISSION OF PROPOSED ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Josh M. Reid, City Attorney
Brandon P. Kemble, Asst. City Attorney
Brian R. Reeve, Asst. City Attorney
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Sarah P. Harmon, and Kelly B. Stout
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for Respondent, City of Henderson

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC

EXHIBIT 1

ORDR

MARGARET A. MCLETTCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETTCHIE SHELL LLC

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702)-728-5300

Email: maggie@nvlitigation.com

Counsel for Petitioner, Las Vegas Review-Journal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No.: A-16-747289-W

Dept. No.: XVIII

[PROPOSED] ORDER

The Motion for Attorney's Fees and Costs of Petitioner Las Vegas Review Journal (the "Review-Journal") came on for hearing at 9:00 a.m. on August 3, 2017, and an additional hearing on August 10, 2017, the Honorable Mark B. Bailus presiding, the Review-Journal appearing by and through its counsel, Alina M. Shell, and Respondent City of Henderson ("Henderson"), appearing by and through Dennis L. Kennedy of Bailey Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve, and the Court having read and considered all of the papers and pleadings on file, and having heard the argument of counsel, hereby makes the following findings of fact and conclusions of law:

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PROCEDURAL HISTORY AND FINDINGS OF FACT

Original Request and the City of Henderson's Response

1. On or around October 4, 2016, Review-Journal reporter Natalie Bruzda sent the City of Henderson ("Henderson") a request pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* ("NPRA") seeking certain documents dated from January 1, 2016 pertaining to Trosper Communications and its principal, Elizabeth Trosper (the "Request").

2. On October 11, 2016, Henderson provided a partial response ("Response") to the Request. The Response, which did not provide timely notice regarding any specific confidentiality or privilege claim, indicated Henderson was "in process of searching for and gathering responsive e-mails and other documents" but that "[d]ue to the high number of potentially responsive documents that meet your search criteria (we have approximately 5,566 emails alone) and the time required to review them for privilege and confidentiality, we estimate that your request will be completed in three weeks from the date we commence our review." (*See* Exhibit ("Exh.") 2 to Amended Petition.)

3. Henderson also demanded payment of \$5,787.89 to continue its review, and stated the \$5,787.89 fee was calculated by averaging the actual hourly rate of the Assistant City Attorneys who would conduct a privilege review of the requested records. (*Id.*)

4. Henderson contended that, pursuant to its Public Records Policy, Henderson Municipal Code § 2.47.085, it would not continue searching for responsive documents and reviewing them for privilege without a deposit of \$2,893.94—half of the total estimated \$5,787.89 fee. (*Id.*)

5. Henderson informed the Review-Journal it would not release any records until the Review-Journal paid the total final fee. (*Id.*)

6. On November 29, 2016, after an informal effort to resolve this dispute with Henderson failed, the Review-Journal initiated this action and filed a Petition for Writ of Mandamus with this Court.

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Litigation

7. Subsequently, counsel for the Review-Journal and attorneys from the City Attorneys' Office conferred extensively regarding the Review-Journal's NPRA request.

8. On December 20, 2016, Henderson provided the Review-Journal with an initial log of documents it was redacting or withholding.

9. Henderson also agreed to make the requested documents available for inspection free of charge. The subsequent inspection by Review-Journal reporter Natalie Bruzda took place on over the course of several days.

10. During the reporter's inspection, counsel for the Review-Journal requested Henderson provide electronic copies of the records to facilitate the reporter's review. Henderson denied this request.

11. In response to request from counsel for the Review-Journal, Henderson provided an addition privilege log which provided descriptions of the documents being withheld or redacted; cited the putative authority for withholding or redaction; and indicated who sent and received emails responsive to the Request.

12. In response to a request from counsel for the Review-Journal, Henderson produced a revised privilege log which included a description of the senders and recipients of withheld or redacted documents.

13. The Review-Journal filed an Amended Petition and a supporting Memorandum on February 8, 2017.

14. In the Amended Petition and Memorandum, the Review-Journal asserted that Henderson's attempt to charge it for a privilege review of the requested documents violated the NPRA because the Act does not permit a governmental entity to charge a requestor for a privilege review.

15. The Review-Journal additionally asserted that Henderson Municipal Code § 2.47.085 and Henderson's Public Records Policy conflicted with the NPRA's limitations in Nev. Rev. Stat. § 239.055(1) on the fees a governmental entity can charge for extraordinary use of personnel.

16. In its Amended Petition, Review-Journal requested (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.

17. On March 30, 2017, the Court conducted a hearing on the Review-Journal's Amended Petition. At that hearing, counsel for Henderson finally agreed to provide the Review-Journal a USB drive with copies of the requested documents.

18. On May 15, 2017, the Court entered an order denying the Review-Journal's request for a writ of mandamus, injunctive relief, and declaratory relief.

19. In that order, the Court noted that at the March 30 hearing, Henderson finally agreed to provide electronic copies of 69,979 pages of documents that were responsive to the Review-Journal's public records request. (May 18, 2017 Order at p. 2, ¶ 2.)

The Review-Journal's Motion for Attorney's Fees and Costs

20. On June 1, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs pursuant to Nev. Rev. Stat. § 239.011(2). In total, the Review-Journal requested \$30,931.50 in attorney's fees, and \$902.84 in costs.

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21. In its Motion and supporting exhibits the Review-Journal requested compensation at the following rates for the work performed by its attorneys and support staff:

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	38.20	\$450.00	\$16,434.00
Alina M. Shell	37.60	\$300.00	\$11,280.00
Gabriel Czop	15.70	\$125.00	\$1,962.50
Pharan Burchfield	5.80	\$100.00	\$580.00

22. Henderson filed an Opposition to the Review-Journal's Motion on July 10, 2017, and the Review-Journal file a Reply on July 27, 2017.

23. In its Opposition, Henderson asserted the Review-Journal was not the prevailing party in this manner, and even if it was, requested this Court reduce any award of fees and costs to compensate the Review-Journal for only the work its attorneys performed on the original NPRS petition. Henderson also disputed various line items contained in the Review-Journal's attorneys' bills. Henderson did not, however, dispute the billing rates for the Review-Journal's attorneys or their support staff.

24. Henderson also asserted that pursuant to Nev. Rev. Stat. § 239.012—a provision of the NPRA which provides immunity from damages for public officials who act in good faith in disclosing or refusing to disclose information—the Review-Journal had to establish Henderson acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

25. This Court conducted a hearing on the Review-Journal's Motion for Attorney's Fees and Costs on August 3, 2017. After hearing argument from counsel, the Court took the matter under consideration, and conducted an additional hearing on August 10, 2017.

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ORDER

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

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

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

28. This entitlement to attorney's fees under Nev. Rev. Stat. § 239.011(2) does not require a prevailing requester to demonstrate that a public officer or employee acted in bad faith in refusing to disclose public records.

29. To read a "good faith" exception from a separate section regarding damages into the provision is inconsistent with Nev. Rev. Stat. § 239.001, which reinforces the important nature of the NPRA. *See* Nev. Rev. Stat. § 239.001(1) ("[t]he purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law").

30. This interpretation is also inconsistent with the plain language of Nev. Rev. Stat. § 239.011(2). Nev. Rev. Stat. § 239.011 provides that a requester is entitled to recover his or her costs and reasonable attorney's fees. There is no provision indicating that a party must request the fees as special damages, nor is there any requirement that the requester must demonstrate the governmental entity from whom it is trying to recoup its fees and costs acted in bad faith.

31. In addition, Henderson's argument ignores a broad body of case law holding that damages and fees are different. *See, e.g., Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617 (7th Cir. 2013) ("an award of attorneys' fees differs from "damages.>"). For example, the NPRA can be contrasted with Nevada stator provisions such

as Nev. Rev. Stat. § 40.655 which expressly defines attorneys’ fees as an element of damages. *See also Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 414, 132 P.3d 1022, 1025 (2006) (“... although NRS 40.655 allows constructional defect claimants to recover attorney fees and costs as an element of damages, NRS 40.655 does not preclude application of the penalty provisions of NRCP 68(f) and NRS 17.115(4).”); *Liu v. Christopher Homes, LLC*, 130 Nev. Adv. Op. 17, 321 P.3d 875, 878 (2014) (attorney fees may be awarded as “special damages,” but only in “limited circumstances.”) Thus, Nev. Rev. Stat. § 239.011(2) does not require the Review-Journal to demonstrate Henderson acted in bad faith in denying the Request.

Legal Standard for Determining When a Requester is the “Prevailing Party”

32. The Nevada Supreme Court has explained that “...by its plain meaning, [the NPRA] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production.” *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh’g denied* (May 29, 2015), *reconsideration en banc denied* (July 6, 2015).

33. A party “prevails” for the purposes of Nev. Rev. Stat. § 239.011(2) if “it succeeds *on any significant issue* in litigation which achieves some of the benefit it sought in bringing suit.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615.

34. To be a prevailing party, a party need not succeed on every issue. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983); *accord Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615/In Nevada, “the method upon which a reasonable fee is determined is subject to the discretion of the court,” which “is tempered only by reason and fairness.” *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). Pursuant to *Brunzell*, a court must consider four elements in determining the reasonable value of attorneys’ services:

- (1) the qualities of the advocate: his ability, his training, education,

experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

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

35. Generally, a fee-setting inquiry begins with the calculation of the “lodestar.” the number of hours reasonably expended multiplied by a reasonable hourly rate. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 896-97 (1984); *accord Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). In most cases, the lodestar figure is a presumptively reasonable fee award. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).

