

CARLOS MCDADE, Nevada Bar No. 11205  
ADAM D. HONEY, Nevada Bar No. 9588  
CLARK COUNTY SCHOOL DISTRICT  
OFFICE OF THE GENERAL COUNSEL  
5100 W. Sahara Avenue  
Las Vegas, NV 89146  
Telephone: (702) 799-5373  
*Counsel for Respondent*

Electronically Filed  
Apr 09 2018 02:43 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

Petitioner,

Dept. No.: XVI

vs.

CLARK COUNTY SCHOOL DISTRICT,

**NOTICE OF APPEAL**

Respondent.

**NOTICE OF APPEAL**

Notice is hereby given that Respondent CLARK COUNTY SCHOOL DISTRICT hereby appeals to the Supreme Court of the State of Nevada from the Findings of Facts and Conclusions of Law and Order issued by the Honorable Timothy C. Williams, District Judge, entered in this action on the 22<sup>nd</sup> day of March, 2018. Notice of Entry of the District Court's Order was filed on March 22, 2018, and is attached hereto as Exhibit A.

Respectfully submitted, this 2<sup>nd</sup> day of April, 2018.

CLARK COUNTY SCHOOL DISTRICT  
OFFICE OF THE GENERAL COUNSEL

/s/ Adam Honey

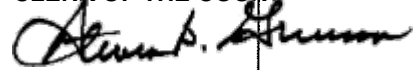
Carlos McDade, Nevada State Bar No. 11205  
Adam Honey, Nevada State Bar No. 9588  
*Counsel for Respondent, Clark County School District*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Margaret A. McLetchie, Esq.  
MCLECHIE SHELL LLC  
701 East Bridger Avenue, Suite 520  
Las Vegas, NV 89101

2

**EXHIBIT A**



1 **NEOJ**

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: maggie@nvlitigation.com

9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

15 **NOTICE OF ENTRY OF ORDER**

16 CLARK COUNTY SCHOOL DISTRICT,

17 Respondent.

18 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that on the 22<sup>nd</sup> day of March, 2018, the Findings of  
20 Facts and Conclusions of Law and Order was entered in the above-captioned action.

21 A copy of the Findings of Facts and Conclusions of Law and Order is attached  
22 hereto as Exhibit 1.

23 DATED this 22<sup>nd</sup> day of March, 2018.

24 /s/ Margaret A. McLetchie

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, Nevada 89101

*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 22<sup>nd</sup> day of March, 2018, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-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 22<sup>nd</sup> day of March, 2018, I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Carlos McDade, General Counsel  
Adam Honey, Asst. General Counsel  
**Clark County School District**  
5100 W. Sahara Ave.  
Las Vegas, NV 89146  
*Counsel for Respondent, Clark County School District*

/s/ Pharan Burchfield  
An Employee of MCLETCHE SHELL LLC

# EXHIBIT 1



1 **FFCL**  
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: maggie@nvlitigation.com  
9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

**FINDINGS OF FACTS AND**  
**CONCLUSIONS OF LAW AND**  
**ORDER**

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

17 The Las Vegas Review-Journal's Motion for Attorney's fees and Costs and Request  
18 for Order Finding CCSD Acted in Bad Faith, having come on for hearing on November 11,  
19 2017 and January 4, 2018, the Honorable Timothy C. Williams presiding, Petitioner LAS  
20 VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorney,  
21 MARGARET A. MCLEATCHIE, and Respondent CLARK COUNTY SCHOOL DISTRICT  
22 ("CCSD"), appearing by and through its attorney, CARLOS M. MCDADE, and the Court  
23 having read and considered all of the papers and pleadings on file and being fully advised,  
24 and good cause appearing therefor, the Court hereby makes the following findings of fact  
25 and conclusions of law:

26 ///

27 ///

28 ///

**MAR 16 2018**

**MCLEATCHIE SHELL**

ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
WWW.NVLITIGATION.COM

I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

***Original Requests; Filing of Action***

1. On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the “Reporter”) sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking certain documents pertaining to CCSD Trustee Kevin Child; the Reporter supplemented the Request on December 9, 2016 (the “December Requests”).

2. After CCSD failed to provide documents or assert any claim of confidentiality pursuant to Nev. Rev. Stat. § 239.0107, the Review-Journal initiated this action on January 26, 2017, requesting expedited consideration pursuant to Nev. Rev. Stat. § 239.011.

***Initial Proceedings and February 22, 2017 Order***

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing. CCSD did not produce all records in unredacted form. Instead, Starting on February 8, 2017 it began producing some records in redacted form and withheld others. CCSD did not disclose that it had limited the sources it searched for records responsive to the Request or the Supplemental Request.

4. The Court conducted an *in camera* review of the unredacted version of the redacted records provided and then, on February 14, 2017, the Court heard oral argument on the Review-Journal’s Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal’s Petition. (*See* February 22, 2017 Order (the “February Order”); *see also* February 23, 2017 Notice of Entry of Order).

5. The Court ordered CCSD to provide the Review-Journal with new versions of records it had produced with only “the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff” redacted. (*Id.* at ¶ 34.) The Court further specified that “CCSD may not make any other redactions” and must unredact the



names of schools, teachers, and all administrative-level employees that were not direct victims. (*Id* at ¶ 35.)

6. CCSD did not appeal this order, or seek other relief pertaining to the February Order. To date, CCSD has disclosed 174 pages of documents to the Review-Journal, redacting consistently with the February Order. CCSD has also withheld 102 pages. *February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search Information*

7. On February 10, 2017, the Review-Journal submitted a new records request to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-Journal also offered to work with CCSD to develop searches.

8. On February 17, 2017, CCSD notified the Review-Journal via email that it was unable to provide the records listed in the February Request within the five days mandated by Nev. Rev. Stat. § 239.0107. On March 1, 2017, Review-Journal filed its Amended Petition. On March 3, 2017, CCSD provided some documents in response to the February Request. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted information pertaining to the names of individuals who reported a complaint or concern about Trustee Child, information including potentially identifying information about students, and personal phone numbers. That same day, the Review-Journal requested CCSD provide a log of withheld documents that were responsive to the February Request and also asked CCSD to provide it with search information. CCSD responded to these requests via letter on March 13, 2017. Despite previous requests from the Review-Journal, that was the first time CCSD provided any search term information.

9. In response to the Review-Journal's inquiry regarding which documents were being withheld, CCSD asserted that "the only information that has not been provided is internal information received or gathered by the District in the court of its investigation of an alleged practice of unlawful practice of discrimination, harassment, or hostile work environment which is confidential and not required to be disclosed under the public records law." By email on March 13, 2017, CCSD also stated it was withholding one document—a

report prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report"). The Review-Journal responded to CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested CCSD conduct additional email searches for responsive records from additional custodians. The Review-Journal requested that CCSD search those records for documents pertaining to the topics outlined in the December and February Requests. The Review-Journal also requested CCSD produce hard copy records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any other hard copy files CCSD maintains on Trustee Child that were responsive to the December and February Requests.

10. CCSD declined to produce the Cole Report and other documents created by the Office of Diversity and Affirmative Action Programs; on March 24, 2017, CCSD supplemented its privilege log to reflect that it was withholding records in addition to the records it had previously identified ("3/24/2017 Log"). This 3/24/2017 Log reflected that, in total, CCSD withheld only the following from documents produced in response to the December Requests and the February Request:

Investigative memoranda prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report") and Mr. Cole's investigative notes.

(See Exhibit E to March 29, 2017 Opening Brief in support of Amended Petition for Writ of Mandamus.)

***Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters***

11. On May 9, 2017, the Court heard oral arguments on the Review-Journal's Amended Petition for Writ of Mandamus. On June 6, 2017, the Court entered an Order granting the Review-Journal's Amended Petition as to the request that CCSD complete additional searches. (June 6, 2017 Order at ¶ 45, ¶ 46.)

12. Further, the Court ordered that, with regard to any documents CCSD had withheld and/or redacted to date and any additional responsive documents it identified in

1 response to the additional email and hard copy searches it was required to perform but  
2 contended are confidential and/or privileged, CCSD was to create a single log numbering  
3 and identifying each document withheld or redacted (in response to either the December  
4 Requests or the February Request) by providing a factual description of each record withheld  
5 (by listing to, from, date, and general subject) as well as a specific explanation for non-  
6 disclosure for each document withheld or redacted (including confidentiality being claimed,  
7 and basis for claim). The Court further ordered that the log provide sufficient information to  
8 the Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted.  
9 The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017,  
10 along with all redacted documents and documents being withheld for an *in camera* review.  
11 The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas  
12 Review-Journal. (June 6, 2017 Order at ¶ 47.)

13 **July 12 Order**

14 13. On May 30, 2017, CCSD submitted the redacted and documents it was  
15 withholding (the "Withheld Records") to the Court for *in camera* review. It additionally  
16 provided the Court with two certifications and a privilege log. ("Final Log")

17 14. Despite its representation to the undersigned, CCSD counsel did not provide  
18 a copy of either of these documents to the Review-Journal at that time. At a hearing held on  
19 June 6, 2017 the Court made clear it has expected CCSD to engage in the routine practice of  
20 providing privilege logs and certifications to opposing counsel in conjunction with *in camera*  
21 submissions. At the hearing, CCSD counsel did finally provide a copy of the Final Log and,  
22 later that day, provided copies of the certifications it had provided to the Court a week earlier.

23 15. In the Final Log, CCSD stated it is withholding the following documents in  
24 their entirety on the basis of the privileges it describes as "Office of Diversity and Affirmative  
25 Action Privileges:"

- 26 • CCSD 034-060; and
- 27 • CCSD 0159-0233.

28 In the Final Log, CCSD has summarized these documents as follows:

To the best of CCSD's knowledge, the only information that has not been provided to Petitioner is internal information received or gathered by Cedric Cole, Executive Director, Office of Diversity and Affirmative Action, in the course of his investigation regarding Trustee Child ...

(Exh. GG to June 13, 2017 Review-Journal Memorandum at Review-Journal007.)

16. The Final Log also cites CCSD Regulation 4110(X) to justify non-disclosure of the 102 pages of documents it is withholding. That Regulation states that

All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law.

(*Id.* at Review-Journal022.)

17. CCSD also claims that the NPRA does not require the release of confidential employee personnel information. (*Id.* at Review-Journal023.) In addition, CCSD claims in its Final Log that the records of its investigation of Trustee Child should be kept confidential pursuant to Title VII and guidance from the Equal Opportunity Employment Commission ("EEOC"). (*Id.* at Review-Journal019-Review-Journal021.) CCSD also claims that withheld internal information it obtained during its investigation of allegations of discrimination or harassment by Trustee Child is subject to the deliberative process privilege because the information "was used as part of the deliberative and decision-making process of District executives" in crafting the Cole Memorandum. (*Id.* at Review-Journal023.) CCSD asserts that any withheld information which might constitute "worksheets, drafts, informal notes, or ad hoc reports," it qualifies as "nonrecord material" under NAC 239.051. (*Id.*)

18. The Review-Journal submitted a Memorandum responding to CCSD's Final Log on June 13, 2017.

19. This Court held a hearing on CCSD's Final Log and May 30, 2017 *in camera* submission on June 27, 2017.

20. At that hearing, CCSD asserted for the first time that in addition to the privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which provides for the creation and regulation of the Nevada Equal Rights Commission—applied to investigations conducted by CCSD's Office of Diversity and Affirmative Action.

1 Specifically, CCSD asserted at the hearing that information pertaining to investigation of  
2 allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. §  
3 233.190.

4 21. On July 12, 2017 an Order was entered ordering CCSD to produce the  
5 Withheld Records, but allowing CCSD to make redaction consistent with the February Order.  
6 CCSD is explicitly permitted to redact the “names of direct victims of sexual harassment or  
7 alleged sexual harassment, students, and support staff.” (See February 23, 2017 Order at ¶  
8 34; see also July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with  
9 the February 23, 2017 Order).) The Court further specified that “CCSD may not make any  
10 other redactions” and must unredact the names of schools, teachers, and all administrative-  
11 level employees that were not direct victims. (See February 23, 2017 Order at ¶ 35; see also  
12 July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with the February  
13 23, 2017 Order).)

14 *Appeal and Motion to Stay*

15 22. On July 12, 2017, CCSD filed a Motion to Stay Enforcement of Order  
16 Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e)  
17 Pending Appeal on Order Shortening Time.

18 23. On July 12, 2017, CCSD also filed a Notice of Appeal to the Nevada  
19 Supreme Court.

20 24. On July 19, 2017, Review-Journal filed its Opposition to Motion to Stay  
21 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
22 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

23 25. On July 21, 2017, CCSD filed its Reply in Support of Motion to Stay  
24 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
25 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

26 26. Only July, 27, 2017, this Court heard arguments on the Motion to Stay  
27 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
28 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time, and ultimately denied

CCSD's Motion to Stay.

27. On July 27, 2017, CCSD filed an Emergency Motion For Stay Pending Appeal with the Nevada Supreme Court; that same day, the Supreme Court assigned CCSD's Emergency Motion to the Court of Appeals.

28. On August 28, 2017, the Court of Appeals granted CCSD's Emergency Motion For Stay Pending Appeal.

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

29. On October 3, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith pursuant to Nev. Rev. Stat. § 239.011(2).

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

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	138.2	\$450.00	\$62,190.00 <sup>1</sup>
Alina M. Shell	88.2	\$350.00	\$30,065.00 <sup>2</sup>
Leo Wolpert	24.0	\$175.00	\$4,200.00
Pharan Burchfield	29.6	\$150.00	\$4,440.00
Administrative Support	18.9	\$25.00	\$472.50
<b>Total Fees Requested</b>			<b>\$101,367.50</b>

31. The Review-Journal also requested \$4,330.87 in costs associated with the litigation, for a combined total request for \$105,698.37 in fees and costs.