The Review-Journal is the Prevailing Party as to Its Request for Public Records

36. Although the Review-Journal did not obtain all the information or relief it sought in this litigation, the Review-Journal is nevertheless the prevailing party because Henderson only produced a substantial amount of the requested records after the Review-Journal sought the Court’s intervention and the Court directed Henderson to produce electronic copies of the records at the March 30, 2017 hearing.

37. As the United States Supreme Court explained in *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983), “[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney’s fee reduced simply because the district court did not adopt each contention raised.” *Accord Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 581 (9th Cir. 1984).

38. In the Ninth Circuit, courts apply a two-part analysis to determine whether fees can be recovered for issues on which a party was unsuccessful. *Thorne v. City of El Segundo*, 802 F.2d 1131, 1141 (9th Cir.1986). “First, the court asks whether the claims upon which the [party] failed to prevail were related to the [party’s] successful claims. If unrelated,

1 the final fee award may not include time expended on the unsuccessful claims.” *Id.* (citing
2 *Hensley*, 461 U.S. at 434–35). If the claims are related, then the court considers the
3 “significance of the overall relief obtained by the [party] in relation to the hours reasonably
4 expended on the litigation.” *Id.* If the party “obtained ‘excellent results,’ full compensation
5 may be appropriate, but if only ‘partial or limited success’ was obtained, full compensation
6 may be excessive.” *Id.*

7 39. In this instance, all the Review-Journal’s claims centered on a common core
8 of facts and law: attempting to obtain access to public records regarding Henderson’s
9 dealings with Trosper Communications and its principal, Elizabeth Trosper. It was only after
10 the Review-Journal submitted its Petition, filed an Amended Petition, completed briefing in
11 support of its Petition, and prepared for and attended a hearing before this Court that
12 Henderson finally agreed to produce documents it had requested. Although the Court denied
13 the Review-Journal the relief it requested in its Amended Petition, the fact remains that the
14 Review-Journal was forced to petition the Court for extraordinary relief to finally get
15 Henderson to comply with its obligations under the NPRA to produce the requested public
16 records. Thus, the Court finds that the Review-Journal is the prevailing party in this matter
17 as to its request for the records.

18 ***The Review-Journal is Entitled to An Award of Attorney’s Fees and Costs***

19 40. Because the Review-Journal prevailed in this matter as to its records
20 request, it is entitled to attorney’s fees and costs.

21 41. Having reviewed the papers and pleadings filed herein, including the
22 documentation provided by the Review-Journal regarding the work performed by its counsel
23 and support staff, and having considered the *Brunzell* factors, the Court finds the Review-
24 Journal is entitled to an award of attorney’s fees in the amount of \$9,010.00, based on the
25 hourly rates set forth on its Motion for Attorney’s Fees and Costs, and the work performed
26 in this matter.

27 ///

28 ///

1 42. The Court further finds the Review-Journal is entitled to \$902.84 in costs,
2 resulting in a total award of \$9,910.84.

3 IT IS SO ORDERED this 22 day of NOVEMBER, 2017.

4
5 11/22/17
6 Date

HONORABLE MARK B. BAILUS
DISTRICT COURT JUDGE

7 Submitted by,
8
9

10 Margaret A. McLetchie, Nevada Bar No. 10931

11 Alina M. Shell, Nevada Bar No. 11711

12 **MCLETCHE SHELL LLC**

13 701 East Bridger Avenue, Suite 520

14 Las Vegas, NV 89101

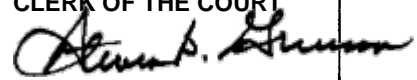
15 Telephone: (702)-728-5300

16 Email: maggie@nvlitigation.com

17 *Counsel for Petitioner, Las Vegas Review-Journal*

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Attorneys for Respondent
CITY OF HENDERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

**CITY OF HENDERSON'S MOTION FOR STAY PENDING RESOLUTION OF
NEVADA SUPREME COURT APPEAL, ON APPLICATION FOR
ORDER SHORTENING TIME**

Date of Hearing: 4-11-18

Time of Hearing: 9:00 A.M.

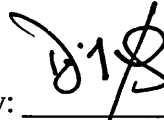
Respondent, City of Henderson (the "City"), respectfully requests that this Court stay all proceedings in this action pending the resolution of the City's appeal in *City of Henderson v. Las Vegas Review-Journal*, Case No. 75407, filed on March 16, 2018, and docketed in the Nevada Supreme Court on March 22, 2018 (the "Appeal").

1 The Appeal concerns the Court's award of fees and costs to the Las Vegas Review-Journal
2 (the "RJ"). Notably, *both* parties have appealed from the Court's February 15, 2018 Order declaring
3 the RJ the prevailing party and awarding the RJ \$9,010.00 in fees and \$902.84 in costs. If this stay
4 is not granted, it is anticipated that the RJ will force the City to pay the award of costs and fees
5 before the Appeal can be heard. The City and its taxpayers should not be forced to pay the award
6 prior to resolution of the Appeal — particularly when both sides have appealed from the award and
7 the City has a strong likelihood of success on the merits. This Motion for Stay, therefore, is made in
8 an effort to conserve judicial and taxpayer resources while the Appeal is pending before the Nevada
9 Supreme Court.

10 This Motion is based upon all pleadings and papers on file herein, the following
11 Memorandum of Points and Authorities, and any oral argument heard by the Court.

12 DATED this 4th day of April, 2018.

BAILEY ♦ KENNEDY

13
14 By: 
15 _____
DENNIS L. KENNEDY

16 and

17 JOSH M. REID, City Attorney
Nevada Bar No. 7497
18 **CITY OF HENDERSON**
240 Water Street, MSC 144


19 *Attorneys for Respondent*
20 **CITY OF HENDERSON**
21
22
23
24
25
26
27
28

APPLICATION FOR ORDER SHORTENING TIME

The City hereby applies for an Order Shortening Time for the hearing on the above Motion for Stay Pending Resolution of Nevada Supreme Court Appeal.

DATED this 4th day of April, 2018.

BAILEY ♦ KENNEDY

By: 
DENNIS L. KENNEDY

and

JOSH M. REID, City Attorney
Nevada Bar No. 7497
CITY OF HENDERSON
240 Water Street, MSC 144

Attorneys for Respondent
CITY OF HENDERSON

**DECLARATION OF BRIAN REEVE IN SUPPORT OF THE CITY'S
APPLICATION FOR ORDER SHORTENING TIME**

I, Brian Reeve, declare as follows:

1. I am an attorney with the City of Henderson, counsel of record for the City of Henderson (the "City") in *Las Vegas Review-Journal v. City of Henderson*, Case No. A-16-747289-W, pending before this Court. I have personal knowledge of and am competent to testify to the facts contained in this declaration. I have made this declaration in support of the City's Application for Order Shortening Time relating to the City's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal ("Motion for Stay").

2. On February 15, 2018, this Court entered an Order granting Petitioner Las Vegas Review-Journal's (the "RJ") request for attorney's fees and costs (the "Fees & Costs Order") which: (i) concluded that the RJ was a prevailing party because it was able to obtain copies of the records it requested after initiating this action; and (ii) awarded the RJ \$9,010.00 in fees and \$902.84 in costs.

3. Notice of Entry of the Fees & Costs Order was filed on February 15, 2018.

4. On March 16, 2018, the City filed its Notice of Appeal, challenging the Fees & Costs Order. On March 26, 2018, the RJ filed its Notice of Cross-Appeal from the Fees & Costs Order.

5. On or about March 27, 2018, I received a telephone call from Margaret McLetchie, an attorney for the RJ, inquiring as to when the City was going to pay her attorney's fees and costs pursuant to the Fees & Costs Order, despite the pending Appeal and Cross-Appeal of the Fees & Costs Order.

6. It is anticipated that the RJ will move to enforce the Fees & Costs Order before this Motion can be heard in the normal course. Therefore, the City respectfully requests that this Motion for Stay be heard on shortened time, at the Court's earliest convenience.

I declare under penalty of perjury under the laws of the State of Nevada, that the foregoing is true and correct.

EXECUTED on this 4th day of April, 2018.


BRIAN REEVE

ORDER SHORTENING TIME

The Court, having considered the City's Application for an Order Shortening Time and the Declaration of Brian Reeves in support thereof, and good cause appearing,

IT IS HEREBY ORDERED that the above CITY OF HENDERSON'S MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME COURT APPEAL ON APPLICATION FOR ORDER SHORTENING TIME shall be heard on the 11 day of April, 2018, at the hour of 9:00 A.m., in Department XVIII, at the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada 89155.

DATED this 5 day of April, 2018.


DISTRICT COURT JUDGE

Submitted by:
BAILEY ♦ KENNEDY

By: 
DENNIS L. KENNEDY

and

JOSH M. REID, City Attorney
Nevada Bar No. 7497
CITY OF HENDERSON
240 Water Street, MSC 144
Henderson, NV 89015

Attorneys for Respondent
CITY OF HENDERSON

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite the fact that both parties have appealed from the Fees & Costs Order, the RJ has notified the City of its intention to collect this Court's award of fees and costs. Therefore, the City respectfully requests that this Court stay all further proceedings in this action pending the resolution of the Appeal. To allow the RJ to collect the disputed award of costs and fees would only serve to unnecessarily waste judicial resources and the City's funds. There is a strong likelihood that given the Court's denial of every claim in the RJ's petition, the Nevada Supreme Court will determine that the City — not the RJ — is the prevailing party in this action. Thus, both judicial and taxpayer resources will be wasted in an attempt to recover the fees and costs prematurely paid to the RJ.