32. The Review-Journal provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

33. CCSD filed an Opposition to the Review-Journal's Motion on October 31, 2017, and the Review-Journal filed a Reply on November 13, 2017.

34. In its Opposition, CCSD asserted that pursuant to Nev. Rev. Stat. § 239.012, a provision of the NPRA which provides immunity from damages for public

<sup>1</sup> This total reflected voluntary reductions for some time entries, made by counsel for the Review-Journal in her billing discretion.

<sup>2</sup> See *supra* n.1.

1 officers who act in good faith in disclosing or refusing to disclose records, the Review-  
2 Journal had to establish CCSD acted in bad faith in refusing to disclose the requested records  
3 to obtain attorney's fees and costs.

4 35. Alternatively, CCSD argued the fees and costs sought by counsel for the  
5 Review-Journal should be apportioned and reduced, largely relying on case law regarding  
6 prevailing market rates from federal cases (including Prison Litigation Reform Act case  
7 law).

8 36. This Court conducted a hearing on the Review-Journal's Motion on  
9 November 16, 2017.

10 37. At the November 16, 2017 hearing, the Court directed the parties to submit  
11 supplemental briefing regarding whether it retained jurisdiction to rule on Review-Journal's  
12 Motion while CCSD's appeal was pending before the Nevada Supreme Court.

13 38. The Review-Journal filed a Supplement to its Motion for Attorney's Fees  
14 and Costs on December 7, 2017.

15 39. On December 18, 2017 CCSD's filed an Opposition to Review-Journal's  
16 Supplement to Motion for Attorney's Fees and Costs, as well as a Motion to Strike Improper  
17 Argument in Review-Journal's Supplemental Motions. CCSD filed an Errata to that  
18 Opposition on December 19, 2017.

19 40. On December 28, 2017, the Review-Journal filed a Reply to CCSD's  
20 Opposition to the Supplement, and also filed an Opposition to CCSD's Motion to Strike.

21 41. The Court conducted a hearing on these motions on January 4, 2018.

22 42. At the January 4, 2018 hearing, the Court found that it retained jurisdiction  
23 over the Review-Journal's Motion for Attorney's Fees and Costs and Request for Order  
24 Finding CCSD Acted in Bad Faith. The Court then granted the Review-Journal's Motion  
25 for Attorney's Fees and Costs, and denied the Review-Journal's Request for Order Finding  
26 CCSD Acted in Bad Faith. The Court further ordered the Review-Journal to submit a  
27 supplement regarding additional attorney's fees it accrued after submitting its Motion for  
28 Attorney's Fees and Costs.

43. On January 11, 2018, the Review-Journal submitted a Supplement to Motion for Attorney's Fees and Costs. In that Supplement, the Review-Journal provided documentation that it accrued an additional \$19,542.50 in attorney's fees and \$508.13 in costs after the submission of its October 3, 2017 Motion for Attorney's Fees and Costs. The Supplement also included a declaration from counsel addressing the *Brunzell* factors.

44. Combined with the \$101,367.50 in attorney's fees and \$4,330.87 in costs, Review-Journal's combined total fees and costs amount to \$125,749.00.

45. On January 18, 2018, CCSD filed a Response to Review-Journal's Supplement to Motion for Attorney's Fees and Costs Filed January 11, 2018.

## II.

## CONCLUSIONS OF LAW

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

46. 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).

47. 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).

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

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

///

///



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

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

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

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

1 *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993) (noting that attorney  
2 fees may be awarded for unfair practice, while punitive damages are awarded for tort based  
3 on same conduct).

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

8 55. Nev. Rev. Stat. § 239.005(5) defines “governmental entity” as follows:

- 9 (a) An elected or appointed officer of this State or of a political subdivision
- 10 of this State;
- 11 (b) An institution, board, commission, bureau, council, department,
- 12 division, authority or other unit of government of this State, including,
- 13 without limitation, an agency of the Executive Department, or of a political
- 14 subdivision of this State;
- 15 (c) A university foundation, as defined in NRS 396.405; or
- 16 (d) An educational foundation, as defined in NRS 388.750, to the extent that
- 17 the foundation is dedicated to the assistance of public schools.

18 56. The officers and employees whose “good faith” actions are subject to  
19 immunity pursuant to the Damages Immunity Statute are not governmental entities. In  
20 contrast, the Respondent (in this case, CCSD) is a “governmental entity” within the meaning  
21 of Nev. Rev. Stat. § 239.005(5) and is therefore responsible for fees pursuant to the Fees  
22 Statute. Thus, the difference in terms between the Fees Statute and the Damages Immunity  
23 Statute supports not reading a “good faith” requirement from the separate Damages  
24 Immunity Statute into the Fees Statute.

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

///

58. Fifth, it is not necessary to read a good faith requirement into the Fees Statute to reconcile it with the separate Damages Immunity Statute. This is so because the good faith provision applies to an entirely different matter than the attorney fees and costs provision. As set forth above, the Damages Immunity Statute addresses when a public officer or employee (and his or her employer) is immune from *damages to anyone* for *producing* records or for failing to produce records if the *officer or employee* acted in good faith. In contrast, the Fees Statute sets forth when a *governmental entity* is responsible to a *requester* for fees and costs in a petition to obtain records. *See Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (“Courts must construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.”) (citation omitted) (emphasis added).

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

60. Further, a strict reading of the Fees Statute (one without a good faith exception read into it) is more in keeping in with the policy favoring access expressed in the NPRA as well as the provision allowing for a court remedy upon a governmental entity’s

1 failure to produce public records. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644,  
2 651, 730 P.2d 438, 443 (1986) “(We conclude a strict reading of the statute is more in  
3 keeping with the policy favoring open meetings expressed in NRS chapter 241 and the spirit  
4 of the Open Meeting Law...)”.

5 61. Accordingly, the Review-Journal, which prevailed in this litigation, is  
6 entitled to its reasonable attorney’s costs and fees that it expended in this matter to obtain  
7 public records from CCSD, regardless of whether CCSD acted in “good faith.”

8 ***The Review-Journal’s Requested Fees and Costs Are Reasonable, and the Brunzell***  
9 ***Factors Support a Full Award of Fees and Costs to the Review-Journal***

10 62. As noted above, the Review-Journal is entitled to its “reasonable”  
11 attorney’s fees and costs in this matter.

12 63. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31  
13 (1969), a court must consider four elements in determining the reasonable value of  
14 attorneys’ services:

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

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

25 64. The Court has carefully reviewed and considered the motion for fees,  
26 supporting detail of work performed and costs, and supporting declarations in light of the  
27 *Brunzell* factors in determining an appropriate award of fees and costs to the Review-  
28 Journal.

65. The Court has also carefully reviewed the Review-Journal’s Supplement  
to Motion for Attorney’s Fees and Costs, the supporting detail of work performed and costs,  
and supporting declaration.

1           66. As to the first factor, the “qualities of the advocate,” the Court finds that  
2 the rates sought are reasonable in light of their ability, training, education, experience,  
3 professional standing and skill. The rates sought for staff are also reasonable, and  
4 compensable.

5           67. The Court also finds that the second *Brunzell* factor, the “character of the  
6 work” performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of  
7 a full award of fees and costs to the Review-Journal.

8           68. This case involved analysis and application of the NPRA, as well as a  
9 careful consideration of protecting the rights and interests of CCSD employees and  
10 balancing these rights and interests against the public’s right to information regarding  
11 alleged misconduct by an elected official. Further, because CCSD borrowed from a number  
12 of areas of law to argue the requested records were confidential, counsel for the Review-  
13 Journal was required to perform extensive research of state and federal case law to  
14 effectively litigate this matter. And, as the NPRA reflects, the work involved in seeking  
15 access to public records is important: access to public records fosters democratic principles.  
16 Nev. Rev. Stat. § 239.001(1). Representing the newspaper of record also necessarily  
17 involves a high level of responsibility and immediate attention. Further, NPRA matters  
18 involve matters of high prominence.

19           69. As to the third factor, the work actually performed by counsel, the Court  
20 finds that counsel for the Review-Journal exercised appropriate discretion in the time and  
21 attention they dedicated to litigating this matter, and how they structured work in this matter.  
22 Review-Journal counsel deducted or omitted entries where appropriate.

23           70. Further, counsel necessarily had to dedicate significant time in this case  
24 due both to its character and due to the fact CCSD asserted numerous purported bases for  
25 refusing to provide public records.

26           71. Thus, this factor weighs in favor of a full award of costs and fees to the  
27 Review-Journal.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

73. As set forth above, the Review-Journal is the prevailing party in this public records litigation, and as a result of its counsel’s efforts, obtained an order from this Court directing CCSD to produce the requested records pertaining to its investigation of Trustee Kevin Child.

74. Thus, this final factor weighs in favor of an award of fees and costs to the Review-Journal.

75. Having considered the *Brunzell* factors, and having considered the papers and pleadings on file in this matter, including the documentation provided by the Review-Journal in support of its Motion for Attorney’s Fees and Costs, the Court finds the Review-Journal is entitled to all its attorney’s fees and costs through January 11, 2018 in the sum of \$125,241.37.

***CCSD Did Not Act in Bad Faith***

76. Under the facts of this case, the Court finds that CCSD did not act in bad faith in declining to provide the requested records to the Review-Journal.

**III.**

**ORDER**

77. Based on the foregoing findings of fact and conclusions of law, the Court hereby ORDERS that CCSD must pay the Review-Journal \$125,241.37 to compensate it for the costs and reasonable attorney’s fees it expended through January 11, 2018 in litigating this matter.

78. Nothing in this Order precludes the Review-Journal from seeking compensation for fees and costs incurred after January 11, 2018 if appropriate upon conclusion of the appeal in this matter.

///  
///

1           79. Further, the Court hereby ORDERS that the Review-Journal's Motion to  
2 Find CCSD in Bad Faith is DENIED.

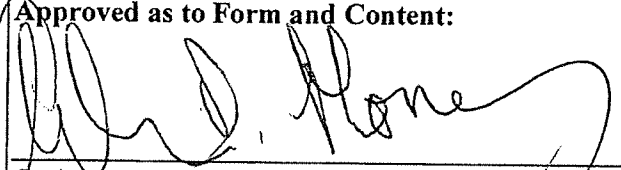
3           IT IS SO ORDERED this 19<sup>th</sup> day of March, 2018.

4  
5  
6   
7 HONORABLE JUDGE TIMOTHY C. WILLIAMS  
8 

9 Respectfully submitted,

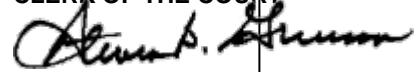
10  
11   
12 Margaret A. McLetchie, Nevada State Bar No. 10931  
13 Anna M. Shell, Nevada State Bar No. 11711  
14 MCLECHIE SHELL, LLC  
15 701 E. Bridger Avenue, Suite 520  
16 Las Vegas, NV 89101  
17 Telephone: (702) 728-5300  
18 Fax: (702) 425-8220  
19 Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
20 *Counsel for Petitioner, Las Vegas Review-Journal*

21 **Approved as to Form and Content:**

22   
23 Carlos McDade, Nevada State Bar No. 11205  
24 Adam Honey, Nevada State Bar No. 9588  
25 CLARK COUNTY SCHOOL DISTRICT  
26 OFFICE OF GENERAL COUNSEL  
27 5100 W. Sahara Avenue  
28 Las Vegas, NV 89146  
*Counsel for Respondent, Clark County School District*

MCLECHIE SHELL, LLC

ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702) 728-5300 (T) / (702) 425-8220 (F)  
[WWW.NVLITIGATION.COM](http://WWW.NVLITIGATION.COM)



**ASTA**

CARLOS MCDADE, Nevada Bar No. 11205  
ADAM D. HONEY, Nevada Bar No. 9588  
CLARK COUNTY SCHOOL DISTRICT  
OFFICE OF THE GENERAL COUNSEL  
5100 W. Sahara Avenue  
Las Vegas, NV 89146  
Telephone: (702) 799-5373  
mcdadcl@nv.ccsd.net  
honeya@nv.ccsd.net  
*Counsel for Respondent*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

**CASE APPEAL STATEMENT**

**CASE APPEAL STATEMENT**

Pursuant to NRAP 3(f)(1) and (3), Appellant Clark County School District respectfully submits for consideration its Case Appeal Statement in the above referenced matter:

**(A) District Court Case Number and Caption:**

Case No. A-17-750151-W; Las Vegas Review Journal v. Clark County School District.

**(B) Name of Judge who entered the orders or judgment being appealed:**

(1) Honorable Judge Timothy C. Williams



- 03/22/2018 Notice of Entry of Order Granting Attorney's Fees and Costs.

**(C) Name of each appellant and name and address of counsel for each appellant:**

(1) The Clark County School District, a political subdivision of the State of Nevada, is the Appellant.

(2) Carlos McDade and Adam Honey, with the Office of General Counsel for the Clark County School District, located at 5100 West Sahara Avenue, Las Vegas, Nevada, 89146, are the attorneys representing the Appellant.

**(D) Name of each respondent and the name and address of appellate counsel, in known, or if not, name and address of trial counsel:**

(1) Las Vegas Review Journal is the Respondent.

(2) Margaret A. McLetchie, whose office is located at 701 East Bridger Avenue, Suite 520, Las Vegas, NV 89101, is counsel for Respondent.

**(E) All attorneys identified herein are licensed to practice law in Nevada.**

(1) Counsel for Appellant: Carlos McDade's Nevada Bar number is 11205; Adam Honey's Nevada Bar number is 9588.

(2) Counsel for Respondent: Margaret McLetchie's Nevada Bar number is 10931.

**(F) Whether Appellant was represented by appointed counsel in the district court; whether Appellant is represented by appointed counsel on appeal:**

(1) No.

(2) No.

1 **(G) Whether the district court granted Appellant leave to proceed in**  
2 **forma pauperis:**

3 No.

4 **(H) Date the proceedings commenced in the district court:**

5 Petitioner's Public Records Act Application Pursuant to NRS  
6 239.001/Petition for Writ of Mandamus was filed on January 26, 2017.

7 **(I) Brief description of the nature of the action and result in district**  
8 **court, including the type of judgment or order being appealed and**  
9 **the relief granted by the district court:**

10 This matter involves important public policy concerns regarding the right of  
11 public employees to raise concerns of all forms of sexual harassment and  
12 discriminatory conduct without fear of retaliation from the accused and without  
13 the loss of confidentiality. These issues are presented in the context of a public  
14 records request made to the Clark County School District ("CCSD") by the Las  
15 Vegas Review-Journal ("LVRJ") under the provisions of NRS Chapter 239.

16 CCSD is appealing the Order of the Honorable Judge Timothy C.  
17 Williams, District Court Judge, entered on March 22, 2018, that requires CCSD to  
18 pay attorney's fees and costs totaling \$125,214.37.

19 **(J) This case is currently under appeal to the Nevada Supreme Court;**  
20 **Clark County School District vs. Las Vegas Review-Journal; Case number**  
21 **73525.**

22 **(K) This case does NOT involve child custody or visitation.**

23 **(L) Whether this case involves the possibility of settlement:**

24 Although settlement is not inconceivable, in Appellant's view the  
25 probability that this case can be settled appears unlikely.  
26  
27  
28

1 Respectfully submitted, this 2nd day of April, 2018.

2 CLARK COUNTY SCHOOL DISTRICT  
3 OFFICE OF THE GENERAL COUNSEL

4 /s/ Adam Honey

5 Carlos McDade, Nevada State Bar No. 11205  
6 Adam Honey, Nevada State Bar No. 9588  
7 Clark County School District  
8 Office of General Counsel  
9 *Counsel for Respondent, Clark County School District*

8 **CERTIFICATE OF SERVICE**

9 I HEREBY CERTIFY that on the 2nd day of April, 2018, I served a true  
10 and correct copy of the foregoing **CASE APPEAL STATEMENT** via electronic  
11 filing and electronic service through the EFP Vendor System to all registered  
12 parties pursuant to the order for electronic filing and service.

13  
14 Margaret A. McLetchie, Esq.  
15 MCLETCHE SHELL LLC  
16 701 East Bridger Avenue, Suite 520  
17 Las Vegas, NV 89101

18 /s/ Susan Gerace

19 AN EMPLOYEE OF THE OFFICE OF THE  
20 GENERAL COUNSEL-CCSD  
21  
22  
23  
24  
25  
26  
27  
28

DEPARTMENT 16  
**CASE SUMMARY**  
**CASE NO. A-17-750151-W**

**Las Vegas Review-Journal, Plaintiff(s)**  
**vs.**  
**Clark County School District, Defendant(s)**

§  
§  
§  
§  
§  
§

Location: **Department 16**  
Judicial Officer: **Williams, Timothy C.**  
Filed on: **01/26/2017**  
Cross-Reference Case Number: **A750151**  
Supreme Court No.: **73525**

CASE INFORMATION

**Statistical Closures**  
03/28/2018 Summary Judgment

Case Type: **Writ of Mandamus**  
Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-17-750151-W  
Court Department 16  
Date Assigned 01/26/2017  
Judicial Officer Williams, Timothy C.

PARTY INFORMATION

**Plaintiff**      **Las Vegas Review-Journal**

**Defendant**      **Clark County School District**







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

**McDade, Carlos L**  
*Retained*  
702-869-8801(W)














DATE

EVENTS & ORDERS OF THE COURT














INDEX

01/26/2017	 Petition Filed by: Plaintiff Las Vegas Review-Journal <i>Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>	
01/26/2017	 Initial Appearance Fee Disclosure Filed By: Plaintiff Las Vegas Review-Journal <i>Initial Appearance Fee Disclosure (NRS Chapter)</i>	
02/02/2017	 Affidavit of Service Filed By: Plaintiff Las Vegas Review-Journal <i>Affidavit of Service</i>	
02/08/2017	 Ex Parte Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Ex Parte Motion for Order Shortening Time and Request for Expedited Hearing</i>	
02/08/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>	
02/08/2017	 Order <i>Order Setting Hearing on Writ of Mandate</i>	

DEPARTMENT 16  
**CASE SUMMARY**  
**CASE NO. A-17-750151-W**














02/14/2017	 <b>Hearing (9:00 AM)</b> (Judicial Officer: Williams, Timothy C.) <i>Hearing: Writ of Mandate</i>
02/22/2017	 <b>Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Writ of Mandate</i>
02/23/2017	 <b>Notice of Entry of Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/01/2017	 <b>Amended Petition</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Amended Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
03/02/2017	 <b>Status Check (9:00 AM)</b> (Judicial Officer: Williams, Timothy C.) <b>03/02/2017, 03/14/2017</b>
03/16/2017	 <b>Stipulation and Order</b> Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order</i>
03/20/2017	 <b>Notice of Entry of Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/27/2017	 <b>Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Order Regarding Briefing Schedule</i>
03/27/2017	 <b>Notice of Entry of Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/29/2017	 <b>Petitioners Opening Brief</b> Filed by: Plaintiff Las Vegas Review-Journal <i>Opening Brief in Support of Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus</i>
04/13/2017	 <b>Answering Brief</b> Filed By: Defendant Clark County School District <i>Respondent's Answering Brief to Petitioner's Amended Public Records Act Application/Petition of Writ of Mandamus</i>
04/24/2017	 <b>Reply</b> Filed by: Plaintiff Las Vegas Review-Journal <i>Reply Brief To Respondent's Answering Rbief To Petitioner's Opening Brief And Public Records Act Application / Petition For Writ Of Mandamus</i>
04/25/2017	 <b>Amended Certificate of Service</b> Party: Plaintiff Las Vegas Review-Journal <i>Amended Certificate of Service for Reply Brief</i>

DEPARTMENT 16  
**CASE SUMMARY**  
**CASE NO. A-17-750151-W**

05/09/2017	 <b>Hearing</b> (9:00 AM) (Judicial Officer: Williams, Timothy C.) <b>05/09/2017, 06/15/2017, 06/27/2017</b> <i>Hearing: Search Parameters</i>
06/06/2017	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Status Check: Hearing (5/9/17)</i>
06/06/2017	 <b>Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters</i>
06/06/2017	 <b>Notice of Entry of Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
06/13/2017	 <b>Memorandum</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Memorandum Regarding CCSD's Privilege and Certifications</i>
07/11/2017	 <b>Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions</i>
07/12/2017	 <b>Notice of Entry of Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
07/12/2017	 <b>Motion to Stay</b> Filed By: Defendant Clark County School District <i>Respondent's Motion to Stay Enforcement of order granting writ of mandamus as to withheld records pursuant to nrcp 62(c), (d) &amp; e pending appeal on order shortening time</i>
07/12/2017	 <b>Case Appeal Statement</b> Filed By: Defendant Clark County School District <i>Case Appeal Statement</i>
07/12/2017	 <b>Notice of Appeal</b> Filed By: Defendant Clark County School District <i>Notice of Appeal</i>
07/19/2017	 <b>Opposition</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Opposition to Respondent Clark County School District's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c),(d), &amp; (e) Pending Appeal on Order Shortening Time</i>
07/21/2017	 <b>Reply in Support</b> Filed By: Defendant Clark County School District <i>Respondent's Reply in Support of Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withhold Records Pursuant to NRCP 62(c), (d) &amp; (e) Pending Appeal on Order Shortening Time</i>
07/27/2017	 <b>Motion to Stay</b> (9:00 AM) (Judicial Officer: Williams, Timothy C.)













DEPARTMENT 16  
**CASE SUMMARY**  
**CASE NO. A-17-750151-W**

*Respondent's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRC 62 (c), (d) 7 (e) Pending Appeal on Order Shortening Time*

07/31/2017	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order</i>
07/31/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
08/04/2017	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Denying Stay</i>
08/04/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
09/11/2017	 Request Filed by: Defendant Clark County School District <i>Request for Transcripts of Proceedings</i>
09/12/2017	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order</i>
09/12/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
09/19/2017	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal Motion for Attorney's fees and Costs</i>
09/19/2017	 Exhibits Filed By: Plaintiff Las Vegas Review-Journal <i>Appendix of Exhibits in Support of Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
09/20/2017	 Errata Filed By: Plaintiff Las Vegas Review-Journal <i>Errata to Appendix of Exhibits in Support of Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
09/21/2017	 Transcript of Proceedings <i>Reporters transcript of Motion for Petition to Stay</i>
09/21/2017	 Reporters Transcript <i>Court Reporters transcript of Writ of Mandate</i>
10/03/2017	 Errata Filed By: Plaintiff Las Vegas Review-Journal












DEPARTMENT 16  
**CASE SUMMARY**  
**CASE NO. A-17-750151-W**

*Errata to Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs*

10/03/2017	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith</i>
10/13/2017	 Stipulation and Order Filed by: Defendant Clark County School District <i>Stipulation and Order</i>
10/17/2017	 Notice of Entry of Stipulation and Order Filed By: Defendant Clark County School District <i>Notice of Entry of Stipulation and Order</i>
10/31/2017	 Opposition Filed By: Defendant Clark County School District <i>Respondent's Opposition to LVRJ's Motion for Attorney Fees and Costs</i>
10/31/2017	 Opposition Filed By: Defendant Clark County School District <i>CCSD's Opposition to LCRJ's Motion to Find Bad Faith</i>
11/13/2017	 Reply Filed by: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Omnibus Reply to Respondent's Opposition to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith</i>
11/16/2017	 <b>Motion for Attorney Fees and Costs (9:00 AM)</b> (Judicial Officer: Williams, Timothy C.) <b>11/16/2017, 01/04/2018</b> <i>Petitioner Las Vegas Review-Journal Motion for Attorney's fees and Costs AND Request for Order Finding CCSD Acted in Bad Faith</i>
11/22/2017	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order Regarding Supplemental Briefing Schedule</i>
11/22/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
12/07/2017	 Supplement Filed by: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Supplement to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith</i>
12/18/2017	 Opposition Filed By: Defendant Clark County School District <i>CCSD's Opposition to LVRJ's Supplement to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith and CCSD's Motion to Strike Improper Argument in LVRJ's Supplemental Motions</i>
12/19/2017	 Errata Filed By: Defendant Clark County School District <i>Errata to CCSD's Opposition to LVRJ's supplement to motion for attorney's fees and costs and</i>



DEPARTMENT 16  
**CASE SUMMARY**  
**CASE NO. A-17-750151-W**

	<i>motion to find CCSD in bad faith and CCSD's motion to strike improper argument in LVRJ's supplement</i>
12/28/2017	 <b>Reply to Opposition</b> Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to CCSD's Opposition to Supplement to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith and Opposition to CCSD's Motion to Strike Improper Argument</i>
01/04/2018	<b>Opposition and Countermotion (9:00 AM)</b> (Judicial Officer: Williams, Timothy C.) <i>CCSD's Opposition to LVRJ's Supplement to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith and CCSD's Motion to Strike Improper Argument in LVRJ's Supplemental Motions</i>
01/04/2018	 <b>All Pending Motions (9:00 AM)</b> (Judicial Officer: Williams, Timothy C.)
01/11/2018	 <b>Supplement</b> Filed by: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Supplement to Motion for Attorney's Fees and Costs</i>
01/18/2018	 <b>Response</b> Filed by: Defendant Clark County School District <i>CCSD's Response to LVRJ's Supplement to Motion for Attorney's Fees and Costs filed January 11, 2018</i>
02/23/2018	 <b>Minute Order (3:00 AM)</b> (Judicial Officer: Williams, Timothy C.)
03/22/2018	<b>Order</b> (Judicial Officer: Williams, Timothy C.) Debtors: Clark County School District (Defendant) Creditors: Las Vegas Review-Journal (Plaintiff) Judgment: 03/22/2018, Docketed: 03/22/2018 Total Judgment: 125,241.37
03/22/2018	 <b>Findings of Fact, Conclusions of Law and Judgment</b> Filed by: Plaintiff Las Vegas Review-Journal <i>Findings of Facts and Conclusions of Law and Order</i>
03/22/2018	 <b>Notice of Entry of Order</b> Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/28/2018	 <b>Order to Statistically Close Case</b> <i>Civil Order to Statistically Close Case</i>
04/02/2018	 <b>Notice of Appeal</b> Filed By: Defendant Clark County School District <i>Notice of Appeal</i>
04/02/2018	 <b>Case Appeal Statement</b> Filed By: Defendant Clark County School District <i>Case Appeal Statement</i>
04/02/2018	 <b>Motion to Stay</b> Filed By: Defendant Clark County School District <i>Motion to Stay Execution and Enforcement of Order Granting Attorneys' Fees and Costs Pending Appeal</i>

DEPARTMENT 16  
**CASE SUMMARY**  
**CASE NO. A-17-750151-W**

05/08/2018

**Motion for Stay of Execution** (9:00 AM) (Judicial Officer: Williams, Timothy C.)  
*Motion to Stay Execution and Enforcement of Order Granting Attorney's Fees and Costs*  
*Pending Appeal*

DATE

FINANCIAL INFORMATION

**Defendant** Clark County School District

Total Charges 48.00

Total Payments and Credits 48.00

**Balance Due as of 4/5/2018 0.00**

**Plaintiff** Las Vegas Review-Journal

Total Charges 270.00

Total Payments and Credits 270.00

**Balance Due as of 4/5/2018 0.00**

## DISTRICT COURT CIVIL COVER SHEET

XVI

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): <b>The Las Vegas Review-Journal</b> <b>c/o McLetchie Shell LLC</b> <b>701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101</b> <b>(702) 728-5300</b>	Defendant(s) (name/address/phone): <b>Clark County School District</b> <b>Legal Department</b> <b>5100 West Sahara Avenue; Las Vegas, NV 89146</b>
Attorney (name/address/phone): <b>Margaret A. McLetchie and Alina M. Shell</b> <b>McLetchie Shell LLC</b> <b>701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101</b> <b>(702) 728-5300</b>	Attorney (name/address/phone):

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

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <b>Probate</b> (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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <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		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

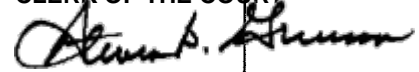
Business Court filings should be filed using the Business Court civil coversheet.