The RJ will suffer no harm or prejudice from the entry of a stay of these proceedings. The RJ has cross-appealed from the Fees and Costs Order, claiming that it is entitled to recover all of its costs and fees in this action (approximately \$32,000.00). Given the amount of costs and fees that the RJ believes to be at stake, collection of approximately one-quarter of the award of costs and fees prior to resolution of the Appeal and Cross-Appeal serves no legitimate purpose.

In sum, when considering all of the factors of NRAP 8, the scale tips in favor of granting a stay. Accordingly, the City respectfully requests that the Court enter an Order staying all further proceedings in this action pending resolution of the Appeal.

II. STATEMENT OF FACTS

The City receives and fulfills thousands of public records requests. During 2016 alone, the City Clerk's Office received and fulfilled over 2,300 public records requests. The City Clerk's Office did not charge any fees to complete a significant majority of these public records requests and, in most cases, the requests were completed in a matter of days.

On October 4, 2016, the City received a public records request from the RJ (the "Request") asking for all documents related to "Trosper Communications," "Elizabeth Trosper," or "crisis communications," among other things, from January 1, 2016 to October 4, 2016. (City of Henderson's Response to Las Vegas Review-Journal's Amended Public Records Act Application Pursuant to NRS 239.001/Petition for Writ of Mandamus/Application for Declaratory and Injunctive

1 Relief (“Resp.”) (filed 3/08/2017) at 3.) The Request asked the City to provide responsive electronic
2 records in their original electronic form attached to an email or downloaded to an electronic medium.
3 (*Id.* at 4.) Five days after receiving the Request, the City provided an Initial Response to the RJ,
4 informing the RJ that the City had found approximately 5,566 emails matching the search terms set
5 forth in the Request. (*Id.*) Those 5,566 emails contained approximately 9,621 electronic files and
6 consisted of approximately 69,979 pages. (*Id.*)

7 In light of the large universe of documents and the City’s responsibility to safeguard
8 confidential information, *i.e.*, non-public records, the City explained that the Request would require
9 extraordinary research and use of City personnel to complete. (*Id.*) The City approximated that it
10 would take 74 hours for City staff to review the electronic files to determine whether to withhold or
11 redact any confidential documents or information within the responsive files. (*Id.*) Pursuant to NRS
12 239.055, the City provided the RJ with an estimate of \$5,787.89 to complete the Request. (*Id.*) In
13 accordance with City policy, the City requested a 50 percent deposit and informed the RJ that it
14 would take three weeks to complete the review once the deposit was received. (*Id.*)

15 On October 12, 2016, the RJ’s attorney, Margaret McLetchie, called the City to discuss the
16 City’s Initial Response. (*Id.* at 5.) Ms. McLetchie disputed the City’s ability to charge extraordinary
17 fees to complete the Request and wanted to know why the City had so many emails matching the
18 RJ’s search terms. (*Id.*) During the call, the parties discussed the potential of narrowing the search
19 terms to decrease the number of emails. (*Id.*) Ms. McLetchie represented that she would call back
20 on October 17, 2016, to discuss the matter further. (*Id.*)

21 Ms. McLetchie did not call the City on October 17, 2016. (*Id.*) Therefore, a week later, the
22 City called Ms. McLetchie’s office on October 25, 2016, to further attempt to work out a resolution.
23 (*Id.*) Counsel for the City was informed by Ms. McLetchie’s office that Ms. McLetchie was out of
24 town until November 4, 2016, and the City requested that Ms. McLetchie return the City’s call upon
25 her return. (*Id.*)

26 Ms. McLetchie never returned the City’s phone call and did not otherwise attempt to contact
27 the City to work on a resolution. (*Id.*) Instead, on November 29, 2016, the RJ filed suit against the
28 City, claiming that the City had refused to provide the RJ with the requested records. (*Id.*; *see also*

1 Public Records Act Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus (the
2 “Petition”) (filed 11/29/2016).)

3 Despite the fact that the RJ rushed to the Court before attempting to resolve the matter, the
4 City continued to attempt to work with the RJ. On December 5, 2016, the City notified the RJ that
5 City employees had spent 72 hours processing the RJ’s Request and provided the actual cost of
6 personnel time to complete the Request (\$5,303.32). (Resp. at 6.) As a compromise, the City
7 offered to reduce the fee to \$3,226.32. (*Id.*) The City emphasized that despite the filing of the
8 lawsuit it was still amenable to working with the Review-Journal on a mechanism to provide the
9 Review-Journal with the requested documents, and working on a protocol for future requests. (*Id.*)

10 The parties subsequently agreed that the RJ could inspect the documents on a computer at
11 City Hall, and the RJ did in fact inspect the documents over a span of several days. (*Id.* at 7.)
12 Notably, after completing its inspection of the documents, the RJ did not request a single copy of
13 any of the documents it reviewed. (*Id.*)

14 On December 20, 2016, the City provided the RJ with an initial list of documents for which it
15 was asserting confidentiality or privilege (“Withholding Log”). The City subsequently provided the
16 RJ with two updated versions of the Withholding Log. On February 28, 2017, the RJ filed an
17 Amended Petition challenging the adequacy of the City’s final Withholding Log.

18 Specifically, the RJ’s Amended Petition requested: (1) a writ of mandamus requiring
19 Henderson to immediately make available all records the Review-Journal had previously requested
20 but had been withheld and/or redacted; (2) injunctive relief prohibiting Henderson from applying the
21 provisions of Henderson Municipal Code § 2.47.085 and the Henderson Public Records Policy
22 concerning fees for public records; (3) declaratory relief stating that Henderson Municipal Code §
23 2.47.085 and the City of Henderson’s Public Records Policy invalid; and (4) declaratory relief
24 limiting Henderson to charging fees for extraordinary use of personnel to fifty cents per page and
25 limiting Henderson from demanding fees for attorney review.” *See generally* Amended Petition
26 (filed 2/28/2017).

27 On March 30, 2017, this Court held a hearing on the RJ’s Amended Petition and entertained
28 arguments of counsel. During that hearing, the RJ was forced to concede that it had reviewed the

documents at issue in the Petition and that no copies were requested or made:

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.

(March 30, 2017 Hr'g Tr., attached hereto as Exhibit A, at 5:19-6:7.)

The Court then asked the RJ's counsel four times if its client still wanted copies of the documents it had inspected. (*Id.* at 6:18-7:12.) In response to the Court's inquiries, and despite not having asked the City for any copies of the documents during or after its review at City Hall in December 2016, the RJ informed the Court that it wanted copies of the already inspected documents. (Order, May 12, 2017, attached hereto as Exhibit B, at 2:4-12.) The Court then asked the City if it would be willing to provide the documents to the RJ on a USB drive, and the City responded in the affirmative. (Ex. A, at 8:8-10; *see also* Ex. B at 2:8-12 ("Following its inspection, LVRJ made no request for copies of the Prepared Documents; however, following 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.").)

The Court ultimately concluded that "[t]he City ha[d] complied with its obligations under the Nevada Public Records Act (the "NPRA")." (Ex. B at 2:11-12 (emphasis added).) Moreover, because the City had already allowed the RJ to inspect the requested documents free of charge, and was willing to also provide electronic copies of the inspected document on a USB drive free of charge, the Court determined that the RJ's arguments regarding the propriety of charging fees and costs was *moot and did not decide them*. (*Id.* at 2:13-15.)

1 The sole issue decided by the Court concerned certain documents the City withheld and/or
2 redacted on the grounds of attorney-client privilege or deliberative process privilege. (*Id.* at 2:16-
3 18.) The Court ruled that the City’s Withholding Log was “timely, sufficient and in compliance with
4 the requirements of the NPRA” and therefore *denied the RJ’s Amended Petition*. (*Id.* at 2:19-21,
5 3:2-4.)

6 Despite this Court’s outright denial of its Petition, the RJ filed a Motion for Attorney’s Fees
7 and Costs (“Motion for Fees”) on June 1, 2017, requesting that the Court award the RJ \$30,931.50 in
8 fees and \$902.84 costs. *See* Motion for Fees at 15:13-19. On July 10, 2017, the City filed its
9 Opposition to the Motion for Fees, asserting that the RJ did not succeed on any significant issue in
10 this litigation, and thus, could not be awarded fees as a “prevailing party” under NRS 239.011(2).
11 *See* City of Henderson’s Opposition to Las Vegas Review-Journal’s Motion for Attorney’s Fees and
12 Costs (filed 7/10/2017) at 9-12. The Court heard argument on the Motion for Fees on August 3 and
13 10, 2017, and at the conclusion of the hearing, awarded the RJ \$9,010.000 in fees (\$22,824.34 less
14 than what the RJ requested) and \$902.84 in costs. (Fees & Costs Order, attached hereto as Exhibit
15 C, at 4:15-19.) Importantly, in granting the RJ’s request, the Court concluded that “[a]lthough the
16 *Review-Journal did not prevail on the claims for relief set forth in its Amended Petition*, the Court
17 finds the Review-Journal is nevertheless a prevailing party because it was able to obtain copies of
18 the records its requested after initiating this action.” (*Id.* 4:10-12 (emphasis added).)