01/26/2017

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 **FFCL**  
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: maggie@nvlitigation.com  
9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

15 **FINDINGS OF FACTS AND**  
16 **CONCLUSIONS OF LAW AND**  
17 **ORDER**

18 CLARK COUNTY SCHOOL DISTRICT,

19 Respondent.

20 The Las Vegas Review-Journal's Motion for Attorney's fees and Costs and Request  
21 for Order Finding CCSD Acted in Bad Faith, having come on for hearing on November 11,  
22 2017 and January 4, 2018, the Honorable Timothy C. Williams presiding, Petitioner LAS  
23 VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorney,  
24 MARGARET A. MCLEATCHIE, and Respondent CLARK COUNTY SCHOOL DISTRICT  
25 ("CCSD"), appearing by and through its attorney, CARLOS M. MCDADE, and the Court  
26 having read and considered all of the papers and pleadings on file and being fully advised,  
27 and good cause appearing therefor, the Court hereby makes the following findings of fact  
28 and conclusions of law:

///

///

///

**MAR 16 2018**

I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

***Original Requests; Filing of Action***

1. On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the “Reporter”) sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking certain documents pertaining to CCSD Trustee Kevin Child; the Reporter supplemented the Request on December 9, 2016 (the “December Requests”).

2. After CCSD failed to provide documents or assert any claim of confidentiality pursuant to Nev. Rev. Stat. § 239.0107, the Review-Journal initiated this action on January 26, 2017, requesting expedited consideration pursuant to Nev. Rev. Stat. § 239.011.

***Initial Proceedings and February 22, 2017 Order***

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing. CCSD did not produce all records in unredacted form. Instead, Starting on February 8, 2017 it began producing some records in redacted form and withheld others. CCSD did not disclose that it had limited the sources it searched for records responsive to the Request or the Supplemental Request.

4. The Court conducted an *in camera* review of the unredacted version of the redacted records provided and then, on February 14, 2017, the Court heard oral argument on the Review-Journal’s Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal’s Petition. (*See* February 22, 2017 Order (the “February Order”); *see also* February 23, 2017 Notice of Entry of Order).

5. The Court ordered CCSD to provide the Review-Journal with new versions of records it had produced with only “the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff” redacted. (*Id.* at ¶ 34.) The Court further specified that “CCSD may not make any other redactions” and must unredact the

1 names of schools, teachers, and all administrative-level employees that were not direct  
2 victims. (*Id* at ¶ 35.)

3 6. CCSD did not appeal this order, or seek other relief pertaining to the  
4 February Order. To date, CCSD has disclosed 174 pages of documents to the Review-  
5 Journal, redacting consistently with the February Order. CCSD has also withheld 102 pages.  
6 ***February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search***  
7 ***Information***

8 7. On February 10, 2017, the Review-Journal submitted a new records request  
9 to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-  
10 Journal also offered to work with CCSD to develop searches.

11 8. On February 17, 2017, CCSD notified the Review-Journal via email that it  
12 was unable to provide the records listed in the February Request within the five days  
13 mandated by Nev. Rev. Stat. § 239.0107. On March 1, 2017, Review-Journal filed its  
14 Amended Petition. On March 3, 2017, CCSD provided some documents in response to the  
15 February Request. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted  
16 information pertaining to the names of individuals who reported a complaint or concern  
17 about Trustee Child, information including potentially identifying information about  
18 students, and personal phone numbers. That same day, the Review-Journal requested CCSD  
19 provide a log of withheld documents that were responsive to the February Request and also  
20 asked CCSD to provide it with search information. CCSD responded to these requests via  
21 letter on March 13, 2017. Despite previous requests from the Review-Journal, that was the  
22 first time CCSD provided any search term information.

23 9. In response to the Review-Journal's inquiry regarding which documents  
24 were being withheld, CCSD asserted that "the only information that has not been provided  
25 is internal information received or gathered by the District in the court of its investigation of  
26 an alleged practice of unlawful practice of discrimination, harassment, or hostile work  
27 environment which is confidential and not required to be disclosed under the public records  
28 law." By email on March 13, 2017, CCSD also stated it was withholding one document—a

1 report prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative  
2 Action, regarding an investigation his office had conducted into hostile work environment  
3 allegations against Trustee Child (the "Cole Report"). The Review-Journal responded to  
4 CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested CCSD  
5 conduct additional email searches for responsive records from additional custodians. The  
6 Review-Journal requested that CCSD search those records for documents pertaining to the  
7 topics outlined in the December and February Requests. The Review-Journal also requested  
8 CCSD produce hard copy records from the Diversity and Affirmative Action Program's hard  
9 copy file on Trustee Child, as well as any other hard copy files CCSD maintains on Trustee  
10 Child that were responsive to the December and February Requests.

11 10. CCSD declined to produce the Cole Report and other documents created by  
12 the Office of Diversity and Affirmative Action Programs; on March 24, 2017, CCSD  
13 supplemented its privilege log to reflect that it was withholding records in addition to the  
14 records it had previously identified ("3/24/2017 Log"). This 3/24/2017 Log reflected that, in  
15 total, CCSD withheld only the following from documents produced in response to the  
16 December Requests and the February Request:

17 Investigative memoranda prepared by Cedric Cole, CCSD's Executive  
18 Manager of Diversity and Affirmative Action, regarding an investigation  
19 his office had conducted into hostile work environment allegations against  
Trustee Child (the "Cole Report") and Mr. Cole's investigative notes.

20 (See Exhibit E to March 29, 2017 Opening Brief in support of Amended Petition for Writ  
21 of Mandamus.)

22 ***Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters***

23 11. On May 9, 2017, the Court heard oral arguments on the Review-Journal's  
24 Amended Petition for Writ of Mandamus. On June 6, 2017, the Court entered an Order  
25 granting the Review-Journal's Amended Petition as to the request that CCSD complete  
26 additional searches. (June 6, 2017 Order at ¶ 45, ¶ 46.)

27 12. Further, the Court ordered that, with regard to any documents CCSD had  
28 withheld and/or redacted to date and any additional responsive documents it identified in

1 response to the additional email and hard copy searches it was required to perform but  
2 contended are confidential and/or privileged, CCSD was to create a single log numbering  
3 and identifying each document withheld or redacted (in response to either the December  
4 Requests or the February Request) by providing a factual description of each record withheld  
5 (by listing to, from, date, and general subject) as well as a specific explanation for non-  
6 disclosure for each document withheld or redacted (including confidentiality being claimed,  
7 and basis for claim). The Court further ordered that the log provide sufficient information to  
8 the Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted.  
9 The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017,  
10 along with all redacted documents and documents being withheld for an *in camera* review.  
11 The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas  
12 Review-Journal. (June 6, 2017 Order at ¶ 47.)

13 ***July 12 Order***

14 13. On May 30, 2017, CCSD submitted the redacted and documents it was  
15 withholding (the "Withheld Records") to the Court for *in camera* review. It additionally  
16 provided the Court with two certifications and a privilege log. ("Final Log")

17 14. Despite its representation to the undersigned, CCSD counsel did not provide  
18 a copy of either of these documents to the Review-Journal at that time. At a hearing held on  
19 June 6, 2017 the Court made clear it has expected CCSD to engage in the routine practice of  
20 providing privilege logs and certifications to opposing counsel in conjunction with *in camera*  
21 submissions. At the hearing, CCSD counsel did finally provide a copy of the Final Log and,  
22 later that day, provided copies of the certifications it had provided to the Court a week earlier.

23 15. In the Final Log, CCSD stated it is withholding the following documents in  
24 their entirety on the basis of the privileges it describes as "Office of Diversity and Affirmative  
25 Action Privileges:"

- 26 • CCSD 034-060; and
- 27 • CCSD 0159-0233.

28 In the Final Log, CCSD has summarized these documents as follows:



1 To the best of CCSD's knowledge, the only information that has not been  
2 provided to Petitioner is internal information received or gathered by Cedric  
3 Cole, Executive Director, Office of Diversity and Affirmative Action, in the  
4 course of his investigation regarding Trustee Child ...

(Exh. GG to June 13, 2017 Review-Journal Memorandum at Review-Journal007.)

5 16. The Final Log also cites CCSD Regulation 4110(X) to justify non-  
6 disclosure of the 102 pages of documents it is withholding. That Regulation states that

7 All information gathered by the District in the course of its investigation of  
8 an alleged unlawful discriminatory practice will remain confidential except  
9 to the extent necessary to conduct an investigation, resolve the complaint,  
10 serve other significant needs, or comply with law.

(*Id.* at Review-Journal022.)

11 17. CCSD also claims that the NPRA does not require the release of  
12 confidential employee personnel information. (*Id.* at Review-Journal023.) In addition, CCSD  
13 claims in its Final Log that the records of its investigation of Trustee Child should be kept  
14 confidential pursuant to Title VII and guidance from the Equal Opportunity Employment  
15 Commission ("EEOC"). (*Id.* at Review-Journal019-Review-Journal021.) CCSD also claims  
16 that withheld internal information it obtained during its investigation of allegations of  
17 discrimination or harassment by Trustee Child is subject to the deliberative process privilege  
18 because the information "was used as part of the deliberative and decision-making process  
19 of District executives" in crafting the Cole Memorandum. (*Id.* at Review-Journal023.) CCSD  
20 asserts that any withheld information which might constitute "worksheets, drafts, informal  
21 notes, or ad hoc reports," it qualifies as "nonrecord material" under NAC 239.051. (*Id.*)

22 18. The Review-Journal submitted a Memorandum responding to CCSD's  
23 Final Log on June 13, 2017.

24 19. This Court held a hearing on CCSD's Final Log and May 30, 2017 *in*  
25 camera submission on June 27, 2017.

26 20. At that hearing, CCSD asserted for the first time that in addition to the  
27 privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which  
28 provides for the creation and regulation of the Nevada Equal Rights Commission—applied  
to investigations conducted by CCSD's Office of Diversity and Affirmative Action.

1 Specifically, CCSD asserted at the hearing that information pertaining to investigation of  
2 allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. §  
3 233.190.

4 21. On July 12, 2017 an Order was entered ordering CCSD to produce the  
5 Withheld Records, but allowing CCSD to make redaction consistent with the February Order.  
6 CCSD is explicitly permitted to redact the “names of direct victims of sexual harassment or  
7 alleged sexual harassment, students, and support staff.” (See February 23, 2017 Order at ¶  
8 34; see also July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with  
9 the February 23, 2017 Order).) The Court further specified that “CCSD may not make any  
10 other redactions” and must unredact the names of schools, teachers, and all administrative-  
11 level employees that were not direct victims. (See February 23, 2017 Order at ¶ 35; see also  
12 July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with the February  
13 23, 2017 Order).)

14 ***Appeal and Motion to Stay***

15 22. On July 12, 2017, CCSD filed a Motion to Stay Enforcement of Order  
16 Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e)  
17 Pending Appeal on Order Shortening Time.

18 23. On July 12, 2017, CCSD also filed a Notice of Appeal to the Nevada  
19 Supreme Court.

20 24. On July 19, 2017, Review-Journal filed its Opposition to Motion to Stay  
21 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
22 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

23 25. On July 21, 2017, CCSD filed its Reply in Support of Motion to Stay  
24 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
25 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

26 26. Only July, 27, 2017, this Court heard arguments on the Motion to Stay  
27 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
28 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time, and ultimately denied

CCSD's Motion to Stay.

27. On July 27, 2017, CCSD filed an Emergency Motion For Stay Pending Appeal with the Nevada Supreme Court; that same day, the Supreme Court assigned CCSD's Emergency Motion to the Court of Appeals.

28. On August 28, 2017, the Court of Appeals granted CCSD's Emergency Motion For Stay Pending Appeal.

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

29. On October 3, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith pursuant to Nev. Rev. Stat. § 239.011(2).

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

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	138.2	\$450.00	\$62,190.00 <sup>1</sup>
Alina M. Shell	88.2	\$350.00	\$30,065.00 <sup>2</sup>
Leo Wolpert	24.0	\$175.00	\$4,200.00
Pharan Burchfield	29.6	\$150.00	\$4,440.00
Administrative Support	18.9	\$25.00	\$472.50
<b>Total Fees Requested</b>			<b>\$101,367.50</b>

31. The Review-Journal also requested \$4,330.87 in costs associated with the litigation, for a combined total request for \$105,698.37 in fees and costs.

32. The Review-Journal provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

33. CCSD filed an Opposition to the Review-Journal's Motion on October 31, 2017, and the Review-Journal filed a Reply on November 13, 2017.

34. In its Opposition, CCSD asserted that pursuant to Nev. Rev. Stat. § 239.012, a provision of the NPRA which provides immunity from damages for public

<sup>1</sup> This total reflected voluntary reductions for some time entries, made by counsel for the Review-Journal in her billing discretion.

<sup>2</sup> See *supra* n.1.

officers who act in good faith in disclosing or refusing to disclose records, the Review-Journal had to establish CCSD acted in bad faith in refusing to disclose the requested records to obtain attorney's fees and costs.

35. Alternatively, CCSD argued the fees and costs sought by counsel for the Review-Journal should be apportioned and reduced, largely relying on case law regarding prevailing market rates from federal cases (including Prison Litigation Reform Act case law).

36. This Court conducted a hearing on the Review-Journal's Motion on November 16, 2017.

37. At the November 16, 2017 hearing, the Court directed the parties to submit supplemental briefing regarding whether it retained jurisdiction to rule on Review-Journal's Motion while CCSD's appeal was pending before the Nevada Supreme Court.

38. The Review-Journal filed a Supplement to its Motion for Attorney's Fees and Costs on December 7, 2017.

39. On December 18, 2017 CCSD's filed an Opposition to Review-Journal's Supplement to Motion for Attorney's Fees and Costs, as well as a Motion to Strike Improper Argument in Review-Journal's Supplemental Motions. CCSD filed an Errata to that Opposition on December 19, 2017.

40. On December 28, 2017, the Review-Journal filed a Reply to CCSD's Opposition to the Supplement, and also filed an Opposition to CCSD's Motion to Strike.

41. The Court conducted a hearing on these motions on January 4, 2018.

42. At the January 4, 2018 hearing, the Court found that it retained jurisdiction over the Review-Journal's Motion for Attorney's Fees and Costs and Request for Order Finding CCSD Acted in Bad Faith. The Court then granted the Review-Journal's Motion for Attorney's Fees and Costs, and denied the Review-Journal's Request for Order Finding CCSD Acted in Bad Faith. The Court further ordered the Review-Journal to submit a supplement regarding additional attorney's fees it accrued after submitting its Motion for Attorney's Fees and Costs.

43. On January 11, 2018, the Review-Journal submitted a Supplement to Motion for Attorney's Fees and Costs. In that Supplement, the Review-Journal provided documentation that it accrued an additional \$19,542.50 in attorney's fees and \$508.13 in costs after the submission of its October 3, 2017 Motion for Attorney's Fees and Costs. The Supplement also included a declaration from counsel addressing the *Brunzell* factors.

44. Combined with the \$101,367.50 in attorney's fees and \$4,330.87 in costs, Review-Journal's combined total fees and costs amount to \$125,749.00.

45. On January 18, 2018, CCSD filed a Response to Review-Journal's Supplement to Motion for Attorney's Fees and Costs Filed January 11, 2018.

## II.

### CONCLUSIONS OF LAW

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

46. 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).

47. 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).

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

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

///

///

1           50. The fact that a separate statute, § 239.012 (the “Damages Immunity  
2 Statute”), provides for immunity for good faith actions of public officers of employees in  
3 responding to NPRA requests does not change the interpretation of the Fees Statute for  
4 multiple reasons.

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

11           52. Because the Fees Statute is clear on its face, this court “cannot go beyond  
12 the statute in determining legislative intent.” *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d  
13 1226, 1228 (2011) (citation and internal quotation marks omitted); *see also Robert E. v.*  
14 *Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (same); *see also State v. Catanio*,  
15 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (“We must attribute the plain meaning to a  
16 statute that is not ambiguous.”); *see also Coast Hotels & Casinos, Inc. v. Nevada State*  
17 *Labor Comm’n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) (“When the language of a  
18 statute is plain and unambiguous, a court should give that language its ordinary meaning  
19 and not go beyond it.”)

20           53. Second, the separate Damages Immunity Statute only provides for  
21 immunity from *damages*—not immunity from fees. *See* Nev. Rev. Stat. § 239.012  
22 (specifying that a public officer or his or her employer are “immune from liability for  
23 damages, either to the requester or to the person whom the information concerns”). Damages  
24 and fees are different. *See, e.g., Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*,  
25 117 Nev. 948, 956 35 P.3d 964, 968 (2001) (comparing procedure for seeking attorney’s  
26 fees as a cost of litigation with fees sought as special damages pursuant to Nev. R. Civ. P.  
27 9(g)); *see also Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617  
28 (7th Cir. 2013) (noting that “an award of attorneys’ fees differs from ‘damages’”); *see also*

1 *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993) (noting that attorney  
2 fees may be awarded for unfair practice, while punitive damages are awarded for tort based  
3 on same conduct).

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

8 55. Nev. Rev. Stat. § 239.005(5) defines “governmental entity” as follows:

- 9 (a) An elected or appointed officer of this State or of a political subdivision  
10 of this State;  
11 (b) An institution, board, commission, bureau, council, department,  
12 division, authority or other unit of government of this State, including,  
13 without limitation, an agency of the Executive Department, or of a political  
14 subdivision of this State;  
15 (c) A university foundation, as defined in NRS 396.405; or  
16 (d) An educational foundation, as defined in NRS 388.750, to the extent that  
17 the foundation is dedicated to the assistance of public schools.

18 56. The officers and employees whose “good faith” actions are subject to  
19 immunity pursuant to the Damages Immunity Statute are not governmental entities. In  
20 contrast, the Respondent (in this case, CCSD) is a “governmental entity” within the meaning  
21 of Nev. Rev. Stat. § 239.005(5) and is therefore responsible for fees pursuant to the Fees  
22 Statute. Thus, the difference in terms between the Fees Statute and the Damages Immunity  
23 Statute supports not reading a “good faith” requirement from the separate Damages  
24 Immunity Statute into the Fees Statute.

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

///

1           58. Fifth, it is not necessary to read a good faith requirement into the Fees  
2 Statute to reconcile it with the separate Damages Immunity Statute. This is so because the  
3 good faith provision applies to an entirely different matter than the attorney fees and costs  
4 provision. As set forth above, the Damages Immunity Statute addresses when a public  
5 officer or employee (and his or her employer) is immune from *damages to anyone* for  
6 *producing* records or for failing to produce records if the *officer or employee* acted in good  
7 faith. In contrast, the Fees Statute sets forth when a *governmental entity* is responsible to a  
8 *requester* for fees and costs in a petition to obtain records. *See Coast Hotels & Casinos, Inc.*  
9 *v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (“Courts must  
10 construe statutes to give meaning to all of their parts and language, and this court will read  
11 each sentence, phrase, and word to render it meaningful within the context of the purpose  
12 of the legislation.”) (citation omitted) (emphasis added).

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

26           60. Further, a strict reading of the Fees Statute (one without a good faith  
27 exception read into it) is more in keeping in with the policy favoring access expressed in the  
28 NPRA as well as the provision allowing for a court remedy upon a governmental entity’s



1 failure to produce public records. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644,  
2 651, 730 P.2d 438, 443 (1986) "(We conclude a strict reading of the statute is more in  
3 keeping with the policy favoring open meetings expressed in NRS chapter 241 and the spirit  
4 of the Open Meeting Law...)".

5 61. Accordingly, the Review-Journal, which prevailed in this litigation, is  
6 entitled to its reasonable attorney's costs and fees that it expended in this matter to obtain  
7 public records from CCSD, regardless of whether CCSD acted in "good faith."

8 ***The Review-Journal's Requested Fees and Costs Are Reasonable, and the Brunzell***  
9 ***Factors Support a Full Award of Fees and Costs to the Review-Journal***

10 62. As noted above, the Review-Journal is entitled to its "reasonable"  
11 attorney's fees and costs in this matter.

12 63. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31  
13 (1969), a court must consider four elements in determining the reasonable value of  
14 attorneys' services:

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

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

25 64. The Court has carefully reviewed and considered the motion for fees,  
26 supporting detail of work performed and costs, and supporting declarations in light of the  
27 *Brunzell* factors in determining an appropriate award of fees and costs to the Review-  
28 Journal.

65. The Court has also carefully reviewed the Review-Journal's Supplement  
to Motion for Attorney's Fees and Costs, the supporting detail of work performed and costs,  
and supporting declaration.

1           66. As to the first factor, the “qualities of the advocate,” the Court finds that  
2 the rates sought are reasonable in light of their ability, training, education, experience,  
3 professional standing and skill. The rates sought for staff are also reasonable, and  
4 compensable.

5           67. The Court also finds that the second *Brunzell* factor, the “character of the  
6 work” performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of  
7 a full award of fees and costs to the Review-Journal.

8           68. This case involved analysis and application of the NPRA, as well as a  
9 careful consideration of protecting the rights and interests of CCSD employees and  
10 balancing these rights and interests against the public’s right to information regarding  
11 alleged misconduct by an elected official. Further, because CCSD borrowed from a number  
12 of areas of law to argue the requested records were confidential, counsel for the Review-  
13 Journal was required to perform extensive research of state and federal case law to  
14 effectively litigate this matter. And, as the NPRA reflects, the work involved in seeking  
15 access to public records is important: access to public records fosters democratic principles.  
16 Nev. Rev. Stat. § 239.001(1). Representing the newspaper of record also necessarily  
17 involves a high level of responsibility and immediate attention. Further, NPRA matters  
18 involve matters of high prominence.

19           69. As to the third factor, the work actually performed by counsel, the Court  
20 finds that counsel for the Review-Journal exercised appropriate discretion in the time and  
21 attention they dedicated to litigating this matter, and how they structured work in this matter.  
22 Review-Journal counsel deducted or omitted entries where appropriate.

23           70. Further, counsel necessarily had to dedicate significant time in this case  
24 due both to its character and due to the fact CCSD asserted numerous purported bases for  
25 refusing to provide public records.

26           71. Thus, this factor weighs in favor of a full award of costs and fees to the  
27 Review-Journal.  
28

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

73. As set forth above, the Review-Journal is the prevailing party in this public records litigation, and as a result of its counsel’s efforts, obtained an order from this Court directing CCSD to produce the requested records pertaining to its investigation of Trustee Kevin Child.

74. Thus, this final factor weighs in favor of an award of fees and costs to the Review-Journal.

75. Having considered the *Brunzell* factors, and having considered the papers and pleadings on file in this matter, including the documentation provided by the Review-Journal in support of its Motion for Attorney’s Fees and Costs, the Court finds the Review-Journal is entitled to all its attorney’s fees and costs through January 11, 2018 in the sum of \$125,241.37.

***CCSD Did Not Act in Bad Faith***

76. Under the facts of this case, the Court finds that CCSD did not act in bad faith in declining to provide the requested records to the Review-Journal.

**III.**

**ORDER**

77. Based on the foregoing findings of fact and conclusions of law, the Court hereby ORDERS that CCSD must pay the Review-Journal \$125,241.37 to compensate it for the costs and reasonable attorney’s fees it expended through January 11, 2018 in litigating this matter.

78. Nothing in this Order precludes the Review-Journal from seeking compensation for fees and costs incurred after January 11, 2018 if appropriate upon conclusion of the appeal in this matter.

///

///

1           79. Further, the Court hereby ORDERS that the Review-Journal's Motion to  
2 Find CCSD in Bad Faith is DENIED.

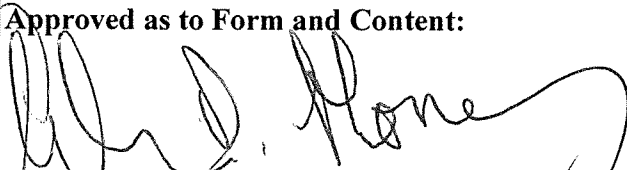
3           IT IS SO ORDERED this 1<sup>st</sup> day of March, 2018.

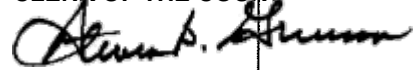
4  
5  
6   
7 HONORABLE JUDGE TIMOTHY C. WILLIAMS  
8 

9 Respectfully submitted,

10  
11   
12 Margaret A. McLetchie, Nevada State Bar No. 10931  
13 Anna M. Shell, Nevada State Bar No. 11711  
14 MCLETCHIE SHELL, LLC  
15 701 E. Bridger Avenue, Suite 520  
16 Las Vegas, NV 89101  
17 Telephone: (702) 728-5300  
18 Fax: (702) 425-8220  
19 Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
20 *Counsel for Petitioner, Las Vegas Review-Journal*

21 **Approved as to Form and Content:**

22   
23 Carlos McDade, Nevada State Bar No. 11205  
24 Adam Honey, Nevada State Bar No. 9588  
25 CLARK COUNTY SCHOOL DISTRICT  
26 OFFICE OF GENERAL COUNSEL  
27 5100 W. Sahara Avenue  
28 Las Vegas, NV 89146  
*Counsel for Respondent, Clark County School District*



1 **NEOJ**

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: maggie@nvlitigation.com

9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

15 **NOTICE OF ENTRY OF ORDER**

16 CLARK COUNTY SCHOOL DISTRICT,

17 Respondent.

18 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that on the 22<sup>nd</sup> day of March, 2018, the Findings of  
20 Facts and Conclusions of Law and Order was entered in the above-captioned action.

21 A copy of the Findings of Facts and Conclusions of Law and Order is attached  
22 hereto as Exhibit 1.

23 DATED this 22<sup>nd</sup> day of March, 2018.

24 /s/ Margaret A. McLetchie

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, Nevada 89101

*Counsel for Petitioner*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 22<sup>nd</sup> day of March, 2018, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-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 22<sup>nd</sup> day of March, 2018, I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Carlos McDade, General Counsel  
Adam Honey, Asst. General Counsel  
**Clark County School District**  
5100 W. Sahara Ave.  
Las Vegas, NV 89146  
*Counsel for Respondent, Clark County School District*

/s/ Pharan Burchfield  
An Employee of MCLETCHE SHELL LLC

# EXHIBIT 1



1 **FFCL**  
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: maggie@nvlitigation.com  
9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

**FINDINGS OF FACTS AND**  
**CONCLUSIONS OF LAW AND**  
**ORDER**

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

17 The Las Vegas Review-Journal's Motion for Attorney's fees and Costs and Request  
18 for Order Finding CCSD Acted in Bad Faith, having come on for hearing on November 11,  
19 2017 and January 4, 2018, the Honorable Timothy C. Williams presiding, Petitioner LAS  
20 VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorney,  
21 MARGARET A. MCLEATCHIE, and Respondent CLARK COUNTY SCHOOL DISTRICT  
22 ("CCSD"), appearing by and through its attorney, CARLOS M. MCDADE, and the Court  
23 having read and considered all of the papers and pleadings on file and being fully advised,  
24 and good cause appearing therefor, the Court hereby makes the following findings of fact  
25 and conclusions of law:

26 ///

27 ///

28 ///

**MAR 16 2018**

**MCLEATCHIE SHELL**

ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
WWW.NVLITIGATION.COM



I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

***Original Requests; Filing of Action***

1. On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the “Reporter”) sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking certain documents pertaining to CCSD Trustee Kevin Child; the Reporter supplemented the Request on December 9, 2016 (the “December Requests”).