19 Both parties subsequently appealed the Fees & Costs Order. The City filed its Notice of
20 Appeal, challenging the Fees & Costs Order, on March 16, 2018, and the Review-Journal filed its
21 Notice of Cross-Appeal on March 26, 2018.¹ (Decl. of Brian Reeves (“Reeves Decl.”) at ¶ 4.) On
22 March 27, 2018, the RJ notified the City that it intended to collect the Court’s award of costs and
23 fees. (*Id.* at ¶ 5.)

24 III. ARGUMENT

25 In deciding whether to issue a stay, the district court should generally consider the following
26 factors: “(1) whether the object of the appeal or writ petition will be defeated if the stay . . . is
27

28 ¹ Copies of the City’s Notice of Appeal and the RJ’s Notice of Cross-Appeal are attached hereto as Exhibit D and E, respectively.

1 denied; (2) whether [the] appellant/petitioner will suffer irreparable or serious injury if the stay . . . is
2 denied; (3) whether [the] respondent/real party in interest will suffer irreparable or serious injury if
3 the stay . . . is granted; and (4) whether [the] appellant/petitioner is likely to prevail on the merits in
4 the appeal or writ petition.” NRAP 8(c); *State v. Robles-Nieves*, 129 Nev. 537, 541, 306 P.3d 399,
5 401 (2013); *Fritz Hansen A/S v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6
6 P.3d 982, 986 (2000). No one factor carries more weight than any other; however, “if one or two
7 factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp.*
8 *v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). The United States Supreme Court has held
9 that “the power to stay proceedings is incidental to the power inherent in every court to control the
10 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for
11 litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

12 Here, the factors dictate that this action should be stayed pending resolution of the Appeal
13 because (i) the parties are simultaneously challenging the very Order the RJ intends to enforce and
14 (ii) the City is likely to prevail on the merits.

15 **A. The Object of the Appeal Will Be Defeated if the Stay Is Denied.**

16 The primary issue in the Appeal is whether the Review-Journal can be considered a
17 “prevailing party,” pursuant to NRS 239.011, simply because it obtained copies of the records it
18 requested after initiating this action. Therefore, the object of the Appeal is for the Supreme Court to
19 determine that the City is the proper “prevailing party” in this action and to obtain a reversal of the
20 Fees & Costs Order in its entirety.

21 The RJ has informed the City of its intent to collect the award of fees and costs entered by
22 the Court. If this action proceeds, and the RJ attempts to collect the award, then the object of the
23 Appeal will be completely defeated. The City will then be forced to waste further resources in
24 attempting to recover the unnecessary and premature payment of fees and costs to the RJ.

25 Because the object of the Appeal will be defeated if the stay is denied, the City respectfully
26 requests that the Court grant this Motion.

27 ///

28 ///

1 **B. The RJ Will Suffer Little to No Harm if the Stay Is Granted.**

2 This case is unique in that the RJ has cross-appealed from the Fees & Costs Order, asserting
3 that it is actually entitled to approximately \$32,000.00 in fees and costs. Because the RJ is
4 challenging the very Fees & Costs Order it now threatens to enforce, it will suffer little to no harm if
5 this action is stayed pending resolution of the Appeal.

6 The RJ knew the Appeal was pending when it threatened to collect the fees and costs award.
7 In fact, the RJ filed its Notice of Cross-Appeal, challenging the Fees & Costs Order, the day before
8 threatening to proceed with enforcing the Fees & Costs Order.

9 It makes little sense to permit the RJ to collect the fees and costs award when both parties
10 have appealed from the Fees & Costs Order. Because the RJ believes the Fees & Costs Order is
11 erroneous, and there is no chance that the City will ultimately be unable to satisfy the judgment
12 should the RJ prevail in the Appeal, the RJ will suffer little to no harm if the stay is granted pending
13 the outcome of the Appeal.

14 **C. The City Will Suffer Harm if the Stay Is Denied.**

15 To the contrary, if the Stay is denied, the City will suffer harm. Specifically, the City's
16 taxpayers will have to shoulder the burden of paying the award of fees and costs to the RJ, funding
17 the Appeal of the Fees & Costs Order, and, should the City prevail on the Appeal, funding efforts to
18 recover the unnecessary and premature payment of fees and costs to the RJ. While the City has the
19 ability and funds to pay the award of fees and costs, it should not be forced to bear this burden until
20 the Appeal is resolved.

21 **D. The City Is Likely to Prevail on the Merits of the Appeal.**

22 The primary issue on appeal is whether the RJ can be considered a "prevailing party" when
23 the District Court denied all of the RJ's claims for relief and the City voluntarily agreed to give the
24 RJ copies of the records it previously inspected free of charge. There is a strong likelihood that the
25 Nevada Supreme Court will determine that the City — not the RJ — is the proper "prevailing party"
26 in this action.

27 A court may not award attorney's fees unless it is authorized by statute, agreement, or rule.
28 *State Dept. of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993). Under the

1 NPRA, a requester is entitled to recover his or her costs and reasonable attorney’s fees in the
2 proceeding from the governmental entity that has custody of the book or record if the requester
3 prevails. NRS 239.011(2). “A party prevails ‘if it succeeds on any significant issue in litigation
4 which achieves some of the benefit it sought in bringing suit.’” *LVMPD v. Blackjack Bonding*, 131
5 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015). Importantly, “*a prevailing party must win on at least*
6 *one of its claims.*” *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. Adv. Op. 41, 373 P.3d
7 103, 107 (2016) (emphasis added).

8 In *Golightly*, the law firm Golightly & Vannah (“G&V”) filed an interpleader action seeking
9 a ruling that its attorney lien had priority and that it receive its contingency fee from the recovery.
10 *Id.* One of the defendants argued that G&V’s lien was not properly perfected and therefore had no
11 priority. *Id.* The court ruled in favor of the defendant, awarding it a full pro-rata share of the
12 recovery at the expense of G&V’s requested recovery. *Id.* Although G&V received some money,
13 because G&V did not prevail on its sole claim of priority, it was not a prevailing party and therefore
14 was not entitled to its costs. *Id.*

15 The United States Supreme Court has explained that a litigant qualifies as a prevailing party
16 if it obtains a “court-ordered ‘chang[e] [in] the legal relationship between [the plaintiff] and the
17 defendant.’” *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dept. of Health & Human Res.*, 532
18 U.S. 598, 604 (2001) (alterations in original). “[E]nforceable judgments on the merits and court-
19 ordered consent decrees create the ‘material alteration of the legal relationship of the parties’
20 necessary to permit an award of attorney’s fees.” *Id.* However, a “***defendant’s voluntary change in***
21 ***conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit,***
22 ***lacks the necessary judicial imprimatur on the change.***” *Id.* at 605 (emphasis added). Instead, “[a]
23 fee-seeking party must show that (1) there has been a material alteration in the legal relationship of
24 the parties and (2) it was judicially sanctioned.” *Wood v. Burwell*, 837 F.3d 969, 973 (9th Cir.
25 2016).

26 The RJ is not a prevailing party. It did not succeed on any of its claims for relief or on any
27 significant issue in the case. Nor did it obtain any judicially enforceable relief on the merits of its
28 claims that materially altered the parties’ legal relationship. This is evident from the plain language

1 of the Court's Order. (*See* Ex. B.)

2 The RJ's Amended Petition sought four claims for relief: "(1) that the Court issue a writ of
3 mandamus requiring Henderson to immediately make available all records the Review-Journal had
4 previously requested but had been withheld and/or redacted; (2) injunctive relief prohibiting
5 Henderson from applying the provisions of Henderson Municipal Code § 2.47.085 and the
6 Henderson Public Records Policy to demand fees in excess of those permitted by the NPRA; (3)
7 declaratory relief stating that Henderson Municipal Code § 2.47.085 and the City of Henderson's
8 Public Records Policy invalid to the extent they provide for fees in excess of those permitted by the
9 NPRA; and (4) declaratory relief limiting Henderson to charging fees for extraordinary use of
10 personnel to fifty cents per page and limiting Henderson from demanding fees for attorney review."
11 ***The Court denied each of these claims for relief.*** (*See* Ex. B at 3:2-4 ("Based on the foregoing,
12 LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining
13 request for relief in the Amended Petition is hereby DENIED.").) Because the RJ did not succeed on
14 any of its claims for relief, it cannot be a prevailing party. *See Golightly*, 373 P.3d at 107
15 (explaining that "a prevailing party must win on at least one of its claims").

16 In its Motion for Fees, the RJ argued that the City's agreement to provide the RJ with the
17 requested documents entitled it to the title of a "prevailing party," and the Court accepted this
18 argument. But this argument was factually incorrect and ignored the content of the Court's May 12,
19 2016 Order.

20 The Court found that, except for the items identified on the City's Withholding Log, all
21 requested files and documents were prepared by the City, and "LVRJ had access to and inspected the
22 Prepared Documents prior to the hearing." (Ex. B at 2:4-8.) Thus, the notion that the City was
23 somehow withholding non-privileged documents at the time of the hearing — and was going to
24 continue to withhold the documents until the Court "directed" it to provide them to the RJ — is
25 inaccurate. The City had already given the RJ access to the requested records and the RJ had already
26 spent several days inspecting the records before the Court's involvement.