2. After CCSD failed to provide documents or assert any claim of confidentiality pursuant to Nev. Rev. Stat. § 239.0107, the Review-Journal initiated this action on January 26, 2017, requesting expedited consideration pursuant to Nev. Rev. Stat. § 239.011.

***Initial Proceedings and February 22, 2017 Order***

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing. CCSD did not produce all records in unredacted form. Instead, Starting on February 8, 2017 it began producing some records in redacted form and withheld others. CCSD did not disclose that it had limited the sources it searched for records responsive to the Request or the Supplemental Request.

4. The Court conducted an *in camera* review of the unredacted version of the redacted records provided and then, on February 14, 2017, the Court heard oral argument on the Review-Journal’s Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal’s Petition. (*See* February 22, 2017 Order (the “February Order”); *see also* February 23, 2017 Notice of Entry of Order).

5. The Court ordered CCSD to provide the Review-Journal with new versions of records it had produced with only “the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff” redacted. (*Id.* at ¶ 34.) The Court further specified that “CCSD may not make any other redactions” and must unredact the

1 names of schools, teachers, and all administrative-level employees that were not direct  
2 victims. (*Id* at ¶ 35.)

3 6. CCSD did not appeal this order, or seek other relief pertaining to the  
4 February Order. To date, CCSD has disclosed 174 pages of documents to the Review-  
5 Journal, redacting consistently with the February Order. CCSD has also withheld 102 pages.  
6 ***February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search***  
7 ***Information***

8 7. On February 10, 2017, the Review-Journal submitted a new records request  
9 to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-  
10 Journal also offered to work with CCSD to develop searches.

11 8. On February 17, 2017, CCSD notified the Review-Journal via email that it  
12 was unable to provide the records listed in the February Request within the five days  
13 mandated by Nev. Rev. Stat. § 239.0107. On March 1, 2017, Review-Journal filed its  
14 Amended Petition. On March 3, 2017, CCSD provided some documents in response to the  
15 February Request. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted  
16 information pertaining to the names of individuals who reported a complaint or concern  
17 about Trustee Child, information including potentially identifying information about  
18 students, and personal phone numbers. That same day, the Review-Journal requested CCSD  
19 provide a log of withheld documents that were responsive to the February Request and also  
20 asked CCSD to provide it with search information. CCSD responded to these requests via  
21 letter on March 13, 2017. Despite previous requests from the Review-Journal, that was the  
22 first time CCSD provided any search term information.

23 9. In response to the Review-Journal's inquiry regarding which documents  
24 were being withheld, CCSD asserted that "the only information that has not been provided  
25 is internal information received or gathered by the District in the court of its investigation of  
26 an alleged practice of unlawful practice of discrimination, harassment, or hostile work  
27 environment which is confidential and not required to be disclosed under the public records  
28 law." By email on March 13, 2017, CCSD also stated it was withholding one document—a

report prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report"). The Review-Journal responded to CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested CCSD conduct additional email searches for responsive records from additional custodians. The Review-Journal requested that CCSD search those records for documents pertaining to the topics outlined in the December and February Requests. The Review-Journal also requested CCSD produce hard copy records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any other hard copy files CCSD maintains on Trustee Child that were responsive to the December and February Requests.

10. CCSD declined to produce the Cole Report and other documents created by the Office of Diversity and Affirmative Action Programs; on March 24, 2017, CCSD supplemented its privilege log to reflect that it was withholding records in addition to the records it had previously identified ("3/24/2017 Log"). This 3/24/2017 Log reflected that, in total, CCSD withheld only the following from documents produced in response to the December Requests and the February Request:

Investigative memoranda prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report") and Mr. Cole's investigative notes.

(See Exhibit E to March 29, 2017 Opening Brief in support of Amended Petition for Writ of Mandamus.)

***Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters***

11. On May 9, 2017, the Court heard oral arguments on the Review-Journal's Amended Petition for Writ of Mandamus. On June 6, 2017, the Court entered an Order granting the Review-Journal's Amended Petition as to the request that CCSD complete additional searches. (June 6, 2017 Order at ¶ 45, ¶ 46.)

12. Further, the Court ordered that, with regard to any documents CCSD had withheld and/or redacted to date and any additional responsive documents it identified in

1 response to the additional email and hard copy searches it was required to perform but  
2 contended are confidential and/or privileged, CCSD was to create a single log numbering  
3 and identifying each document withheld or redacted (in response to either the December  
4 Requests or the February Request) by providing a factual description of each record withheld  
5 (by listing to, from, date, and general subject) as well as a specific explanation for non-  
6 disclosure for each document withheld or redacted (including confidentiality being claimed,  
7 and basis for claim). The Court further ordered that the log provide sufficient information to  
8 the Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted.  
9 The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017,  
10 along with all redacted documents and documents being withheld for an *in camera* review.  
11 The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas  
12 Review-Journal. (June 6, 2017 Order at ¶ 47.)

13 **July 12 Order**

14 13. On May 30, 2017, CCSD submitted the redacted and documents it was  
15 withholding (the "Withheld Records") to the Court for *in camera* review. It additionally  
16 provided the Court with two certifications and a privilege log. ("Final Log")

17 14. Despite its representation to the undersigned, CCSD counsel did not provide  
18 a copy of either of these documents to the Review-Journal at that time. At a hearing held on  
19 June 6, 2017 the Court made clear it has expected CCSD to engage in the routine practice of  
20 providing privilege logs and certifications to opposing counsel in conjunction with *in camera*  
21 submissions. At the hearing, CCSD counsel did finally provide a copy of the Final Log and,  
22 later that day, provided copies of the certifications it had provided to the Court a week earlier.

23 15. In the Final Log, CCSD stated it is withholding the following documents in  
24 their entirety on the basis of the privileges it describes as "Office of Diversity and Affirmative  
25 Action Privileges:"

- 26 • CCSD 034-060; and
- 27 • CCSD 0159-0233.

28 In the Final Log, CCSD has summarized these documents as follows:

To the best of CCSD's knowledge, the only information that has not been provided to Petitioner is internal information received or gathered by Cedric Cole, Executive Director, Office of Diversity and Affirmative Action, in the course of his investigation regarding Trustee Child ...

(Exh. GG to June 13, 2017 Review-Journal Memorandum at Review-Journal007.)

16. The Final Log also cites CCSD Regulation 4110(X) to justify non-disclosure of the 102 pages of documents it is withholding. That Regulation states that

All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law.

(*Id.* at Review-Journal022.)

17. CCSD also claims that the NPRA does not require the release of confidential employee personnel information. (*Id.* at Review-Journal023.) In addition, CCSD claims in its Final Log that the records of its investigation of Trustee Child should be kept confidential pursuant to Title VII and guidance from the Equal Opportunity Employment Commission ("EEOC"). (*Id.* at Review-Journal019-Review-Journal021.) CCSD also claims that withheld internal information it obtained during its investigation of allegations of discrimination or harassment by Trustee Child is subject to the deliberative process privilege because the information "was used as part of the deliberative and decision-making process of District executives" in crafting the Cole Memorandum. (*Id.* at Review-Journal023.) CCSD asserts that any withheld information which might constitute "worksheets, drafts, informal notes, or ad hoc reports," it qualifies as "nonrecord material" under NAC 239.051. (*Id.*)

18. The Review-Journal submitted a Memorandum responding to CCSD's Final Log on June 13, 2017.

19. This Court held a hearing on CCSD's Final Log and May 30, 2017 *in camera* submission on June 27, 2017.

20. At that hearing, CCSD asserted for the first time that in addition to the privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which provides for the creation and regulation of the Nevada Equal Rights Commission—applied to investigations conducted by CCSD's Office of Diversity and Affirmative Action.

1 Specifically, CCSD asserted at the hearing that information pertaining to investigation of  
2 allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. §  
3 233.190.

4 21. On July 12, 2017 an Order was entered ordering CCSD to produce the  
5 Withheld Records, but allowing CCSD to make redaction consistent with the February Order.  
6 CCSD is explicitly permitted to redact the “names of direct victims of sexual harassment or  
7 alleged sexual harassment, students, and support staff.” (See February 23, 2017 Order at ¶  
8 34; see also July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with  
9 the February 23, 2017 Order).) The Court further specified that “CCSD may not make any  
10 other redactions” and must unredact the names of schools, teachers, and all administrative-  
11 level employees that were not direct victims. (See February 23, 2017 Order at ¶ 35; see also  
12 July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with the February  
13 23, 2017 Order).)

14 *Appeal and Motion to Stay*

15 22. On July 12, 2017, CCSD filed a Motion to Stay Enforcement of Order  
16 Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e)  
17 Pending Appeal on Order Shortening Time.

18 23. On July 12, 2017, CCSD also filed a Notice of Appeal to the Nevada  
19 Supreme Court.

20 24. On July 19, 2017, Review-Journal filed its Opposition to Motion to Stay  
21 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
22 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

23 25. On July 21, 2017, CCSD filed its Reply in Support of Motion to Stay  
24 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
25 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

26 26. Only July, 27, 2017, this Court heard arguments on the Motion to Stay  
27 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
28 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time, and ultimately denied

CCSD's Motion to Stay.

27. On July 27, 2017, CCSD filed an Emergency Motion For Stay Pending Appeal with the Nevada Supreme Court; that same day, the Supreme Court assigned CCSD's Emergency Motion to the Court of Appeals.

28. On August 28, 2017, the Court of Appeals granted CCSD's Emergency Motion For Stay Pending Appeal.

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

29. On October 3, 2017, the Review-Journal filed a Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith pursuant to Nev. Rev. Stat. § 239.011(2).

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

Attorney/Biller	Hours	Billing Rate	Total Billed
Margaret A. McLetchie	138.2	\$450.00	\$62,190.00 <sup>1</sup>
Alina M. Shell	88.2	\$350.00	\$30,065.00 <sup>2</sup>
Leo Wolpert	24.0	\$175.00	\$4,200.00
Pharan Burchfield	29.6	\$150.00	\$4,440.00
Administrative Support	18.9	\$25.00	\$472.50
<b>Total Fees Requested</b>			<b>\$101,367.50</b>

31. The Review-Journal also requested \$4,330.87 in costs associated with the litigation, for a combined total request for \$105,698.37 in fees and costs.

32. The Review-Journal provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

33. CCSD filed an Opposition to the Review-Journal's Motion on October 31, 2017, and the Review-Journal filed a Reply on November 13, 2017.

34. In its Opposition, CCSD asserted that pursuant to Nev. Rev. Stat. § 239.012, a provision of the NPRA which provides immunity from damages for public

<sup>1</sup> This total reflected voluntary reductions for some time entries, made by counsel for the Review-Journal in her billing discretion.

<sup>2</sup> See *supra* n.1.

1 officers who act in good faith in disclosing or refusing to disclose records, the Review-  
2 Journal had to establish CCSD acted in bad faith in refusing to disclose the requested records  
3 to obtain attorney's fees and costs.

4 35. Alternatively, CCSD argued the fees and costs sought by counsel for the  
5 Review-Journal should be apportioned and reduced, largely relying on case law regarding  
6 prevailing market rates from federal cases (including Prison Litigation Reform Act case  
7 law).

8 36. This Court conducted a hearing on the Review-Journal's Motion on  
9 November 16, 2017.

10 37. At the November 16, 2017 hearing, the Court directed the parties to submit  
11 supplemental briefing regarding whether it retained jurisdiction to rule on Review-Journal's  
12 Motion while CCSD's appeal was pending before the Nevada Supreme Court.

13 38. The Review-Journal filed a Supplement to its Motion for Attorney's Fees  
14 and Costs on December 7, 2017.

15 39. On December 18, 2017 CCSD's filed an Opposition to Review-Journal's  
16 Supplement to Motion for Attorney's Fees and Costs, as well as a Motion to Strike Improper  
17 Argument in Review-Journal's Supplemental Motions. CCSD filed an Errata to that  
18 Opposition on December 19, 2017.

19 40. On December 28, 2017, the Review-Journal filed a Reply to CCSD's  
20 Opposition to the Supplement, and also filed an Opposition to CCSD's Motion to Strike.

21 41. The Court conducted a hearing on these motions on January 4, 2018.

22 42. At the January 4, 2018 hearing, the Court found that it retained jurisdiction  
23 over the Review-Journal's Motion for Attorney's Fees and Costs and Request for Order  
24 Finding CCSD Acted in Bad Faith. The Court then granted the Review-Journal's Motion  
25 for Attorney's Fees and Costs, and denied the Review-Journal's Request for Order Finding  
26 CCSD Acted in Bad Faith. The Court further ordered the Review-Journal to submit a  
27 supplement regarding additional attorney's fees it accrued after submitting its Motion for  
28 Attorney's Fees and Costs.



43. On January 11, 2018, the Review-Journal submitted a Supplement to Motion for Attorney's Fees and Costs. In that Supplement, the Review-Journal provided documentation that it accrued an additional \$19,542.50 in attorney's fees and \$508.13 in costs after the submission of its October 3, 2017 Motion for Attorney's Fees and Costs. The Supplement also included a declaration from counsel addressing the *Brunzell* factors.

44. Combined with the \$101,367.50 in attorney's fees and \$4,330.87 in costs, Review-Journal's combined total fees and costs amount to \$125,749.00.

45. On January 18, 2018, CCSD filed a Response to Review-Journal's Supplement to Motion for Attorney's Fees and Costs Filed January 11, 2018.

## II.

## CONCLUSIONS OF LAW

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

46. 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).

47. 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).

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

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

///

///

1           50. The fact that a separate statute, § 239.012 (the “Damages Immunity  
2 Statute”), provides for immunity for good faith actions of public officers of employees in  
3 responding to NPRA requests does not change the interpretation of the Fees Statute for  
4 multiple reasons.

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

11           52. Because the Fees Statute is clear on its face, this court “cannot go beyond  
12 the statute in determining legislative intent.” *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d  
13 1226, 1228 (2011) (citation and internal quotation marks omitted); *see also Robert E. v.*  
14 *Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (same); *see also State v. Catanio*,  
15 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (“We must attribute the plain meaning to a  
16 statute that is not ambiguous.”); *see also Coast Hotels & Casinos, Inc. v. Nevada State*  
17 *Labor Comm’n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) (“When the language of a  
18 statute is plain and unambiguous, a court should give that language its ordinary meaning  
19 and not go beyond it.”)

20           53. Second, the separate Damages Immunity Statute only provides for  
21 immunity from *damages*—not immunity from fees. *See* Nev. Rev. Stat. § 239.012  
22 (specifying that a public officer or his or her employer are “immune from liability for  
23 damages, either to the requester or to the person whom the information concerns”). Damages  
24 and fees are different. *See, e.g., Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*,  
25 117 Nev. 948, 956 35 P.3d 964, 968 (2001) (comparing procedure for seeking attorney’s  
26 fees as a cost of litigation with fees sought as special damages pursuant to Nev. R. Civ. P.  
27 9(g)); *see also Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617  
28 (7th Cir. 2013) (noting that “an award of attorneys’ fees differs from ‘damages’”); *see also*

1 *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993) (noting that attorney  
2 fees may be awarded for unfair practice, while punitive damages are awarded for tort based  
3 on same conduct).

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

8 55. Nev. Rev. Stat. § 239.005(5) defines “governmental entity” as follows:

- 9 (a) An elected or appointed officer of this State or of a political subdivision
- 10 of this State;
- 11 (b) An institution, board, commission, bureau, council, department,
- 12 division, authority or other unit of government of this State, including,
- 13 without limitation, an agency of the Executive Department, or of a political
- 14 subdivision of this State;
- 15 (c) A university foundation, as defined in NRS 396.405; or
- 16 (d) An educational foundation, as defined in NRS 388.750, to the extent that
- 17 the foundation is dedicated to the assistance of public schools.

18 56. The officers and employees whose “good faith” actions are subject to  
19 immunity pursuant to the Damages Immunity Statute are not governmental entities. In  
20 contrast, the Respondent (in this case, CCSD) is a “governmental entity” within the meaning  
21 of Nev. Rev. Stat. § 239.005(5) and is therefore responsible for fees pursuant to the Fees  
22 Statute. Thus, the difference in terms between the Fees Statute and the Damages Immunity  
23 Statute supports not reading a “good faith” requirement from the separate Damages  
24 Immunity Statute into the Fees Statute.

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

///

58. Fifth, it is not necessary to read a good faith requirement into the Fees Statute to reconcile it with the separate Damages Immunity Statute. This is so because the good faith provision applies to an entirely different matter than the attorney fees and costs provision. As set forth above, the Damages Immunity Statute addresses when a public officer or employee (and his or her employer) is immune from *damages to anyone* for *producing* records or for failing to produce records if the *officer or employee* acted in good faith. In contrast, the Fees Statute sets forth when a *governmental entity* is responsible to a *requester* for fees and costs in a petition to obtain records. *See Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (“Courts must construe statutes to give meaning to all of their parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.”) (citation omitted) (emphasis added).

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

60. Further, a strict reading of the Fees Statute (one without a good faith exception read into it) is more in keeping in with the policy favoring access expressed in the NPRA as well as the provision allowing for a court remedy upon a governmental entity’s

1 failure to produce public records. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644,  
2 651, 730 P.2d 438, 443 (1986) "(We conclude a strict reading of the statute is more in  
3 keeping with the policy favoring open meetings expressed in NRS chapter 241 and the spirit  
4 of the Open Meeting Law...)".

5 61. Accordingly, the Review-Journal, which prevailed in this litigation, is  
6 entitled to its reasonable attorney's costs and fees that it expended in this matter to obtain  
7 public records from CCSD, regardless of whether CCSD acted in "good faith."

8 ***The Review-Journal's Requested Fees and Costs Are Reasonable, and the Brunzell***  
9 ***Factors Support a Full Award of Fees and Costs to the Review-Journal***

10 62. As noted above, the Review-Journal is entitled to its "reasonable"  
11 attorney's fees and costs in this matter.

12 63. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31  
13 (1969), a court must consider four elements in determining the reasonable value of  
14 attorneys' services:

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

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

25 64. The Court has carefully reviewed and considered the motion for fees,  
26 supporting detail of work performed and costs, and supporting declarations in light of the  
27 *Brunzell* factors in determining an appropriate award of fees and costs to the Review-  
28 Journal.

65. The Court has also carefully reviewed the Review-Journal's Supplement  
to Motion for Attorney's Fees and Costs, the supporting detail of work performed and costs,  
and supporting declaration.

1           66. As to the first factor, the “qualities of the advocate,” the Court finds that  
2 the rates sought are reasonable in light of their ability, training, education, experience,  
3 professional standing and skill. The rates sought for staff are also reasonable, and  
4 compensable.

5           67. The Court also finds that the second *Brunzell* factor, the “character of the  
6 work” performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of  
7 a full award of fees and costs to the Review-Journal.

8           68. This case involved analysis and application of the NPRA, as well as a  
9 careful consideration of protecting the rights and interests of CCSD employees and  
10 balancing these rights and interests against the public’s right to information regarding  
11 alleged misconduct by an elected official. Further, because CCSD borrowed from a number  
12 of areas of law to argue the requested records were confidential, counsel for the Review-  
13 Journal was required to perform extensive research of state and federal case law to  
14 effectively litigate this matter. And, as the NPRA reflects, the work involved in seeking  
15 access to public records is important: access to public records fosters democratic principles.  
16 Nev. Rev. Stat. § 239.001(1). Representing the newspaper of record also necessarily  
17 involves a high level of responsibility and immediate attention. Further, NPRA matters  
18 involve matters of high prominence.

19           69. As to the third factor, the work actually performed by counsel, the Court  
20 finds that counsel for the Review-Journal exercised appropriate discretion in the time and  
21 attention they dedicated to litigating this matter, and how they structured work in this matter.  
22 Review-Journal counsel deducted or omitted entries where appropriate.

23           70. Further, counsel necessarily had to dedicate significant time in this case  
24 due both to its character and due to the fact CCSD asserted numerous purported bases for  
25 refusing to provide public records.

26           71. Thus, this factor weighs in favor of a full award of costs and fees to the  
27 Review-Journal.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

73. As set forth above, the Review-Journal is the prevailing party in this public records litigation, and as a result of its counsel’s efforts, obtained an order from this Court directing CCSD to produce the requested records pertaining to its investigation of Trustee Kevin Child.

74. Thus, this final factor weighs in favor of an award of fees and costs to the Review-Journal.

75. Having considered the *Brunzell* factors, and having considered the papers and pleadings on file in this matter, including the documentation provided by the Review-Journal in support of its Motion for Attorney’s Fees and Costs, the Court finds the Review-Journal is entitled to all its attorney’s fees and costs through January 11, 2018 in the sum of \$125,241.37.

***CCSD Did Not Act in Bad Faith***

76. Under the facts of this case, the Court finds that CCSD did not act in bad faith in declining to provide the requested records to the Review-Journal.

**III.**

**ORDER**

77. Based on the foregoing findings of fact and conclusions of law, the Court hereby ORDERS that CCSD must pay the Review-Journal \$125,241.37 to compensate it for the costs and reasonable attorney’s fees it expended through January 11, 2018 in litigating this matter.

78. Nothing in this Order precludes the Review-Journal from seeking compensation for fees and costs incurred after January 11, 2018 if appropriate upon conclusion of the appeal in this matter.

///  
///

1                    79. Further, the Court hereby ORDERS that the Review-Journal's Motion to  
2 Find CCSD in Bad Faith is DENIED.

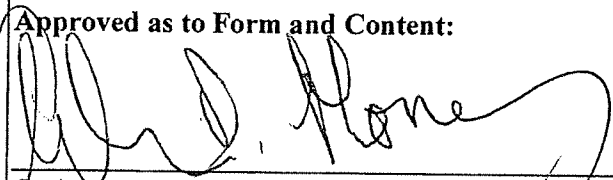
3                    IT IS SO ORDERED this 19<sup>th</sup> day of March, 2018.

4  
5  
6   
7 HONORABLE JUDGE TIMOTHY C. WILLIAMS  
8 

9 Respectfully submitted,

10  
11   
12 Margaret A. McLetchie, Nevada State Bar No. 10931  
13 Anna M. Shell, Nevada State Bar No. 11711  
14 MCLECHIE SHELL, LLC  
15 701 E. Bridger Avenue, Suite 520  
16 Las Vegas, NV 89101  
17 Telephone: (702) 728-5300  
18 Fax: (702) 425-8220  
19 Email: maggie@nvlitigation.com  
20 *Counsel for Petitioner, Las Vegas Review-Journal*

21 **Approved as to Form and Content:**

22   
23 Carlos McDade, Nevada State Bar No. 11205  
24 Adam Honey, Nevada State Bar No. 9588  
25 CLARK COUNTY SCHOOL DISTRICT  
26 OFFICE OF GENERAL COUNSEL  
27 5100 W. Sahara Avenue  
28 Las Vegas, NV 89146  
*Counsel for Respondent, Clark County School District*

MCLECHIE SHELL, LLC

ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702) 728-5300 (T) / (702) 425-8220 (F)  
WWW.NVLITIGATION.COM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus****COURT MINUTES****February 14, 2017**

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
                                  vs.  
                                  Clark County School District, Defendant(s)

**February 14, 2017      9:00 AM      Hearing**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Lorna Shell

**RECORDER:**

**REPORTER:** Peggy Isom

**PARTIES**

**PRESENT:**      Honey, Adam      Attorney  
                          McDade, Carlos L      Attorney  
                          McLetchie, Margaret A.      Attorney

**JOURNAL ENTRIES**

- - Ms. McLetchie argued regarding the scope of the redactions, that Clark County was subject to public record, that confidentiality must outweigh the right for public disclosure by a preponderance of evidence, and that Clark County must disclose within five days. Mr. Honey argued they produced redacted documents pursuant to the narrow request of the Review Journal (RJ), that information was redacted to protect the identities of parties, and that NRS 239.010 controlled what public records must be produced. Ms. McLetchie stated the privilege log didn't include any children. Court stated he was not given much discretion, that a public agency had a certain period of time to respond, and that the public agency must indicate why the information was confidential. Mr. Honey argued NRS 386.350 gave the trustees broad powers regarding requests for employee information and the information could be deemed confidential under that law. Mr. Honey argued release of the information would cause a chilling effect on employees of all levels when it came to reporting inappropriate actions. Ms. McLetchie argued Deft. s waived privilege by not responding within the proper time frame. Further arguments by counsel regarding the short time frame to respond to requests, the whistleblower statute, additional requests for information, and NRS 239. COURT FINDS pursuant to NRS 239.0107 (1)(d)(1) and (2) certain things must happen within a time period, that the request was responded to however not in a meaningful way, and that there was no adequate showing. COURT THEREFORE

ORDERED, the identity of the school shall be disclosed, the identity of any administrators shall be disclosed, no students shall be identified and nothing regarding sexual harassment shall be identified. Upon request of counsel, COURT CLARIFIED administrators would include any administrative level employee including a principal, assistant principal, dean, program coordinator, or teacher; however no support staff shall be identified as they do not have as much protection, and no direct victims shall be identified. COURT FURTHER ORDERED, Status Check SET.

03/02/17 9:00 AM STATUS CHECK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Mandamus

## COURT MINUTES

**March 02, 2017**

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
vs.  
Clark County School District, Defendant(s)

**March 02, 2017                  9:00 AM                  Status Check**

**HEARD BY:** Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Lorna Shell

**RECORDER:**

**REPORTER:** Peggy Isom

## PARTIES

<b>PRESENT:</b>	Honey, Adam	Attorney
	McLetchie, Margaret A.	Attorney

## JOURNAL ENTRIES

- Ms. McLetchie stated the matter was not yet resolved, that documents had been produced in a redacted form; however a number of documents were missing. Ms. McLetchie further argued she wanted to be sure the Pltf.'s were getting all the requested information regarding Trustee Childs and that she was trying to get the documents on a rolling basis; however the Deft.'s indicated they wouldn't produce them until tomorrow, after this hearing. Ms. McLetchie argued the February request was still missing documentation, that she would like a date certain indicating when the documents would be produced, that she would like a production log from Deft.'s and a date for the log to be produced. Mr. Honey argued the original request was by e-mail to the School District, not his law office causing delays, that the December request was not a supplement rather it was a new request, and that he'd informed Pltf.'s the information would be forwarded to them by May. Mr. Honey argued that every request by Pltf.'s, no matter when made, shouldn't refer back to the December request. Mr. Honey stated this status check was just to determine if he'd responded to the December request. Ms. McLetchie argued she'd supplemented the request and it was discussed at the last hearing and that the request was still in regards to Trustee Childs and the School District's decision to ban him from the property. Following further arguments by counsel, COURT ORDERED, Status Check CONTINUED to allow counsel one last chance to work this out and if not resolved, counsel must explain why and the court will set the matter for a briefing schedule.