27 ///

28 ///

1 Because the RJ was forced to concede that it never made a request for copies at the
2 December 2016 inspection, the Court found that the RJ “made no request for copies of the Prepared
3 Documents[.]” (*Id.* at 2:8-9.) Nonetheless, despite its months-long silence, when the RJ orally
4 requested copies of the documents it had previously inspected, the City promptly **agreed** to provide
5 the documents on a USB drive. (*Id.* at 2:9-11.) There was no “direction” given by the Court; rather,
6 the Court simply asked the City if it was willing to provide copies of the inspected documents on a
7 USB drive and the City responded affirmatively. The City’s willingness to provide electronic copies
8 of documents that the RJ had already inspected does not constitute a judicially-sanctioned, material
9 alteration in the parties’ legal relationship warranting the RJ being declared the “prevailing party.”

10 Moreover, because this Court found that the City “complied with its obligations under the
11 Public Records Act,” the RJ, by definition, cannot be deemed the prevailing party in this Public
12 Records Act action. (*Id.* at 2:11-12.) Finally, because the Court **outright denied** the RJ’s request for
13 a writ of mandamus, injunctive relief, and declaratory relief and “any remaining request for relief in
14 the Amended Petition,” (*id.* at 3:2-4), the RJ should not have been awarded any attorney’s fees or
15 costs in this matter.

16 Because the City is likely to prevail on the merits of the issue presented on Appeal (*i.e.*,
17 whether the RJ can be deemed a “prevailing party” entitled to any award of fees and costs), there is a
18 great likelihood that the Nevada Supreme Court will hold that the RJ is not entitled to an award of
19 attorney’s fees and costs. As such, the Fees & Costs Order will likely be reversed. Therefore, it
20 makes little sense to permit the RJ to collect upon an award that will likely be reversed.

21 **E. No Bond Is Required in This Case.**

22 Finally, it should be noted that pursuant to N.R.C.P. 62(e), if this Motion is granted and a
23 stay is imposed (as it should be), the City shall not be required to post a supersedeas bond. N.R.C.P.
24 62, which governs stays of proceedings to enforce a judgment (as is requested here) typically allows
25 the Court to order the appellant to post a supersedeas bond. *See* N.R.C.P. 62(c). But appeals taken
26 by the State, any county, city or town within the State, or any officer or agency thereafter are
27 excepted from the rule. *See* N.R.C.P. 62(e). Therefore, no bond is required to stay this action.

28 ///

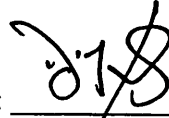
IV. CONCLUSION

For the foregoing reasons, the City of Henderson respectfully requests that this Court stay all further proceedings in this action pending the outcome of the Appeal.

DATED this 4th day of April, 2018.

BAILEY ♦ KENNEDY

By:



DENNIS L. KENNEDY

and

JOSH M. REID, City Attorney
Nevada Bar No. 7497
CITY OF HENDERSON
240 Water Street, MSC 144

Attorneys for Respondent
CITY OF HENDERSON

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 5th day of April, 2018, service of the foregoing **CITY OF HENDERSON'S MOTION FOR STAY PENDING RESOLUTION OF NEVADA SUPREME COURT APPEAL ON APPLICATION FOR ORDER SHORTENING TIME** was made by mandatory electronic service through the Eighth Judicial District 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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LAS VEGAS REVIEW-JOURNAL

/s/ Josephine Baltazar
Employee of BAILEY ♦ KENNEDY

EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

Defendant.

[illegible]

DEPT. XVIII

PETITION FOR WRIT OF MANDAMUS

DENNIS L. KENNEDY, ESQ.,
JOSH M. REID, ESQ.,
BRIAN R. REEVE, ESQ.

JA0831

1 **LAS VEGAS, NEVADA; THURSDAY, MARCH 30, 2017**

2 [Proceeding commenced at 8:57 a.m.]

3
4 THE COURT: Page five, the Las Vegas Review-Journal versus
5 Henderson. Okay. Counsel, for the record.

6 MS. SHELL: Good morning, Your Honor. Alina Shell and
7 Margaret McLetchie on behalf of the Review-Journal.

8 MS. McLEITCHIE: Good morning, Your Honor.

9 MR. KENNEDY: And for the Defendant, City of Henderson, Dennis
10 Kennedy along with City Attorney Josh Reid and Assistant City
11 Attorney Brian Reeve.

12 MR. REEVE: Good morning, Your Honor.

13 THE COURT: Okay. This is the Review-Journal's petition.

14 MS. SHELL: Yes, Your Honor. Thank you. In its opposition to
15 our memorandum, Your Honor, the City of Henderson has thrown up a
16 lot of red herrings that it hopes Your Honor might catch onto, but
17 really what is important in this case and what is central to this
18 Court's consideration is the Nevada Public Records Act and what --
19 and the intent of the Nevada Public Records Act. And that is to
20 ensure that the public has easy access to government records.

21 What we have here is an issue where the City of Henderson
22 has enacted an ordinance and is trying to enforce an ordinance
23 against the Review-Journal that is at conflict with the NPRA.
24 Specifically, the NPRA provides that, as I said, the public should
25 have easy access to records. And that the -- that to the extent

1 that there's -- are any charges that attach to a request for
2 records, those charges only attach to providing copies or to
3 extraordinary use in providing those copies.

4 What we have here is not a charge that the City wants to
5 offer up for providing copies. What they are trying to charge the
6 Review-Journal for is a privilege review. And that, Your Honor, is
7 at odds with the -- with the NPRA. It's not the -- and the reason
8 that it's at odds with the NPRA, Your Honor, is because it's not
9 the public's job to pay for a municipality like the City of
10 Henderson to conduct a privilege review.

11 Now, one of the issues that the -- that the City of
12 Henderson has presented is that this is a moot issue. Now,
13 granted, we have -- as we've acknowledged in our papers and as
14 discussed at length in the response by the City of Henderson, we
15 put forth this public records request. When we received the notice
16 from the City of Henderson that it wanted to charge these -- the
17 Review-Journal almost \$6,000, not even to provide copies of the
18 documents, but just to tell us whether they would even provide the
19 documents for the copies.

20 Ms. McLetchie, my law partner who is sitting with me at
21 counsel table, called the City of Henderson and attempted to work
22 this out. We attempted to come to an arrangement. We attempted to
23 ask them to reconsider the ordinance in the policy that they have
24 in place that is -- that they're relying on to charge this frankly
25 serious fee just to get copies of records. Just to -- not even to

1 get the copies, just to tell us if they'll give us the copies.

2 When Ms. McLetchie spoke to the City of Henderson, they
3 made their position very clear, and indeed as indicated in Exhibit
4 D to the City's response, they said, we believe that this policy is
5 proper, but it said the City is interested in having the Courts
6 provide clarity to the meaning and application of NRS 239.005 as
7 clear and concise guidance on these provisions would greatly
8 benefit both local governments.

9 So although we tried to work this out, once it became
10 clear that they're -- that the City of Henderson was not going to
11 rescind its policy and was not going to rescind its request for
12 this fee to conduct a privilege review, this litigation was
13 started.

14 After we started the litigation, Henderson and
15 Ms. McLetchie -- Ms. McLetchie had several phone calls -- I wasn't
16 on the calls, but I got to hear quite a few of them where she was
17 speaking sometimes to two or three attorneys at once trying to
18 resolve this. Eventually in December, they permitted our clients,
19 the reporter, to review the documents. They've never provided
20 copies. I mean, this is part of the --

21 THE COURT: Did you ask for copies?

22 MS. SHELL: We have asked for copies and we've asked --

23 THE COURT: Even copies of the ones that are not -- that they
24 claim privilege or have redacted some of them.

25 MS. SHELL: Correct.

1 THE COURT: And I think it's your Exhibit 7 to your petition;
2 is that right?

3 MS. SHELL: That includes some documents that they provided,
4 Your Honor.

5 THE COURT: I think your Exhibit 7 is the ones that we are
6 primarily in dispute; is that right?

7 MS. SHELL: I'm sorry, Your Honor. What was that?

8 THE COURT: Your Exhibit 7 to --

9 MS. SHELL: Yes --

10 THE COURT: -- those are the ones that you -- that are
11 primarily in dispute at this point; is that right?

12 MS. SHELL: That is part of the issue. There are still copies
13 that we've -- our reporter has reviewed some copies.

14 Now, they provided these -- Exhibit 7 were provided so
15 that we can review and assess the redactions that Henderson had
16 done.

17 THE COURT: All right. But --

18 MS. SHELL: So there are still copies of documents.

19 THE COURT: But when your reporter went to the City and
20 reviewed them I guess online; is that right? Some computer or
21 something?

22 MS. SHELL: They had made a computer available specifically
23 for just the review.

24 THE COURT: And did your reporter ask for copies of any of the
25 documents your reporter saw?

1 MS. SHELL: She did not because we still had this issue -- or
2 Ms. McLetchie may have an answer to that.

3 THE COURT: I think that they'll give those to you or I
4 thought that they would have.

5 MR. KENNEDY: Just for the record, that's correct. No copies
6 were requested or made.

7 THE COURT: Okay.

8 MS. McLETCHE: Your Honor, if I may so just to clarify what
9 we originally requested you have two rights under the Nevada Public
10 Records Act. You can request copies or you can request an in-
11 person inspection. We requested copies. What Mr. Reid offered and
12 what I accepted as an interim solution while this Court was
13 resolving issues, was to allow an in-person inspection.

14 Now, whether or not they would have made one or two
15 copies available at that inspection is frankly not -- is frankly
16 not the point, Your Honor. The point is that we wanted copies and
17 they said in order --

18 THE COURT: Do you still want the copies?

19 MS. McLETCHE: We would still have -- we would still like,
20 without the exorbitant charge, a USB drive with the documents
21 requested, yes, Your Honor.

22 THE COURT: If you wanted copies and they gave -- there's
23 69,000 pages according to what I read.

24 MR. KENNEDY: Right.

25 THE COURT: If you want 69,000 pages, I guess they can run

1 that off.

2 MS. McLEITCHIE: Well, Your Honor, the usual practice --

3 THE COURT: Do you want that?

4 MS. McLEITCHIE: Your Honor, at this point -- at this point we
5 don't need 69,000 pages printed out, but what -- what my reporter
6 wanted originally rather than have to go and spend almost a week, I
7 think, at Henderson's office and to review under difficult
8 circumstances, what we had asked for was the right to inspect --

9 THE COURT: But you still want the copies?

10 MS. McLEITCHIE: -- copies. We -- we that issue isn't moot,
11 Your Honor, because we requested copies. The usual --

12 THE COURT: So you still want the copies?

13 MS. McLEITCHIE: Your Honor, what -- what usually the practice
14 is, so I'm clear, is what the usual practice is is that they give
15 us a USB drive rather than allow -- rather than require us to come
16 in person and then everybody can avoid the expense of copies.

17 THE COURT: I'm a very old Judge. A USB drive?

18 MS. McLEITCHIE: I'm sorry, Your Honor.

19 MS. SHELL: It's like a little stick that you put in the
20 computer that's like --

21 THE COURT: Okay. I know what an email is, but I'm --

22 MS. McLEITCHIE: It's a -- it's a --

23 MS. SHELL: It's a portable storage device.

24 MS. McLEITCHIE: -- essentially instead of the old floppy
25 drives that we've had --

1 THE COURT: Okay.

2 MS. SHELL: -- or CDs --

3 THE COURT: It's the stick you stick in the computer?

4 MS. McLEITCHIE: Correct, Your Honor.

5 THE COURT: Okay.

6 MS. McLEITCHIE: And it's an easy way for us to solve some of

7 the logistical issues of providing copies, but from our position --

8 THE COURT: Are you -- are you willing to give them a USB

9 drive with all the documents?

10 MR. KENNEDY: Sure.

11 THE COURT: Okay. Well does that resolve --

12 MS. SHELL: It does not, Your Honor, and here's why it

13 doesn't.

14 THE COURT: Okay.

15 MS. SHELL: Because we still have this ordinance in place in

16 Henderson that is directly at odds with the NPRA. And, you know,

17 it's -- it's a bit of an old chestnut, but there is this rule of

18 construction called Dillon's Rule which says that when a

19 legislature evidences an intent to regulate a particular area of

20 law that you can't have a municipality, have a law that's at

21 conflict with the legislature's intent.

22 THE COURT: If they're willing to give you what you requested

23 on a drive rather than printing the paper, maybe we don't need to

24 get to the constitutionality of their rules. I mean, if they're

25 willing to give it to you that would resolve the case wouldn't it?

1 MS. SHELL: It would only revolve it with regards to this
2 particular issue --

3 THE COURT: Well, that's what we're worried about.

4 MS. SHELL: -- but this is -- this is something that is
5 capable of repetition and that is another issue that we have in
6 this matter. Is that this is --

7 THE COURT: Well, up until this case what I read was that you
8 guys had been cooperating and getting things back and forth -- or
9 at least getting things to the RJ when they requested it.

10 MS. SHELL: I don't think that there is -- this is not -- this
11 is not an issue, Your Honor, respectfully, where simply because you
12 have a pattern and practice of everything being okay most of the
13 time and then you have like this one incident that --

14 THE COURT: I'm just worried about this case. If they're
15 willing to give you the documents, I think that that ought to solve
16 it.

17 MS. SHELL: I understand your -- what you're saying, Your
18 Honor, but again our concern is that this will be an impediment in
19 future cases not just for the RJ.

20 THE COURT: Well, let's worry about the future cases when we
21 get there. That's for maybe a younger Judge.

22 MS. SHELL: Well, Your Honor, we are -- we are concerned that
23 this is something that is capable of repetition. And there's no
24 indication that they're going to rescind a policy which is at odds
25 with the NPRA.

1 THE COURT: I was -- I was led to believe that our hearing
2 today was to argue over the redacted documents that you have in --
3 that you attached to your petition.

4 MS. SHELL: Yes, we also have issues with the redactions, Your
5 Honor. And I won't -- I think I went through in detail in my reply
6 some of my issues with the redactions and the withholdings.

7 But, the thing to remember in NPRA cases dealing with the
8 Public Records Act is that the burden -- there's a presumption. We
9 start with a presumption under the law that records are public and
10 that they should be easily accessible. And that's a presumption
11 that can only be overcome by the government entity who wants to
12 withhold the documents. And they have to prove that by the
13 preponderance of the evidence.

14 And what we have here is an issue where in certain
15 instances -- and I would direct Your Honor's attention to the most
16 recent log, the third privilege log that was produced by the by the
17 City and that would be at --

18 THE COURT: That's your Exhibit 6.

19 MS. SHELL: It's actually, I was looking at the Exhibit H to
20 the -- I think it is our Exhibit 6, but it's also Exhibit H to the
21 City's response. And what we have here --

22 MR. KENNEDY: That is the most recent --

23 THE COURT: It's the same one. I've got it here.

24 MS. SHELL: Correct. It is the third privilege log. And we
25 have dozens of documents here where the -- there's a few different

1 categories, one of them is attorney-client privilege.

2 THE COURT: Right.

3 MS. SHELL: There are dozens of documents here where the City
4 has asserted they can't release the -- they won't release them
5 because of attorney-client privilege. However --

6 THE COURT: There's also the liberty of processed privilege a
7 confidential personal information which I guess would contain
8 social security numbers and things like that.

9 MS. SHELL: And, Your Honor, we don't contest that last
10 category. When it comes to personal identifying information, we
11 agree that those redactions are appropriate. Our concern comes
12 more with the assertions of attorney-client privilege, deliberative
13 process privilege, and, I believe, that -- yeah, those were the two
14 main categories of documents that were withheld.

15 Now when it comes to attorney-client privilege as I said
16 in our papers, attorney-client privilege needs to be construed
17 narrowly because it can be an impediment to open access to
18 documents and that's what the Supreme Court said in the *Whitehead*
19 case.

20 And the other thing that has been said by the Supreme
21 Court is you can't just -- this is a law in some ways like
22 discovery issue. You can't just put forth a boilerplate assertion
23 of privileged documents without providing more detail so that the
24 person requesting the document can assess whether that is an
25 appropriate withholding or redaction.

1 And what we have here with their third privilege log,
2 when you have these assertions of attorney-client privilege, it's
3 very generalized language that makes it impossible for the
4 Review-Journal to discern what exactly the nature of the
5 attorney-client privilege is.

6 You have dozens of them where it's just electronic
7 correspondence containing communication between attorney and staff
8 made for the purposes of facilitating legal -- the rendition of
9 professional legal services to the Troster contract terms.

10 I mean, it's so vague that it's essentially meaningless
11 to me. Like, every time I wrote that I didn't understand what that
12 meant. And that's part of the problem we don't know what those
13 documents are. If -- if --

14 THE COURT: What is the Troster contract?

15 MS. SHELL: Your Honor, Troster Communications was a
16 communications firm that had contracted for a period of time with
17 the City of Henderson to provide different services like public
18 relation services.

19 THE COURT: Did they have a contract?

20 MS. SHELL: As far as I know, they had a contract.

21 THE COURT: Well, the contract itself should be available to
22 you.

23 MR. KENNEDY: Correct. It's public record.

24 MS. SHELL: And that, Your Honor, there was actually one other
25 --

1 THE COURT: I guess, if there was negotiations involving that
2 contract and -- and staff was discussing what to offer or what to
3 agree to or how much to pay or something like that that probably
4 would be -- between the attorneys and the staff that would probably
5 be something that would be privileged, but there's an awful lot of
6 those same things, I agree with you.

7 MS. SHELL: Yes, Your Honor. I mean, to the extent that there
8 may be those documents. Those may be properly withheld, but it's
9 impossible to discern from their log what those documents are and
10 what they actually talk about. The actually -- and, Your Honor, I
11 actually --

12 THE COURT: How do I -- how do I resolve this?

13 MS. SHELL: I think the way to revolve it, Your Honor, is to
14 take the documents in camera and review them to see if they had
15 been properly withheld.

16 THE COURT: Well, they offered to give them to me in camera.
17 I was really excited about reading a couple hundred documents.

18 MR. KENNEDY: I'm sure -- I'm sure that you were.

19 MS. SHELL: Well, yeah, and Ms. McLetchie also pointed out
20 another thing would be, and it's actually what I put in the reply,
21 is that we need a better log so that we can assess the privilege
22 because they're asserting the privilege. It's their burden to
23 prove it. We can't tell if they're meeting their burden.

24 THE COURT: And that's true. I agree. They have to make a
25 demonstration and --

1 MS. SHELL: They also asserted deliberative privilege process,
2 Your Honor, as to a lot of the same documents, so. I just -- I had
3 only mentioned two categories.

4 THE COURT: I guess that deliberative privilege exception is
5 where you've got staff members discussing how they're going to
6 present something or give it to the commissioners to decide; is
7 that right?

8 MS. SHELL: Right. And that's not what the deliberative
9 process privilege is meant to encompass, Your Honor. And as I
10 pointed out, indeed, in one of the cases that is actually sighted
11 in Henderson's moving papers, the deliberative process privilege is
12 meant to apply to communications and records that deal with
13 significant policy judgments.

14 And there's no evidence when you look where they've
15 asserted, the -- you'll forgive me, Your Honor, as I flip back and
16 forth between these things -- the deliberative process privilege
17 one of the documents that they cite is electronic correspondence
18 containing mental impressions and strategy of city management
19 regarding preparation of public statement and comments on draft
20 statement. A public statement isn't a significant policy judgment
21 issue.

22 THE COURT: I guess it depends about what the statement is.

23 MS. SHELL: Well, and it's impossible -- frankly, Your Honor,
24 it's impossible to discern from the log what that policy statement
25 is.

1 THE COURT: I must confess I had not heard about the
2 deliberative privilege previously, so I wasn't very familiar with
3 it.

4 MS. SHELL: Your Honor, just -- and as another alternative to
5 in camera review, that -- your Court -- the Court could find that
6 they haven't met their burden and just direct the City of Henderson
7 to produce the records.

8 THE COURT: Okay.

9 MS. SHELL: All right. Your Honor, thank you.

10 THE COURT: Thank you.

11 MR. KENNEDY: Your Honor, with respect to the first issue and
12 that is the inspection and production of the documents. We
13 produced almost 70,000 pages. Nobody asked for a single copy of
14 anything and as we told the Court this morning, we're willing to
15 provide those.

16 THE COURT: Okay. Well, I guess they want them.

17 MR. KENNEDY: Well, okay. They didn't have to sue us to get
18 them.

19 THE COURT: We'll -- I'll accept that as a stipulation that
20 you will provide it within five days.

21 MR. KENNEDY: Yes. We will.

22 THE COURT: All right. Thank you. That will resolve that
23 issue.

24 MR. KENNEDY: Secondly, the Court is correct. With respect to
25 the argument about can you or can't you charge a fee, what can the

1 fee be, and all of that, we're just -- we're going to produce
2 these. That's really not an issue before the Court.

3 THE COURT: Well, at one time it was. You did request money
4 for privilege review. I don't know that the statute says you're
5 entitled to money for privilege review. Now, if it's an
6 extraordinary request, maybe that's part of it, but I -- that's
7 arguable either way.

8 MR. KENNEDY: It is arguable either way. Just -- the Court
9 doesn't have to decide it. The last issue is on the -- the
10 privilege law.

11 THE COURT: The privilege.

12 MR. KENNEDY: Okay. And the Nevada Supreme Court has dealt
13 with this. In the context of the Public Records Act in *Reno*
14 *Newspaper versus Gibbons* one of the questions before the Supreme
15 Court was, what do you have to put in this privilege log? Because
16 the statute says if -- you'll say we can't produce it, we give you
17 the reasons why, and cite the statute. That's -- that's what the
18 Public Records Act says. And the Nevada Supreme Court said, well,
19 exactly what do you have to tell the other party?

20 And the question involved the legendary Vaughn Index.
21 It's a federal case and it says under the Federal Act here's what
22 you have to do. The Supreme Court said, well, you don't have to do
23 a Vaughn Index 'cause every case is different. The Supreme Court
24 said, in order to -- and I'm reading out of the *Gibbons* case, in
25 order to preserve a fair adversarial environment, the log should

1 contain, at a minimum, a general factual description of each record
2 withheld and a specific explanation for nondisclosure. So describe
3 the document and tell us why you're not disclosing it.

4 So in our Exhibit H, what we did was we described the
5 document, by document number and a description of it, and then --
6 and, you know, who wrote it, who sent it, that, and then cited
7 whatever the -- whatever the reason for withholding was; either
8 attorney-client communication or the deliberative privilege. And
9 so that's what we did and that -- that satisfies the test in
10 *Gibbons*.

11 Now, in the next paragraph the Supreme Court in *Gibbons*
12 -- and this is at -- it's 127 Nevada Advance Opinion 79, I just
13 have the cite to the Pacific page it's at 884. The Supreme Court
14 said, and if that's not sufficient -- what is it, describe it, and
15 tell us why you're withholding it, Supreme Court said, if that's
16 not enough in order for a decision to be made, the Supreme Court
17 says, to the delight of trial Judges everywhere, in other words an
18 in camera review may be used to supplement a log, but it may not be
19 used as a substitute where a log is necessary. Which means provide
20 the log. If that's not good enough, then in camera review.

21 That's why we said in your response, we'll provide them
22 to the Court in camera. And that's what *Gibbons* says. If you look
23 at the log and you say, fine, I know what the document is, I know
24 what the privilege is, but I've got to look at it, then in camera
25 review --

1 THE COURT: My concern is that you have repeated kind of a
2 boilerplate explanation. It's fairly detailed, but it's still a
3 boilerplate explanation for an awful lot of documents.

4 MR. KENNEDY: Yeah. It is. And you know -- you know, Your
5 Honor, what the response to that is? It is in footnote three in
6 that *Gibbons* opinion, footnote three the Supreme Court addresses
7 that issue. And it says, you know what, you can't ask for too much
8 because if you give a little bit more, you're going to waive the
9 privilege.

10 And in footnote three, the Court says we understand that
11 problem. And so here's why we're deciding the case the way we do.
12 And in -- in footnote three they cite a couple cases which -- which
13 hold that which say you don't -- you don't have to go so far as to
14 endanger the privilege. So that's what we did. Said here's the
15 document attorney-client or deliberative and as the Supreme Court
16 said in *Gibbons*, we'll give them to the Court in camera if that's
17 necessary.

18 And so what we did was really strictly complied with the
19 Public Records Act as the Supreme Court interpreted it in *Gibbons*.
20 As I said, much to the delight of trial Judges everywhere, but that
21 is -- that is what the Supreme Court said so that's why we did what
22 we did.

23 And those are -- those are all the points I want to make.
24 Okay. Thank you.

25 MS. SHELL: Thank you, Your Honor, I just have a couple of

1 brief points. The first thing that I would to say is Mr. Kennedy
2 said we didn't have to sue to get these records. Clearly we did
3 because this is the first time we've been given an -- they've told
4 us they're going to give us a USB drive so obviously we did have to
5 bring this case to the Court.

6 THE COURT: That's done.

7 MS. SHELL: Yeah. And, Your Honor, in terms of the privilege
8 log, there's actually on the next page of the *Gibbons* opinion so
9 that would be the Pacific Reporter on page 885, what *Gibbons* says,
10 and I think it echoes what Your Honor's concerns were, we cannot
11 conclude that merely pinning a string of citations to a boilerplate
12 declaration of confidentiality satisfies the State's prelitigation
13 obligation under NRS 239.0107 to cite specific authority that makes
14 the public book or record a part or a part thereof confidential.

15 And in fact, I actually believe, Your Honor, although
16 it's been an hour or two since I read the *Gibbons* opinion, that in
17 *Gibbons* the Supreme Court actually told the State to go and revise
18 its privilege log to provide more information. And we're in the
19 same situation here where we don't have sufficient --

20 THE COURT: Well, 'cause I didn't go back and read the *Gibbons*
21 case. I know that you both referenced it, but I didn't go back and
22 read it. What was the explanation offered in the *Gibbons* case that
23 was insufficient?

24 MS. SHELL: I believe those -- some of those fell under -- and
25 forgive me, Your Honor, this was in the *Gibbons* case, the Reno

1 Newspapers had asked for emails between then Governor Jim Gibbons
2 and a series of individuals. And there were I believe -- I
3 believe, gosh, Maggie, do you remember?

4 THE COURT: I mean --

5 MS. SHELL: I don't recall the nature --

6 THE COURT: Was it as detailed as these explanations here?

7 MR. KENNEDY: No.

8 THE COURT: -- that electronic correspondence containing
9 communication between attorney and staff made for the purpose of
10 facilitating the rendition of professional services re Trosper
11 contract terms.

12 MR. KENNEDY: Right.

13 MS. SHELL: Your Honor, I --

14 THE COURT: It's fairly detailed. I mean, if it's true it
15 would be a --

16 MS. McLEITCHIE: Your Honor, if I recall and, I don't --
17 unfortunately, we don't have the case in front of us, but if I
18 recall, the issue that they came up with is the same issue that we
19 had here in that regardless of whether it took the form of a log or
20 a declaration, the issue was that it was just boilerplate and there
21 is the balancing act that Mr. Kennedy mentioned, but you still have
22 to provide -- and this is what the *Gibbons* Court said, you still
23 have to provide enough information so that the other side can
24 ascertain whether or not the privilege is properly being brought.

25 THE COURT: If -- if you're --

1 MS. McLEITCHIE: And both we and Your Honor had some confusion
2 --

3 THE COURT: If these statements are accurate, I would think
4 that the privilege is -- I mean, the privilege is validly claimed.
5 Now, if you claim that the privilege isn't accurate, then I have to
6 look at it to see if it's accurate.

7 MS. McLEITCHIE: We have to -- I'm sorry, go ahead, Ms. Shell.

8 MS. SHELL: It's impossible because it is when you look at
9 when they say facilitating the rendition of professional legal
10 services, that is -- we just can't tell. I mean frankly it's just
11 -- it's difficult to discern because that is taken directly from
12 the statute. That's not actually a descriptor. So that's why we
13 can't tell if the privilege is being properly asserted and that's
14 why --

15 THE COURT: Well, the only way to know is to look at the
16 document.

17 MS. SHELL: That's correct, Your Honor.

18 THE COURT: You want me to do that?

19 MS. SHELL: I believe we would, Your Honor.

20 MS. McLEITCHIE: We would also ask that the log also be updated
21 so that they better describe the documents so we can match up just
22 provide enough information to us to see --

23 THE COURT: The documents are copied in this Exhibit 7 aren't
24 they?

25 MS. McLEITCHIE: Some of them are, Your Honor. They both

1 withheld documents and they redacted documents. So there's some
2 that were provided and there are some that were withheld in their
3 entirety, but we need more of an explanation --

4 THE COURT: Well, I looked up, for example, the very first one
5 which was log number three, it's so small I can't read it.

6 MS. McLEITCHIE: Your Honor, we need more information --

7 THE COURT: Maybe it's my poor eyes, but I --

8 MS. SHELL: Yeah.

9 MS. McLEITCHIE: -- about either the nature of what was
10 redacted or the nature of the document that was withheld so that we
11 can tell at least whether or not the privilege applies.

12 THE COURT: Okay.

13 MS. SHELL: And unless Your Honor has any further questions?

14 THE COURT: Anything further?

15 MR. KENNEDY: I can answer your question about *Gibbons*.

16 THE COURT: Okay. What did they -- what were they?

17 MR. KENNEDY: In *Gibbons*, they didn't give a log. They just
18 gave a statement. This is at --

19 THE COURT: What was the statement?

20 MR. KENNEDY: -- 876 in the Pacific third cite. The State
21 informed the RGJ, the Reno Gazette Journal, that all of the
22 requested emails were confidential because they were either
23 privileged or not considered public records. The Review-Journal
24 repeated its request for a log containing a description of each
25 individual email so it could assess whether to challenge the

1 State's classification. No log in that case, so.

2 THE COURT: So they didn't have the statement that you have
3 given here?

4 MR. KENNEDY: That is correct.

5 THE COURT: Okay.

6 MR. KENNEDY: That is correct. And that was, of course, that
7 was the problem. You just --

8 THE COURT: Well, unless there's some indication that they --
9 that the City has misrepresented what these are, I think this is an
10 adequate description of the privilege.

11 MS. McLEITCHIE: Your Honor, if I may, I think the whether it
12 was -- whether it's on a log and separated out by document or
13 whether it's in a declaration as it was in the *Gibbons* case, we
14 have the same problem because we don't have enough information to
15 ascertain whether or not the privilege is properly brought.

16 We're not supposed to be in a situation where we're
17 supposed to assume that they're properly bringing the privilege and
18 that we somehow have to figure out which we can't do without more
19 information.

20 THE COURT: If this is all the *Gibbons* case requires, I think
21 they've satisfied it.

22 MS. McLEITCHIE: They don't just require a log, they require
23 enough information so that we can ascertain whether or not the
24 privilege is properly being brought and that's --

25 THE COURT: I think this is enough information.

1 MS. McLEITCHIE: Your Honor, I respectfully disagree. And if I
2 may raise just one last issue with regard to the declaratory relief
3 and the injunctive relief. I do just want to make one last pitch.
4 I've heard Your Honor's position, but my -- my view is that they
5 shouldn't -- the public's entitled to clarity.

6 There's an ordinance and there's a policy in Henderson
7 right now that is at odds with the NPRA for two reasons. Both
8 because they're applying it to allow for fees for things like
9 privilege review and because the figure, the per page number is
10 higher --

11 THE COURT: They're not arguing for any more money. They're
12 not going to -- they're not going to ask you for any money.

13 MS. McLEITCHIE: Then I would ask that they -- that they
14 voluntarily rescind that policy.

15 THE COURT: Well, that's -- we'll worry about it at the next
16 case. But, they're going to give you a stick -- what do you call
17 it?

18 MS. SHELL: A USB drive, Your Honor.

19 THE COURT: USB drive with the 69,000 pages on it and I'm
20 going to deny the rest of the petition.

21 MR. KENNEDY: Very good.

22 THE COURT: I need an order to that effect.

23 MR. KENNEDY: I will prepare the order and run it by counsel.

24 THE COURT: Send it by counsel.

25 MS. McLEITCHIE: Thank you, Your Honor.

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MR. KENNEDY: Surely.

THE COURT: Have a good day.

[Proceedings concluded at 9:29 a.m.]

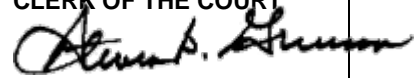
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ATTEST: I do hereby certify that I have truly and correctly
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to the best of my ability.



Jennifer P. Gerold
Court Recorder/Transcriber

EXHIBIT B



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CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order denying Petitioner's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition was entered on May 12, 2017.

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1 A true and correct copy is attached.

2 DATED this 15th day of May, 2017.

3 BAILEY❖KENNEDY

4
5 By: /s/ Dennis L. Kennedy
6 DENNIS L. KENNEDY

7 and

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CERTIFICATE OF SERVICE

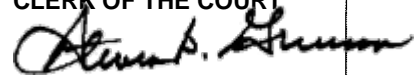
I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15th day of May, 2017, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W
Dept. No. XVIII

ORDER

The Amended Public Records Act Application/Petition for Writ of Mandamus/Application for Declaratory Relief (the "Petition") of Petitioner Las Vegas Review Journal (the "LVRJ") came on for hearing at 9:00 a.m. on March 30, 2017 on expedited basis pursuant to NRS 239.011; the LVRJ was represented by Alina Shell and Margaret A. McLetchie; Respondent City of Henderson (the "City") was represented by Dennis L. Kennedy of Bailey ♦ Kennedy, City Attorney Josh M. Reid and Assistant City Attorney Brian R. Reeve; the Court having read the pleadings and memoranda filed by the parties, having considered the evidence presented and having heard the argument of counsel, hereby ORDERS AS FOLLOWS:

1 1. The Petition presents three principal issues: (i) preparation and access to public
2 records; (ii) assessing costs and charging fees for copying and preparing public records; and (iii)
3 withholding and redacting certain records.

4 2. Preparation and Access to Records. In response to the LVRJ's public record request,
5 the City performed a search that returned 9,621 electronic files consisting of 69,979 pages of
6 documents. Except for the items identified on the City's withholding log (discussed in paragraph 4,
7 below), all such files and documents (the "Prepared Documents") were prepared by the City, and
8 LVRJ had access to and inspected the Prepared Documents prior to the hearing. Following its
9 inspection, LVRJ made no request for copies of the Prepared Documents; however, following
10 LVRJ's counsel's representations at the hearing that it also wanted electronic copies of the Prepared
11 Documents, the City agreed to provide electronic copies of the Prepared Documents. The City has
12 complied with its obligations under the Nevada Public Records Act (the "NPRA").

13 3. Costs and Fees. The City has provided the Prepared Documents without charging
14 costs or fees to the LVRJ. Therefore, LVRJ's claims regarding the propriety of charging such costs
15 and fees are moot, and the Court does not decide them.

16 4. Withheld Documents. The sole issue decided by the Court concerns certain
17 documents the City withheld and/or redacted (the "Withheld Documents") on the grounds of
18 attorney-client or deliberative process privilege. The operative privilege log (the "Privilege Log")
19 was attached as Exhibit "H" to the City's Response to the Petition. The Court finds the Privilege
20 Log to be timely, sufficient and in compliance with the requirements of the NPRA, and therefore
21 DENIES the LVRJ's Amended Petition concerning the Withheld Documents.

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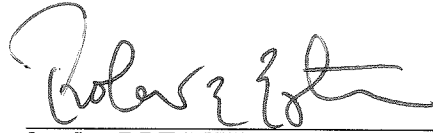
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5. CONCLUSION. Based on the foregoing, LVRJ's request for a writ of mandamus, injunctive relief, and declaratory relief, and any remaining request for relief in the Amended Petition is hereby DENIED.

DATED this ____ day of April, 2017.



Submitted by:

Approved as to Form and Content:

BAILEY ♦ KENNEDY

MCLETCHIE SHELL LLC

By: 
DENNIS L. KENNEDY

By: _____
ALINA SHELL
MARGARET A. MCLETCHIE

and

JOSH M. REID, City Attorney
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Notification of Service

Case Number: A-16-747289-W
Case Style: Las Vegas Review-Journal,
Plaintiff(s)vs.Henderson City of, Defendant(s)
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Case Number	A-16-747289-W
Case Style	Las Vegas Review-Journal, Plaintiff(s)vs.Henderson City of, Defendant(s)
Date/Time Submitted	5/15/2017 9:47 AM PST
Filing Type	Notice of Entry of Order - NEOJ
Filing Description	Notice of Entry of Order
Filed By	Susan Russo
Service Contacts	<p>Las Vegas Review-Journal:</p> <p>Alina Shell (alina@nvlitigation.com)</p> <p>Margaret McLetchie (maggie@nvlitigation.com)</p> <p>Other Service Contacts not associated with a party on the case:</p> <p>Alina Shell . (alina@nvlitigation.com)</p> <p>Bailey Kennedy . (bkfederaldownloads@baileykennedy.com)</p> <p>Brandon P. Kemble . (Brandon.Kemble@cityofhenderson.com)</p> <p>Cheryl Boyd . (Cheryl.Boyd@cityofhenderson.com)</p> <p>Dennis L. Kennedy . (dkennedy@baileykennedy.com)</p>

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