CONTINUED TO: 03/14/17 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**March 14, 2017**

---

A-17-750151-W	Las Vegas Review-Journal, Plaintiff(s) vs. Clark County School District, Defendant(s)
---------------	---

---

**March 14, 2017                      9:00 AM                      Status Check**

**HEARD BY:** Williams, Timothy C.                      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Lorna Shell

**RECORDER:**

**REPORTER:** Peggy Isom

**PARTIES**

<b>PRESENT:</b>	Honey, Adam                      Attorney McLetchie, Margaret A.                      Attorney
-----------------	---

**JOURNAL ENTRIES**

- Ms. McLetchie stated she'd just received a letter detailing the information the school district had been withholding and noted she had concerns regarding the search terms used. Ms. McLetchie argued the Deft.'s limited the searches to custodians and that there was nothing regarding any sexual harassment claims. Ms. McLetchie requested a briefing schedule be set and further stipulated to extend the due dates for the Pltf.'s Motion for Attorney's Fees. Mr. Honey stipulated to the extension of time and agreed to a briefing schedule. COURT ORDERED, Briefing Schedule SET, Opening Brief due March 29, 2017, Response due April 13, 2017, Reply due April 24, 2017, Hearing Set.

05/09/17 9:00 AM HEARING RE: SEARCH PARAMETERS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus****COURT MINUTES****May 09, 2017**

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
                                  vs.  
                                  Clark County School District, Defendant(s)

**May 09, 2017                      9:00 AM                      Hearing**

**HEARD BY:** Williams, Timothy C.                      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Louisa Garcia

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Honey, Adam                      Attorney  
                                  McLetchie, Margaret A.                      Attorney

**JOURNAL ENTRIES**

- Arguments by counsel whether the Court has jurisdiction over the Amended Petition and whether Clark County School District (CCSD) improperly limited responsive documents by limiting their searches and sources, and whether the documents that CCSD is acknowledging it is withholding merit protection. Court advised it needs to know who the decision maker is. If orders are not being complied with it has to make a decision and, if the Court makes a factual determination that documents are not being produced in good faith, it could access monetary damages. Following arguments by counsel, COURT FINDS it has jurisdiction over this matter, based upon the fact the initial petition was filed in this Department and specifically was a public information request as it pertained to Trustee Child. FURTHER, COURT ORDERED, as to full searches, the request is GRANTED as to e-mail searches, all trustees, Cedric Cole and Diversity and Affirmative action staff. Court advised if there were any specific privileges that might apply, the document must be identified. Court will review all the documents in camera for final determination. Court advised it wants a finalized log of everything that is being produced and if there are any claims of privilege, it wants the documents described and provided for in camera review. Additionally, counsel to provide some form of certification to attest to the accuracy of the searches and documents. Court advised the request shall be complied within three weeks from today; final privilege log shall be submitted in writing for the Court s review and it will then make determination if those documents should be

provided. Ms. McLetchie to prepare the Order. COURT ORDERED, matter SET for status check.

6/6/17 STATUS CHECK: HEARING (5/9/17)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**June 06, 2017**

---

A-17-750151-W	Las Vegas Review-Journal, Plaintiff(s) vs. Clark County School District, Defendant(s)
---------------	---

---

<b>June 06, 2017</b>	<b>9:00 AM</b>	<b>Status Check</b>
----------------------	----------------	---------------------

**HEARD BY:** Williams, Timothy C.                      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Marwanda Knight

**RECORDER:**

**REPORTER:** Peggy Isom

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Margaret McLetchie, Esq., appeared on behalf of Pltf  
Adam Honey, Esq., appeared on behalf of Deft

Colloquy between the Court and counsel regarding the items the Court received for in camera review. The Court queried Ms. McLetchie as to what she had received. In response, McLetchie advised she was not aware of items received by the Court, noting the competing orders from the last hearing and that counsel could not agree whether or not the order should require Pltfs receive the certification and a copy of the privilege log. Mr. Honey queried the submission of the orders, which resulted in colloquy between the Court and counsel regarding the same. Further, Mr. Honey noted being reluctant to do things without having an order in place; additional colloquy.

Following the discussion and comments made by the Court as to the submission of documents, COURT ORDERED Defts provide Pltfs with the certifications and privilege logs.

Court noted its review of the proposed orders, noting Pltf's order conformed with the Court's decisions. Order SIGNED IN OPEN COURT and returned to counsel for processing.

COURT FURTHER ORDERED hearing regarding search parameters SET June 15, 2017 at 10:00 am.



COURT FURTHER ORDERED Pltf's response due by June 13, 2017 for the Court's review.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**June 15, 2017**

---

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
vs.  
Clark County School District, Defendant(s)

---

**June 15, 2017      10:00 AM      Hearing**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Denise Duron

**RECORDER:**

**REPORTER:** Peggy Isom

**PARTIES**

**PRESENT:**      Honey, Adam      Attorney  
                    McLetchie, Margaret A.      Attorney

**JOURNAL ENTRIES**

- Mr. Honey requested a continuance due to time constraints. Ms. McLetchie had no opposition. Colloquy between counsel regarding availability. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 06/27/17 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus****COURT MINUTES****June 27, 2017**

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
                                  vs.  
                                  Clark County School District, Defendant(s)

**June 27, 2017****10:30 AM****Hearing****Hearing: Search  
Parameters****HEARD BY:** Williams, Timothy C.**COURTROOM:** RJC Courtroom 12D**COURT CLERK:** April Watkins**RECORDER:****REPORTER:** Peggy Isom**PARTIES**

**PRESENT:**      Honey, Adam                              Attorney  
                                  McLetchie, Margaret A.                              Attorney

**JOURNAL ENTRIES**

- Following arguments by counsel, Court stated it's important to point out that when you take a look at the statute, under Nevada law, The Court focused, more specifically on NRS 239.010, and that would be the public books, public records are open to inspection. It appears to the Court to be fairly clear that what the Nevada legislature wanted to do was to make sure public records of our governments are open to inspection. And there's a very simple reason for that when it comes to public records, public decision, decisions made by those in government elected officials, the public has a right to know when it's all said and done. And so that's the first consideration. Secondly, the Court has taken a look at Nevada Chapter 233. That is the NERC or Nevada Equal Rights Commission, and EEOC from the federal side. And it's the decision by the Court that Chapter 233 has no application to the diversity to the school district, a diversity department. Because that's not a governmental agency. It's not a state agency. It's not the federal government. So that doesn't apply. The Court took a look at the derivative process privilege being applied here. And for the record, once again, it's not an absolute privilege. And so, ultimately, and this is one of the reasons why the Court is going to make the decision the Court is going to make regarding what should happen. And, specifically, we have competing interests regarding the statutory interest of disclosure versus the interest of secrecy regarding the acts of the Clark County School District. The Court stated it's

important to point out we can't overlook this one fact that the focus of the interests of disclosure is not really focusing on the conduct of an employee, but the conduct of an elected official. And the Court feels that is significant. And that's on for a couple of reasons. Number one, not only does the public have a right to know, but anyone that wants to participate in the election process has a right to know because they're an elected official. Then we have an interest of secrecy. The Court understands that. But it appears to the Court that the actions of an elected official is very compelling to know exactly what happened, and the public has a right to know that. Regarding the regulation, the Court thinks that is 4110. And for the record I did have a chance to look at that, and I think that's Roman Numeral X, which provides as follows: All information gathered by the district in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with the law. It is the Court's decision that the information gathered by the district in this case serves a significant need because it focuses on the acts of an elected official. And, consequently, this will serve as an exception to the confidentiality requirement under the regulation. And also, if the Court was to make a decision that there's a conflict between the regulation and Chapter 239.010, the next provision "or to comply with the law" would take care of that too. So because at the end of the day there's an overwhelming mandate from the Nevada legislature regarding the public's right to access governmental records. COURT ORDERED, regarding the documents, the Court is going to require them to be disclosed but redacted in accordance with my prior decision where applicable. Before those are turned over, counsel can submit them to the Court with the redactions, and then the Court will review them, and then the Court will submit them to counsel. FURTHER ORDERED, documents to be provided to the Court by Friday, June 30, 2017.

Ms. McLetchie to prepare the order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**July 27, 2017**

---

A-17-750151-W	Las Vegas Review-Journal, Plaintiff(s) vs. Clark County School District, Defendant(s)
---------------	---

---

**July 27, 2017                      9:00 AM                      Motion to Stay**

**HEARD BY:** Williams, Timothy C.                      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Kory Schlitz

**RECORDER:**

**REPORTER:** Peggy Isom

**PARTIES**

<b>PRESENT:</b>	McDade, Carlos L                      Attorney McLetchie, Margaret A.                      Attorney
-----------------	--

**JOURNAL ENTRIES**

- Mr. McDade argued in support of the Motion stating irreparable harm and indicated the limited redaction allowed by the Court regarding the victims and witnesses will not protect their identities. Mr. McDade further argued that once the police report is released it cannot be unreleased and the victims and the employees will further be discouraged against filing new reports since the report will be made public. Mr. McDade requested the Court to order an emergency stay to allow him to pursue the appeal with the Supreme Court and have a case to return, and that will not be the case if the documents are released now. Ms. McLetchie argued against the Motion, stating the School District has failed to establish the records are confidential and stated the CCSD is only concerned about their policy and what a Court ruling would mean for future cases. Ms. McLetchie stated the School District did not even originally respond appropriately to the Public Service Act and requested the documents be released. COURT STATED ITS FINDINGS and ORDERED Motion to Stay Enforcement DENIED; Court directed all victims names be REDACTED. Colloquy regarding preparing the Order. Court directed parties if they cannot agree on the language in the Order, then both side can submit and Order to Chambers by August 1, 2017.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**November 16, 2017**

---

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
vs.  
Clark County School District, Defendant(s)

---

**November 16, 2017      9:00 AM      Motion for Attorney Fees  
and Costs**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Elizabeth Vargas

**RECORDER:**

**REPORTER:** Peggy Isom

**PARTIES**

**PRESENT:**      Honey, Adam      Attorney  
                         McLetchie, Margaret A.      Attorney

**JOURNAL ENTRIES**

- Colloquy regarding whether this Court had jurisdiction to grant fees and costs. COURT ORDERED, briefing schedule SET.

MATTER RECALLED. Parties agreed to stipulate to the briefing schedule, prepare a stipulation, and email the Law Clerk regarding their agreement.

CONTINUED TO: 1/4/18 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**January 04, 2018**

---

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
vs.  
Clark County School District, Defendant(s)

---

**January 04, 2018      9:00 AM      All Pending Motions**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Elizabeth Vargas

**RECORDER:**

**REPORTER:** Peggy Isom

**PARTIES**

**PRESENT:**      Honey, Adam      Attorney  
                         McLetchie, Margaret A.      Attorney

**JOURNAL ENTRIES**

- PETITIONER LAS VEGAS REVIEW-JOURNAL MOTION FOR ATTORNEY'S FEES AND COSTS AND REQUEST FOR ORDER FINDING CCSD ACTED IN BAD FAITH CCSD'S OPPOSITION TO LVRJ'S SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES AND COSTS AND MOTION TO FIND CCSD IN BAD FAITH AND CCSD'S MOTION TO STRIKE IMPROPER ARGUMENT IN LVRJ'S SUPPLEMENTAL MOTIONS

Ms. McLetchie argued it is not required under the statute that Clark County School District acted in bad faith in order for attorney fees and costs be awarded and requested the court make a determination of bad faith. Court inquired regarding jurisdictional issue and reviewed applicable statutes; stated the statute is clear that the requester who prevails is able to recover attorney fees and costs. Court further stated it retains jurisdiction pursuant to case law; as it relates to collateral matters, bad faith is not a requirement of statutory scheme. Arguments by counsel regarding whether fees and costs requested are reasonable and blocked billing issues. Mr. Honey requested Plaintiff's request to provide additional supplemental billing be denied. Ms. McLetchie argued she had additional billing to file the reply and for today's hearing. Court advised it will permit supplementation of billing. COURT ORDERED, Las Vegas Review Journal's Motion for Attorney Fees and Costs GRANTED IN PART pursuant to court's decision regarding amounts; denied as to

finding CCSD acted in bad faith; FURTHER ORDERED regarding amount of attorney fees granted briefing schedule SET, Plaintiff's brief and review of Brunzell factors due on or before January 11, 2018, Defendant's response due on or before January 18, 2018; Court will provide a chambers decision on or before January 25, 2018.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus**

**COURT MINUTES**

**February 23, 2018**

---

A-17-750151-W      Las Vegas Review-Journal, Plaintiff(s)  
vs.  
Clark County School District, Defendant(s)

---

<b>February 23, 2018</b>	<b>3:00 AM</b>	<b>Minute Order</b>	<b>Petitioner Las Vegas Review-Journal s Motion for Attorney s Fees and Costs and Motion to Find CCSD in Bad Faith</b>
--------------------------	----------------	---------------------	--

**HEARD BY:** Williams, Timothy C.

**COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Elizabeth Vargas

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- After review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

The Court has found that the award of attorney s fees is proper pursuant to NRS 239.011, which provides, in pertinent parts, If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney s fees in the proceeding from the governmental entity whose officer has custody of the book or record.

Additionally, in reliance on Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 455 P.2d 31 (1969), the Court has determined the fee request made by the Plaintiff, Review-Journal, to be reasonable in light of the significant steps taken to obtain the public records, and the work performed by Margaret A. McLetchie, Esq. meets or exceeds all the Brunzell factors.

Therefore, Plaintiff s Motion for Attorney s Fees and Costs is hereby GRANTED in the sum of One Hundred One Thousand, Three Hundred Sixty-Seven Dollars and Fifty Cents (\$120,910.50) for attorney s fees and Four Thousand, Three Hundred Thirty Dollars and Eighty-Seven Cents (\$4,330.87) for costs.

Lastly, under the facts of this case, the Court did not determine that the actions of the Clark County School District Officials were in bad faith.

Counsel for Plaintiff shall prepare a detailed Order, Findings of Fact, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

Clerk s Note: A copy of the Minute Order has been electronically served to all registered parties for Odyssey File & Serve. //ev 2/23/18

# 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 APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT  
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
AND ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

LAS VEGAS REVIEW-JOURNAL,

Plaintiff(s),

vs.

CLARK COUNTY SCHOOL DISTRICT,

Defendant(s),

Case No: A-17-750151-W

Dept No: XVI

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 5 day of April 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk