

1 CASE NO. A-17-750151-W

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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9 LAS VEGAS REVIEW JOURNAL,)

10 Plaintiff,)

11 vs.)

12 CLARK COUNTY SCHOOL DISTRICT,)

13 Defendant.)

14 -----)

15 REPORTER'S TRANSCRIPT

16 OF

17 HEARING: MOTIONS

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21 DATED THURSDAY, JANUARY 4, 2018

22

23

24 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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CCSB1050

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1 LAS VEGAS, NEVADA, TUESDAY, MAY 9, 2017

2 9:11 A.M.

3 P R O C E E D I N G S

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09:07:25 5

6 THE COURT: All right. We're going to move
7 on. Next up on the contested calendar, first matter,
8 Las Vegas Review Journal versus Clark County School
9 District.

09:21:07 10

MS. MCLEATCHIE: Good morning.

11 MR. HONEY: Good morning, your Honor.

12 THE COURT: Good morning. Let's go ahead and
13 note our appearances for the record.

14 MS. MCLEATCHIE: Good morning, your Honor.

09:21:15 15

Happy New Year. Maggie McLetchie for the Las Vegas
16 Review Journal.

17 MR. HONEY: Adam Honey for the Clark County
18 School District.

09:21:25 20

19 THE COURT: All right. Once again, good
morning.

21 It's my recollection we had some supplemental
22 briefing as to whether or not I retain jurisdiction in
23 matter to award attorney's fees pursuant to the
24 stature. Is that correct, Counsel?

09:21:38 25

MS. MCLEATCHIE: That's correct, your Honor.

09:21:38 1 That briefing has been submitted. Has the Court had
2 the opportunity to review it?

3 THE COURT: Yes, I have. All right. And we
4 can just talk about that, ma'am, for a second.

09:21:46 5 MS. MCLEATCHIE: Sure. It's the Las Vegas
6 Review Journal's position, and I actually don't think
7 that CCSD contests this position, that this Court does
8 have jurisdiction over an attorney fee application and
9 a related -- a related motion to find CCSD in bad

09:22:08 10 faith. That is so, your Honor, because they're
11 collateral matters. And the Nevada Supreme Court has
12 explained that matters such as attorney's fees matters,
13 hearings, and sanctions motions can be heard despite
14 the fact that the default rule is that an appeal

09:22:22 15 divests the district court of jurisdiction. It's also
16 the Las Vegas Review --

17 THE COURT: It's my --

18 MS. MCLEATCHIE: I'm sorry.

19 THE COURT: -- recollection, ma'am, that came
09:22:29 20 straight from the Emerson versus Eighth Judicial
21 District Court case.

22 MS. MCLEATCHIE: Yes, your Honor.

23 THE COURT: And that case specifically dealt
24 with whether the court retained jurisdiction over
09:22:39 25 sanctions. But just as important in that case they

09:22:41 1 discussed the Cantor versus Cantor case, which also set
2 forth the proposition that the court retains
3 jurisdiction to award attorney's fees and costs.

4 MS. MCLETCHIE: Yes, your Honor.

09:22:51 5 THE COURT: Okay.

6 MS. MCLETCHIE: And a sanctions motion is, I
7 think, akin to a bad-faith determination by this Court.
8 While CCSD --

9 THE COURT: But is bad faith even required
09:23:03 10 under the statute, ma'am?

11 MS. MCLETCHIE: Your Honor, it's absolutely
12 not required under the statute. And for the same
13 reasons that the NPRA urges this Court to hear the
14 attorney's fees application now and issue an order
09:23:16 15 granting fees and costs, the NPRA also -- the plain
16 text of the NPRA does not require us to establish that
17 CCSD acted in bad faith, despite the fact that they
18 did, in order for us to get fees and costs.

19 And you can turn to 239.017 if your Honor is
09:23:37 20 looking for the section on attorney's fees and costs in
21 public records cases. And what that says is that --
22 I'm sorry, it's 011, 239.011.

23 THE COURT: I know that, ma'am.

24 MS. MCLETCHIE: Thank you, your Honor. But
09:23:50 25 what it says is this Court -- that if a requester

09:23:53 1 prevails, the Court shall grant reasonable fees and
2 costs.

3 There is a separate provision that does limit
4 liability, both the liability of the public officer and
09:24:04 5 the sort of vicarious liability of the governmental
6 entity for civil liability if -- and for other damages,
7 for damages, if the public officer acted in bad faith.

8 I think taking that section and reading into
9 the attorney fee provision, a requirement that we find
09:24:24 10 bad faith would be at odds with the plain text of the
11 statutes and with the legislature's mandate that's
12 written directly into the statute to interpret the
13 terms of the NPRA broadly and any limitations narrowly.

14 The fees provision in the access to court was
09:24:41 15 added by the legislature to address the very situation
16 we had here which is CCSD essentially, despite the law
17 requiring them to respond within five days, ignored and
18 ignored and ignored a reporter's requests.

19 While it is the Las Vegas Review Journal's
09:24:59 20 position that a determination of bad faith is not
21 necessary, I would ask this Court to find that CCSD
22 acted in bad faith. And because even if bad faith
23 were -- if bad faith were required, CCSD did act in bad
24 faith. And on those grounds CCSD then couldn't appeal
09:25:21 25 the attorney's fees order because CCSD -- the order

09:25:25 1 will reflect that even if bad faith were required under
2 the statute, which it does not require, that CCSD, in
3 fact, did act in bad faith.

4 With regard to bad faith --

09:25:36 5 THE COURT: In order to make a bad-faith
6 determination, would I need more evidence? Would I
7 need to have potentially an evidentiary hearing?
8 Because that's -- you know, that's a totally different
9 determination when it comes to issues regarding bad
09:25:52 10 faith.

11 Wouldn't I have to have the specific public
12 officials and/or employees come in and testify in front
13 of me before I make that determination, really?

14 MS. MCLEITCHIE: Perhaps, your Honor. Except
09:26:06 15 for the fact in this case that the Las Vegas Review
16 Journal has submitted deposition transcripts. The
17 contents of those have not been questioned by CCSD.
18 They merely said in response to our arguments about bad
19 faith, they've merely said that concern for employees'
09:26:22 20 privacy necessitated that they -- that they act the way
21 they did in this case. And so the question for the
22 Court is whether or not a concern for a potential
23 confidentiality claim can justify not responding, and
24 not responding to a public records request.

09:26:42 25 Even assuming CCSD's motivations on their face

09:26:45 1 that their concern was to protect the confidentiality
2 and privacy of their employees, then they certainly
3 could have asserted that confidentiality within five
4 days or certainly any of the numerous other times the
09:27:00 5 Las Vegas Review Journal reporter and then myself
6 attempted to -- attempted to get information. It's not
7 disputed in this case and CCSD hasn't disputed, and we
8 have a factual record in the orders about the history
9 of the requests, about the history of the nonresponses.

09:27:18 10 The fact that NRS 239.0 -- I think that's 0107(D)
11 requires the responses within five days, it's not
12 controverted that they didn't respond meaningfully
13 within five days. That CCSD kept getting -- kept
14 saying we'll get back to you, we'll get back to you,
09:27:36 15 we'll get back to you.

16 The deposition transcripts of Mr. Ray and
17 Ms. Smith Johnson reflect that the reason that they
18 couldn't get back to the Review Journal reporter was
19 because CCSD general counsel instructed them not to.

09:27:50 20 CCSD has not controverted these facts that
21 were -- that were ascertained at the depositions and
22 were presented to the Court in -- as exhibits to the
23 motion for attorney's fees. And so I don't think -- I
24 don't think that on the -- I don't think that on the
09:28:08 25 particular facts and procedural posture of this case

09:28:11 1 that it's necessary for the Court to hold an
2 evidentiary hearing. And, obviously, that would also
3 complicate matters because Carlos McDade is an attorney
4 in this case. Mr. Honey, I don't think, was as
09:28:26 5 directly involved.

6 But it would, obviously, complicate matters if
7 they were required to take the stand and talk about
8 their intent and bad faith because then they're parties
9 in the case. Who would represent CCSD? All kinds of
09:28:40 10 complicated issues would arise.

11 THE COURT: Okay. They'd probably have to go
12 out and get separate counsel potentially under those
13 circumstances. I'm not sure.

14 MR. HONEY: Well --

09:28:50 15 THE COURT: Here's my next question: Why
16 would I even make a bad-faith determination? Because
17 it's my understanding I don't think we're seeking
18 liability as far as any specific public officer and/or
19 employee as it relates to the failure to disclose these
09:29:10 20 records. We're not seeking personal liability; are we?
21 I mean, that's the bottom line.

22 MS. MCLEITCHIE: You're right, your Honor. The
23 Las Vegas Review Journal is not at this time seeking
24 damages. And that separate provision that talks
09:29:20 25 about -- that talks about immunity for good-faith

09:29:25 1 responses to public records requests does apply
2 separately to damages. I don't want to belabor the
3 briefs that we've submitted that are pretty extensive
4 about the differences between damages and attorney's
09:29:34 5 fees.

6 THE COURT: Yeah.

7 MS. MCLEATCHIE: Your Honor, I entirely -- I
8 entirely agree that the Court does not need to make a
9 bad faith determination should CCSD -- should the Court
09:29:45 10 grant attorney's fees and costs. CCSD appeals.
11 Certainly the Nevada Supreme Court if they somehow
12 bought this bad-faith argument, could remand for a bad
13 faith good-faith determination evidentiary hearing at
14 that time, your Honor.

09:29:57 15 THE COURT: You know what it's kind of like?
16 Its kind of like asking the Court to make a
17 determination of punitive damages when there's no claim
18 for relief for punitive damages. And so I don't want
19 to wade into water that's unnecessary if you understand
09:30:11 20 what I'm trying to say. There's no need to jump into
21 that potentially, right, when it comes to the award of
22 attorney's fees.

23 MS. MCLEATCHIE: Understood, your Honor. With
24 regards to CCSD's motion to strike that portion of our
09:30:26 25 supplement, as we explained in our reply should the

09:30:30 1 Court agree with CCSD that bad faith were required,
2 we --

3 THE COURT: I got it.

4 MS. MCLEITCHIE: Exactly. Thank you, your
09:30:34 5 Honor.

6 THE COURT: I get it. I do. Anything else,
7 ma'am?

8 MS. MCLEITCHIE: On the jurisdictional issue,
9 no, your Honor.

09:30:41 10 THE COURT: Okay.

11 MR. HONEY: I was going to say I think your
12 question was about jurisdiction.

13 THE COURT: Right.

14 MR. HONEY: When we were here previously.

09:30:47 15 THE COURT: It was.

16 MR. HONEY: There was two separate motions.

17 There was a motion for attorney's fees and costs filed
18 by LVRJ, and then a separate motion for finding that
19 CCSD acted in bad faith. And that was the motion which
09:30:58 20 the jurisdictional question came up. Because the

21 question was from the Court was, Now, wait a second --

22 THE COURT: Well, it was even really -- I was
23 thinking about it in relationship to both motions
24 because as you know there's a pending appeal, so ...

09:31:12 25 MR. HONEY: Okay. Well, I guess, that wasn't

09:31:14 1 clear at the time. Doesn't reflect that in the minutes
2 of the case.

3 So really our position was that the separate
4 motion for bad faith was unnecessary and redundant.

09:31:30 5 Clearly LVRJ, this whole --

6 THE COURT: What about the jurisdictional
7 issue? Is the school district acquiescing that I
8 retain jurisdiction as it relates to collateral issues
9 as discussed in the Emerson case and the Cantor case?

09:31:46 10 MR. HONEY: In regards to attorney's fees we
11 are not. We don't think the bad-faith issue prevents
12 you from ruling on attorney's fees.

13 We only raised jurisdictional issue, again, in
14 the separate motion --

09:31:58 15 THE COURT: Okay.

16 MR. HONEY: -- to find us in bad faith.

17 THE COURT: I understand. I understand. I
18 do.

19 MR. HONEY: Okay. I don't know if you have
09:32:05 20 any particular questions in regards to our opposition
21 and attorney's fees.

22 THE COURT: Well, let's talk about the
23 statutory scheme. Because it's my understanding, I
24 want to make sure I'm clear on that, because you do
09:32:15 25 have NRS 239.011.

09:32:21 1 MR. HONEY: Correct.

2 THE COURT: And specifically in that regard,
3 it mandates. This is what the statute provides in
4 pertinent part.

09:32:31 5 If the requester prevails, the requester is
6 entitled to recover his or her costs and
7 reasonable attorney's fees in the proceedings
8 from the governmental entity whose officer has
9 custody of the records.

09:32:47 10 And so when I read that statute, it appears to
11 be fairly straightforward and simple in my
12 interpretation. And that would be if you prevail, you
13 get paid. You get your costs.

14 And I think there's probably a pretty good
09:33:00 15 public policy reason for that. Because, you know,
16 pursuant to the statute, the governmental entities are
17 required to disclose public documents statutorily. And
18 in that regard, the Nevada legislature has spoken.

19 In fact, under the statutory scheme, the
09:33:26 20 governmental entity has the burden of proof to
21 establish confidentiality; right? And so it -- when
22 you look at it from this perspective, it's almost -- I
23 won't say it rises to this level, but it's -- it almost
24 stands for the proposition that all documents are
09:33:44 25 presumed public unless you establish by a preponderance

09:33:48 1 of the evidence that they're confidential, and there's
2 a basis for that. And so that's how I interpret the
3 statutory scheme.

4 MR. HONEY: There's many --

09:33:58 5 THE COURT: And the reason why I think it's
6 important to point that out because there's a record
7 that the Supreme Court or Court of Appeals can look at,
8 and they can agree or disagree with my interpretation.

9 MR. HONEY: There's many exceptions to the
09:34:09 10 production of the records. There must be a hundred
11 different NRSs --

12 THE COURT: But.

13 MR. HONEY: -- referenced in the statute.

14 THE COURT: But do they really apply? Because
09:34:20 15 this is a statute that specifically deals with record
16 requests, right, with particularity. And so if I start
17 bringing in all these other statutes that conflict, and
18 I can't say that they do conflict, because this is a
19 particular statute with particularity and specificity
09:34:42 20 under the requirement to produce government documents.

21 MR. HONEY: I'm talking about all the statutes
22 that are enumerated in NRS Chapter 239 including the
23 language that says unless otherwise declared by law.
24 So there's many exceptions to the production of
09:35:03 25 records. But what I think what we're getting away from

09:35:04 1 is, yes, we have 239.011. But we also have 239.012
2 that says an employee and the employee's employer are
3 not liable for damages if they act in good faith. Now,
4 we can't read one --

09:35:20 5 THE COURT: You want me to interpret that for
6 you?

7 MR. HONEY: -- and ignore the other. The
8 legislative history which we've laid out in our
9 opposition, and, by the way, this exact issue is in
09:35:28 10 front of the Supreme Court currently as it was held in
11 a different department that with good-faith behavior,
12 attorney's fees aren't allowed in these types of
13 situations, we can't read one and completely ignore the
14 other. The legislative history is very clear --

09:35:44 15 THE COURT: But how can -- but here's the
16 thing. I guess, it really comes down to statutory
17 interpretation. And based upon my interpretation of
18 the statute, I don't think there's conflict. I'm going
19 to tell you why. Because I read it. And it's my
09:35:59 20 interpretation when it comes to NRS 239.012, and I'll
21 read that into the record, then I'll discuss it. It
22 provides as follows.

23 A public officer or employee who acts in
24 good faith in disclosing or refusing to
09:36:15 25 disclose information, and the employer of the

09:36:20 1 public officer or employee are immune from
2 liability for damages either to the requester
3 or the person whom the information concerns.
4 And so when I read that statute, it's -- what
09:36:34 5 it's really doing is, and this is my interpretation,
6 it's immunity from the public officer or the employee
7 unless there's bad faith. And so specifically, say
8 hypothetically, I made an evidentiary determination
9 that somebody in -- counsel for the Clark County School
09:37:01 10 District's office acted in bad faith, then,
11 potentially, they could be personally responsible for
12 the fees and costs or damages; right? That's how I
13 read that.
14 And so this doesn't stand for the proposition
09:37:16 15 that the Court shall not award reasonable attorney's
16 fees and costs to the prevailing party or the
17 requester. That's how I read it.
18 MR. HONEY: The legislative history in this
19 case makes clear that the only damage contemplated by
09:37:35 20 the legislators were attorney's fees. No other damages
21 such as indicated by the Court were even contemplated
22 at the time.
23 THE COURT: But here's the thing, and --
24 MR. HONEY: What other damages are there other
09:37:44 25 than fees?

09:37:45 1 THE COURT: Let me finish. Number one, before
2 I look at the legislative history, what am I mandated
3 to do? I have to determine that there's an ambiguity
4 in the statute or the statutory scheme. To me, it's
09:37:55 5 pretty clear what the statute says. We'll go back to
6 NRS 239.011 which provides as follows:

7 If the requester prevails, the requester is
8 entitled to recover his or her costs and
9 reasonable attorney's fees in the proceeding
09:38:17 10 from the governmental entity.

11 Right?

12 MS. MCLEATCHIE: Correct.

13 THE COURT: That's what it says.

14 Whose officer has custody of the book or
09:38:27 15 record.

16 And so here's the thing, it says here the
17 requester is entitled to recover. That doesn't -- that
18 to me it appears that doesn't even give the Court any
19 discretion as far as that is concerned.

09:38:44 20 MS. MCLEATCHIE: That's correct, your Honor,
21 and as the Court pointed out, it's not ambiguous. And
22 before one even need to get into things like the
23 detailed legislative history and what people who
24 testified to the legislature said, we don't even need
09:38:58 25 to go there not only because NRS 239.011 is so clear on

09:39:02 1 its face, but also because the Nevada Legislature
2 instructed governmental entities on how -- what their
3 legislative intent was and how they wanted all the
4 terms in the NPRA to be interpreted.

09:39:15 5 So the very beginning of the NPRA declares
6 their legislative intent. And it instructs
7 governmental entities to interpret the terms of the
8 NPRA broadly, and any limitations narrowly. So based
9 on that, I think it's preposterous to go outside to the
09:39:33 10 legislative history and to look at what people who
11 testified to the legislature on a separate provision on
12 a separate statute within the NPRA, what they said with
13 regard to that. I -- it is absolutely clear on its
14 face, and it also has to be interpreted, just like
09:39:50 15 every other section of the NPRA, it has to be

16 interpreted in a fashion that furthers public access.
17 And to further public access, the legislature
18 added this provision to allow a requester to get to
19 court and get remedy when an governmental entity does
09:40:07 20 exactly what CCSD does, which is ignore the Public
21 Records Act, it allows them to go to court, and it
22 requires that if the requester prevails, which
23 unquestionably the Las Vegas Review Journal did, that
24 the Court is required to provide attorney's fees and
09:40:22 25 costs because we're entitled to that. So then the only

09:40:25 1 question --

2 THE COURT: Well --

3 MS. MCLETCHE: Thank you, your Honor.

4 THE COURT: Well, Ms. McLetchie, I think it's
09:40:29 5 important to really point out the language. I think
6 what you're really relying upon would be NRS 239.001.
7 And it talks about the purpose of this chapter. And
8 that is to foster democratic principles by providing
9 members of the public with access to inspect and copy
09:40:52 10 public books and records to the extent permitted by
11 law.

12 But here's -- to me this is very important
13 language because you don't see this very often in the
14 statutory scheme. You just don't. I've seen this in
09:41:10 15 the specific Nevada statutes as it relates to
16 registering to vote and filing for candidacy. And, I
17 guess, in a generic form, it's the Voter Rights Acts
18 for the state of Nevada. And that language mirrors
19 this language where it talks about the act is to be
09:41:30 20 construed liberally or given liberal construction.

21 And the reason why that's important is
22 essentially this: You're talking about democratic
23 principles, whether it's a right to vote, whether it's
24 a right to file for candidacy for office. Or just as
09:41:47 25 important too, the public has a right to records.

09:41:51 1 Public records. They do. They're paying for this
2 stuff through their tax dollars. I mean, that's how I
3 see that. And so I look here, and this is what it
4 says. This is subsection 2.

09:42:01 5 The provisions of this chapter must be
6 construed literally to carry out this important
7 purpose.

8 And so that's pretty strong language. You
9 very rarely see that in statutes. You just don't see
09:42:18 10 it. You know, and so the way I read it, and I feel
11 fairly confident in this regard:

12 Number one, I don't see an ambiguity. I
13 don't.

14 Secondly, I don't think the statutes are in
09:42:31 15 conflict.

16 Third, when you read the plain language and, I
17 don't mind interpreting this for you in the record. I
18 just don't mind doing it. I think it's good just to
19 have this in the record because this might be a case
09:42:42 20 they want to issue a published decision on.

21 But when you look at the specific statutes,
22 and NRS 239.011 relates to whether or not the
23 governmental entity is responsible for attorney's fees.
24 That's what it does. And if the requester prevails,
09:43:10 25 they are.

09:43:11 1 Specifically, NRS 239.012 focuses on
2 good-faith disclosure or refusal to disclose
3 information. And it grants immunity to public officers
4 and/or employees in their individual capacity.

09:43:33 5 They're not on the hook unless it's bad faith.
6 And that's my interpretation. I just want to tell you
7 that for the record, Mr. Honey. That's how I read it.
8 So where do we go from here? That's my decision as far
9 as that is concerned.

09:43:47 10 MS. MCLEATCHIE: Would you like me to address
11 the fees and costs under the Brunzell factors, your
12 Honor?

13 THE COURT: Yeah. This is what I want to do.
14 I just want to make sure the record is clear.

09:43:55 15 MS. MCLEATCHIE: Sure.

16 THE COURT: Number one, I make -- my ruling is
17 going to be essentially this that the Court does retain
18 jurisdiction over this matter. That's pursuant to the
19 Emerson case which was cited. Also the Cantor versus
09:44:12 20 Cantor case which was discussed in the Emerson case,
21 and it specifically has a provision or discussion as it
22 relates to collateral matters or collateral issues that
23 will not have an impact on the ultimate decision making
24 by the trial court, right? That's what it says.

09:44:26 25 And then regarding my interpretation of the

09:44:30 1 statutory scheme, I've set forth that on the record.
2 But bad faith is not a requirement to award attorney's
3 fees pursuant to the statutory scheme. And that's my
4 decision. I just want everybody to know that. I think
09:44:49 5 it's pretty clear.

6 MS. MCLEATCHIE: Understood, your Honor.

7 THE COURT: So let's go to the award of
8 attorney's fees in general.

9 MS. MCLEATCHIE: Your Honor, we submitted
09:44:56 10 detail on our attorney's fees in our original
11 application. I will apologize. I was intending to
12 provide a supplement. I had my family in town last
13 week, and I did not provide a supplement of our fees
14 that included the supplemental briefing. And I would
09:45:11 15 like the opportunity to do so to submit just a detail
16 showing additional time. Allow CCSD to respond to
17 that. We don't need to do a reply. But I do want -- I
18 would like the opportunity to do that.

19 But I will now address the merits of the
09:45:28 20 application. The Court has already discussed the fact
21 that whether to award fees and costs is not
22 discretionary. The Court is required to award
23 reasonable fees and costs. And so the only question
24 today is whether or not the fees and costs that we have
09:45:44 25 set forth are reasonable.

09:45:48 1 And with regard to whether we're the
2 prevailing party, I discussed that a little bit
3 earlier. I think CCSD tries to make two points with
4 regard to that issue. One is that somehow because we
09:46:03 5 agreed with the Court once we actually got information
6 from CCSD and got into court, that we agreed with the
7 Court, and that certain information should redacted to
8 protect privacy that somehow we weren't prevailing. I
9 don't think that that's a proper argument. As the
09:46:19 10 Court has pointed out, they had the burden to establish
11 confidentiality. They were supposed to respond to us
12 meaningfully. They didn't do so.

13 When we got to court and we were discussing
14 the issues with the Court, we did agree -- in the
09:46:30 15 spirit of cooperation and out of concern for some of
16 the information, we did agree that certain information
17 could be redacted. That doesn't mean that we weren't
18 the prevailing party. We're unquestionably the
19 prevailing party. We have obtained numerous orders
09:46:46 20 providing for relief. We've had to fight not just
21 before the litigation but throughout the litigation for
22 information such as information regarding what was
23 submitted in camera. We had to fight for a more
24 specific log so that we weren't shooting in the dark,
09:47:03 25 and so that we could litigate this case meaningfully.

09:47:07 1 We -- we've unquestionably prevailed. The
2 nature the work is not simple and straightforward and
3 unmeritorious of the rates which we've requested
4 contrary to CCSD's arguments. While the NPRA itself
09:47:23 5 may be simple in CCSD's view, obviously, there's been
6 extensive briefing by the parties on numerous issues
7 within the NPRA, so that argument that -- the
8 procedural history of this case I think belies that
9 argument.

09:47:38 10 In addition, when you litigate a public
11 records case, oftentimes as CCSD does, the governmental
12 entity asserts confidentiality claims borrowed from
13 numerous areas of law --

14 THE COURT: I'm glad you brought that up.
09:47:51 15 Because I think its important to point out too, under
16 the statute, and I discussed the application or the
17 distinction between NRS 239.011 and 012. But more
18 specifically, I think it's important to incorporate by
19 reference the fact that NRS 239.010 actually defines
09:48:10 20 what a governmental entity is. And clearly, if you
21 look at some of the definitions here, like, I think
22 it's paragraph 4 of that statute. And it says:

23 Here an institution, board, commission,
24 bureau, council, department, division,
09:48:41 25 authority, or other unit of government of the

09:48:45 1 state or political subdivision of the state.

2 And it's right there. And so adding to the
3 discussion as far as who pays the attorney's fees
4 pursuant to the statutory scheme, it's the governmental
09:48:59 5 entities.

6 MS. MCLEATCHIE: And if I understand the Court
7 correctly, adding to the distinguishing between
8 NRS 239.011 and the separate provision 239.012 --

9 THE COURT: Right. Because --

09:49:07 10 MS. MCLEATCHIE: -- is the definition of
11 governmental entity. Understood.

12 THE COURT: Governmental entity is even
13 defined under the statute --

14 MS. MCLEATCHIE: Correct.

09:49:13 15 THE COURT: -- as to who's responsible.

16 MS. MCLEATCHIE: Correct. But with regard --
17 with regard to the rates that we've sought and for
18 the -- and with regard to the quality of the work,
19 CCSD, for example, in this case asserted

09:49:26 20 confidentiality claims related to numerous areas of law
21 including Title 7. Litigating these cases requires a
22 versatility and a breadth of legal knowledge to be able
23 to litigate -- to litigate in these areas.

24 And, again, we've litigated this case very,
09:49:39 25 very heavily. It takes a certain amount -- it's not

09:49:44 1 easy work fighting with governmental entities to get
2 public records. And I think that is relevant to the
3 Court's analysis.

4 The Court is well aware that we've had very
09:49:52 5 long hearings. We've had very, very extensive briefing
6 by the parties and at the request of the Court. And
7 the rates that we've requested are reasonable. We
8 submitted my declaration as well as the declaration of
9 Ms. England, a practitioner in the community.

09:50:10 10 They are -- they just sort of are dismissive
11 of the rates that we've sought saying that we don't --
12 haven't really -- we're not really worth it. But they
13 haven't submitted any actual factual information that
14 would suggest what the appropriate rates are. I think
09:50:24 15 that the rates we've sought are reasonable.

16 With regard to the hours, as I just mentioned,
17 this has been a complicated and difficult case. It was
18 months and months to get a response from CCSD. They
19 never provided a meaningful response to the Public
09:50:40 20 Records Act request until we filed suit. We got
21 records, and we obtained I think -- I think, there
22 were -- have been four orders issued in this case that
23 provided relief to the Las Vegas Review Journal. And
24 so while over \$100,000 in fees may seem like a lot of
09:51:00 25 money, I think it's very reasonable in light of the

09:51:03 1 extensive work that we've had to do in this case.

2 And again, the fees provision is supposed to
3 promote access. And so it's supposed to compensate
4 someone fairly for having to go to court and seek their
09:51:17 5 fees. And one of the things that's sometimes relevant
6 to Court's evaluation of fees is work that was foregone
7 in order to do this work. \$450 is my default rate.

8 And it's certainly a reasonable rate. And if I hadn't
9 been working on this, I would have been billing that
09:51:35 10 rate certainly in other matters, and so that's relevant
11 to the Court's analysis too.

12 With regard to the block billing, we think our
13 time entries are very detailed. The Nevada Supreme
14 Court has explained that the -- that block billing --
09:51:48 15 our block billing entries that are still susceptible to
16 Brunzell analysis by the Court are acceptable. That's
17 the in re Margaret Mary Adams case, I believe.

18 And what the Nevada Supreme Court has said
19 that where -- where you can still determine whether or
09:52:07 20 not the time was reasonable that there's essentially
21 nothing -- nothing de facto wrong with block billing.
22 That it's not proper to just take out block billing
23 entries and reduce a request for fees and costs because
24 some of the entries are block billing.

09:52:22 25 In addition, some of the entries that you look

09:52:24 1 at that they complain about being block billing entries
2 are really things like working on one brief, but
3 detailing the various aspects of the work on that
4 brief, the research that we did, the sections that
09:52:34 5 bear -- that were worked on, and those -- and those
6 sorts of matters.

7 In the -- in the in re Margaret Mary Adams
8 case, the Nevada Supreme Court certainly did say that
9 the district court can certainly ask for additional
09:52:48 10 information. I don't think an additional -- any
11 additional information is necessary. Our fee detail is
12 fairly extensive in my view. It was over 13 pages
13 long, I believe. But certainly should the Court have
14 additional questions that you wish us to supplement and
09:53:03 15 explain our fees further, we're more than able to do
16 that.

17 We're entitled to compensation for all the
18 work by people in our office including paralegals. And
19 all of the rates -- all of the rates for everyone
09:53:16 20 except for administrative staff were supported by
21 Ms. England's declaration. And courts have explained
22 that things like running to court are -- they're not
23 overhead. Those are compensable time. That's -- those
24 are compensable fees and costs as well, your Honor.

09:53:32 25 THE COURT: I understand. Thank you, ma'am.

09:53:34 1

Sir.

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THE COURT: And not look at all that other

09:54:47 1 stuff, right? Look at the complexity of the work. The
2 background of the lawyer requesting attorney's fees.
3 And all those things. That's what kind of what I do.
4 Typically.

09:54:59 5 MR. HONEY: So the school district is
6 requesting that the fee rate for Ms. McLetchie be
7 reduced to \$300 an hour, which comes out to \$182 per
8 page that they've obtained through months of litigation
9 on this. That would bring a fee rate of \$62,000. If
09:55:18 10 you include --

11 THE COURT: But I don't look at the number
12 pages of documents. I mean, I'll give you an example.
13 Say hypothetically, there were three key documents, and
14 you had to go to considerable litigation to get those
09:55:29 15 three documents that the court -- that potentially the
16 public had a right to access to. I don't look at the
17 number of documents that were produced, ultimately, to
18 decide what amount of attorney's fees to award, right?
19 I don't think I do.

09:55:43 20 MS. MCLETCHE: No, your Honor. It's not
21 relevant to the Brunzell analysis.

22 THE COURT: I mean.

23 MS. MCLETCHE: And the Public Records Act
24 doesn't say anything about awarding fees and costs
09:55:51 25 based on the pages. In fact, you would never know

09:55:54 1 before you go to court how many documents they're
2 withholding if it makes -- it makes no sense.

3 THE COURT: This is -- I have a really
4 important question for you. And I don't remember if
09:56:03 5 this was discussed in detail, but it seemed like to me
6 this is an important issue. You have NRS 239.0107.
7 And that deals specifically what the requirements would
8 be for a governmental entity when confronted with a
9 public records request, right, and you got to do
09:56:22 10 certain things, and you got to do it within a certain
11 time period.

12 And what I'm focusing on is essentially this:
13 Because the statute says, Look, not later than the end
14 of the fifth business day after the day on which the
09:56:37 15 person who has legal custody or control of a public
16 record or book of a governmental entity receives a
17 written request from a public -- from a person to
18 inspect their copy of the public book or record of a
19 governmental entity shall do one of the following that
09:56:58 20 are applicable.

21 So it seems to me that, number one, there's a
22 legislative mandate you got to do something.

23 MR. HONEY: And we did.

24 THE COURT: And so -- and that's what I want
09:57:08 25 to talk about. What specifically was done within that

09:57:10 1 five-day time period?

2 MR. HONEY: In regards to the December --

3 THE COURT: And did you comply with the
4 statute?

09:57:15 5 MR. HONEY: In regards to the December
6 request, we sent correspondence within five days
7 telling them that we were working on gathering the
8 documentation.

9 THE COURT: What about the initial request.

09:57:25 10 MR. HONEY: That is the December request --

11 THE COURT: Okay.

12 MR. HONEY: -- your Honor. In the February
13 request, on the 5th --

14 THE COURT: Did we -- and I want to make sure,
09:57:31 15 did we comply with the statute?

16 MR. HONEY: Yes, we did. The statute doesn't
17 require that you produce records within five days. It
18 requires that you make a response within five days.

19 Because often what happens in these
09:57:43 20 situations, the requests are so onerous, or so
21 specific, particularly to an organization with 40,000
22 employees that it can't be fully responded to within
23 five days. So within five days you need to send a
24 written response telling them the status of the
09:57:56 25 request.

09:57:57 1 For example, in regards to the December
2 request -- I'm sorry, the February 10th request, which
3 was four pages long, including 15 distinct categories,
4 there's no way we could respond to that within five
09:58:08 5 days. In fact, the fifth business days. It's not even
6 just five days, your Honor.

7 On the fifth business day, we sent them
8 correspondence telling them that we anticipated a
9 further response on March 3rd. Prior to the March 3
09:58:20 10 date arriving, plaintiff's counsel filed an amended
11 petition for writ. Even though our act wasn't due
12 pursuant to our prior correspondence until March 3. On
13 March 3 we did, in fact, produce records in response to
14 that written request withholding the -- excuse me, The
09:58:44 15 Affirmative Action, Cedric Cole's offices',
16 investigative materials only. Thereafter, there was
17 litigation in regards to the search terms in the
18 breadth of our search.

19 MS. MCLETCHIE: Your Honor, this Court has
09:58:57 20 actually already determined in its orders that they did
21 not comply with NRS 239.017 --.0107. And what CCSD
22 ignores is that a meaningful response is supposed to be
23 provided within five days. And if the public entity is
24 not intending to provide documents based on a
09:59:19 25 confidentiality, they're supposed to provide specific

09:59:23 1 notice of that fact. And with --

2 THE COURT: It's the statute.

3 MS. MCLEATCHIE: -- citation to the law.

4 THE COURT: Well, there's a reason why I'm
09:59:30 5 asking that specific question. Because I'm wondering
6 if this would be a proper part of the analysis when it
7 determines whether a party requesting public documents
8 has prevailed. Because it seems to me essentially
9 this, the number of pages, ultimately, obtained whether
09:59:55 10 some is redacted or not, is not really the controlling
11 issue in determining whether someone prevailed or not.

12 Just as important too, and this is really what
13 I'm focusing on, and this is something the Court of
14 Appeals will have to grapple with. It seems to me that
10:00:18 15 if there's a failure to comply with NRS 239.0107 and
16 you don't meet the statutory requirements from that
17 point on, regardless of what information is ultimately
18 obtained pursuant to the statute, you prevail.

19 MS. MCLEATCHIE: I would agree with that, your
10:00:46 20 Honor. And I would also say it a different way. As
21 the Court pointed out earlier --

22 THE COURT: Yeah.

23 MS. MCLEATCHIE: -- the Public Records Act is
24 supposed to promote democratic principles and
10:00:57 25 transparency. And you shouldn't have to go to court to

10:00:59 1 get a meaningful response. We did. In fact, we had to
2 keep pushing and pushing to even get an adequate
3 privilege log.

4 With regard to their position that sometimes
10:01:08 5 documents may not be immediately available, for
6 example, within five days, the statute doesn't allow
7 for that, but it says you have to provide a date
8 certain. CCSD never did. And what the public
9 information officer and the IT person who were trying
10:01:23 10 to work on these requests testified to was that they
11 could not provide documents because they were told by
12 general counsel not to.

13 It's CCSD's position that they had good reason
14 not to, and that their reason was protecting employee
10:01:39 15 privacy. But they never told the RJ that, and they
16 never articulated that until we filed suit.

17 And we did get documents. Not only did we
18 get -- did we get a response via the Court ordering
19 them to respond over and over in meaningful fashion, we
10:01:53 20 got documents. They've appealed part of this Court's
21 order, but by their own framing of that appeal, it's a
22 narrow -- it's a narrow part of this Court's order.

23 At one point they represented it was only one
24 13-page document. As time went on, and we pushed and
10:02:11 25 pushed and pushed for information, we -- it turns out

10:02:13 1 that there was more documents than that. Your Honor
2 has seen them in camera, and they are now on a log.

3 But in any case, it's a relatively narrow
4 portion. They're not appealing all the orders.

10:02:22 5 They're appealing only the final order. And the Review
6 Journal necessarily prevailed and had to hire counsel
7 and competent counsel to keep fighting and keep
8 fighting this case. I'm not sure how they come up with
9 the \$300 an hour number. But --

10:02:40 10 THE COURT: I can't arbitrarily decide what
11 would be an appropriate number; right?

12 MS. MCLEATCHIE: Right. And the -- and that's
13 a -- they don't present any, any information. We
14 present -- we present information such as my

10:02:53 15 declaration about what my firm's rates are and
16 Ms. England's declaration that those -- about our
17 qualities and about the fact that the rates that we are
18 seeking are reasonable.

19 And the NPRA does allow this Court to evaluate
10:03:06 20 whether the fees and costs are reasonable. It doesn't
21 say we just get anything we ask for.

22 THE COURT: Right?

23 MS. MCLEATCHIE: It says we get our reasonable
24 attorney's fees and costs. We've introduced evidence
10:03:16 25 showing that our fees and costs were reasonable. It's

10:03:18 1 not relevant, for example, if CCSD has a contract with
2 Littler Mendelson. It's not relevant what CCSD pays
3 outside counsel.

4 With regard to Mr. Kennedy's rates, the reason
10:03:29 5 we included those was to -- was to address arguments
6 they make. These cases are simple and easy. If they
7 were simple and easy, Henderson wouldn't be hiring
8 Dennis Kennedy to litigate against me. Mr. Kennedy
9 told me that the \$520 an hour in that case was a

10:03:44 10 reduced rate. But it shows that these cases are not
11 easy and simple cases. In fact, as the Court knows, I
12 worked extremely hard to get the relief that I did get
13 from this Court.

14 We kept detailed records of our time and our
10:03:57 15 costs. We presented those to the Court. With the
16 exception of the additional briefing on the attorney's
17 fees in the supplemental jurisdictional issue that
18 we've been talking about today. But our fees and costs
19 are reasonable, your Honor. And with regard to the
10:04:12 20 block billing, I think I've addressed that as well.

21 But there is no support for just striking any block
22 billing entry. And, again, the entries that we
23 included were, in fact, very detailed which is exactly
24 what the Court needs in order to evaluate

10:04:28 25 reasonableness under Brunzell.

10:04:30 1 THE COURT: Anything else you want to add,
2 sir?

3 MR. HONEY: Couple of things. First of all --

4 THE COURT: Then you'll get the last word.

10:04:35 5 MS. MCLEITCHIE: Thank you, your Honor.

6 MR. HONEY: In regards to the block billing,
7 we didn't ask for entries to be entirely struck. We
8 asked them to be reduced consistent with other case
9 law.

10:04:43 10 And you've raised 239.0107 as an important
11 part to you. I think it's important, though, to keep
12 in mind, we had distinctly different records involved
13 here. And so if you're going to look at whether or not
14 we complied with -- the district complied with
10:04:59 15 239.0107, we need to look at the first records request
16 in December leading to the original writ filed, I
17 believe, on January 22, 2017. And then you need to
18 look at whether or not we complied with 239.0107 in
19 regards to the additional or amended records request
10:05:19 20 dated February 10 to make that determination if that is
21 as important to you as you seem to indicate.

22 Because what you're going to see --

23 THE COURT: Well, what I think is it -- well
24 if you read the statute, all the statute says the
10:05:33 25 requester prevails; right? So if you get some records,

10:05:37 1 then I have to make a determination as to whether or
2 not the fee request is reasonable. That's what it
3 says, but I was looking at it more from this
4 perspective, if you -- if say, hypothetically, the
10:05:51 5 government entity failed to comply with the initial
6 request timely, does that prevent them from arguing on
7 some level that the requester didn't prevail. That's
8 really and truly what I was focusing on, you know.
9 Because it seems to me before you -- if you're
10:06:12 10 compliant, and, say, hypothetically, in this case a
11 hundred pages of records were produced, and at the end
12 of the day, I made a determination that, Hey, that's
13 all they had to produce, and there was no need, and
14 they're not redacted and so on, and they complied with
10:06:31 15 the records requirements and production under the
16 statute, maybe under those circumstances I might not
17 award attorney's fees, right?
18 MS. MCLEATCHIE: Right.
19 THE COURT: And so that's a different matter,
10:06:45 20 really and truly.
21 But I don't want to cut you off, sir. I'm
22 sorry.
23 MR. HONEY: We're fine. Thank you, your
24 Honor. Nothing further.
10:06:52 25 MS. MCLEATCHIE: Your Honor, I would just point

10:06:53 1 out with regard to the -- I'll be brief. We've been
2 here a long time I know. With regard to the second
3 request, it wasn't an entirely separate unrelated
4 request. We were concerned about the lack of apparent
10:07:06 5 searches, and so that may have been done in response to
6 the first. And so we broadened that search and
7 provided directives about where and what to search.
8 Because as it -- as it so turned out, CCSD had
9 unilaterally limited the custodian said it searched.
10:07:21 10 In addition as we now also found out, there may have
11 been document destruction while this litigation is
12 pending, which is at odds with the tack they took in
13 another public records case that I litigated against
14 the school district, your Honor.

10:07:35 15 THE COURT: Okay.

16 MR. HONEY: I have one last thing. A separate
17 matter not regarding to them. If you need to comment,
18 of course.

19 She mentioned before earlier that she was
10:07:40 20 requesting the Court in order to file additional
21 attorney's fees --

22 THE COURT: A supplement.

23 MR. HONEY: -- a supplement, yes. We object
24 to that. We stipulated after the November hearing that
10:07:49 25 she could do so. She's had over a month to do that and

10:07:54 1 has chosen not to do that in her supplement, and her
2 reply to the supplement. She's had more than ample
3 opportunity to do that. This matter has dragged on
4 long enough. And it's time to have this resolved and
10:08:05 5 move forward to the next court if need be. So...

6 MS. MCLETCHIE: Your Honor, with regard to the
7 supplement, our work on the supplemental jurisdiction
8 issue continued today in court and last week when we
9 filed a reply. I'm not sure what we could have done a
10:08:18 10 month ago in terms of submitting -- we could have
11 submitted additional fees and costs through our last
12 original briefing on the attorney's fees application,
13 but there's now been additional briefing on the
14 supplemental jurisdiction issue that the Court wanted
10:08:32 15 addressed, and I think it's appropriate and consistent
16 with the statute to fully compensate the Las Vegas
17 Review Journal for all the fees and costs incurred in
18 litigating this case including in connection with a
19 fee -- the fee and cost application. And I think that
10:08:46 20 could be simply and efficiently done by us submitting,
21 without argument, a detail showing the fees and costs
22 and allowing CCSD the opportunity to respond. We don't
23 need the opportunity to do a reply, your Honor.

24 THE COURT: Okay. This is what I'm going to
10:09:03 25 do in that regard: Number one, I'm going to permit

10:09:07 1 supplementation because if you take a look at the
2 statute, it doesn't set forth a specific timeline. It
3 just doesn't do that.

4 And, in fact, it almost stands for the
10:09:21 5 proposition that it's a matter of right. Because it
6 says the requester is entitled -- that's pretty strong
7 language, I think -- to recover his or her costs and
8 reasonable attorney's fees in the proceeding from the
9 governmental entity whose officer has custody of the
10:09:41 10 books or records.

11 And so this is what I'm going to do. How much
12 time do you need, ma'am?

13 MS. MCLEITCHIE: I could do it by Monday.

14 THE COURT: Okay. This is what we'll do.
10:09:51 15 We'll make it real simple. Number one, we're going to
16 give you -- we'll give you until a week from today.

17 A week after that, is that fine, Mr. Honey?

18 MR. HONEY: That's fine, your Honor.

19 THE COURT: Yeah. So -- and what I'll do is
10:10:03 20 this: Number one, for the record, I'm going to award
21 attorney's fees and costs. I am. I'm going to take a
22 look at the supplementation and also I'm going to take
23 a look at the fee request itself. I will apply the
24 Brunzell factors when I make that determination. And
10:10:20 25 I'm just going to go back and look at the -- sometimes

10:10:23 1 this is difficult. I feel like a forensic accountant
2 when I'm conducting this function, but I'm required to
3 do it, so I'll do that.

4 And what I'll do then, I'll set this for a
10:10:33 5 chambers decision three weeks from today. How is that?

6 MR. HONEY: Sounds good.

7 MS. MCLEATCHIE: That sounds good, your Honor.

8 Would you like me to prepare an order on
9 the -- on the -- not the amount -- the amount of the
10:10:47 10 fees and costs award, but the other issues that we
11 talked about today?

12 THE COURT: I'd just wait.

13 MS. MCLEATCHIE: Okay.

14 THE COURT: I think it's better to tie it up
10:10:52 15 in one bow.

16 MS. MCLEATCHIE: Sure. That sounds easier.

17 THE COURT: Okay. And one order. We have a
18 record that you can rely upon.

19 MS. MCLEATCHIE: Thank you. Thank you, your
10:10:59 20 Honor.

21 THE COURT: Okay.

22 MR. HONEY: Thank you, your Honor.

23 THE COURT: Enjoy your day.

24 MR. HONEY: You too.

10:11:02 25 THE COURT: And for the record, I'm not making

10:11:05 1 a bad-faith determination.

2 MS. MCLEATCHIE: Understood.

3 MR. HONEY: Correct.

4 THE COURT: Got it?

10:11:09 5 MS. MCLEATCHIE: Understood.

6 MR. HONEY: Understood.

7 THE COURT: Okay.

8 MR. HONEY: Thank you.

9

10 (Proceedings were concluded.)

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16
17 _____
18 PEGGY ISOM, RMR, CCR 541
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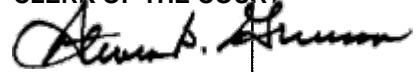
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12/16 23/11 28/14 41/20</p> <p>V</p> <p>various [1] 28/3</p>	<p>VEGAS [15] 1/9 2/5 2/13 3/1 3/8 3/15 4/5 4/16 6/19 7/15 8/5 9/23 18/23 26/23 41/16</p> <p>versatility [1] 25/22</p> <p>versus [4] 3/8 4/20 5/1 21/19</p> <p>very [14] 6/15 15/14 18/5 19/12 19/13 20/9 25/24 25/25 26/4 26/5 26/5 26/25 27/13 37/23</p> <p>via [1] 35/18</p> <p>vicarious [1] 6/5</p> <p>view [2] 24/5 28/12</p> <p>vote [2] 19/16 19/23</p> <p>Voter [1] 19/17</p> <p>W</p> <p>wade [1] 10/19</p> <p>wait [2] 11/21 43/12</p> <p>want [14] 10/2 10/18 12/24 15/5 20/20 21/6 21/13 21/14 22/4 22/17 31/24 32/14 38/1 39/21</p> <p>wanted [2] 18/3 41/14</p> <p>was [43] 6/14 8/1 8/18 9/4 11/11 11/12 11/15 11/16 11/17 11/19 11/21 11/21 11/22 11/22 12/3 12/4 15/10 18/3 21/19 21/20 22/11 23/22 26/17 27/6 27/20 28/12 29/7 29/19 31/5 31/25 33/3 33/16 35/10 35/14 35/23 36/1 37/5 37/5 37/9 39/3 39/8 39/13 40/19</p> <p>wasn't [3] 11/25 33/11 40/3</p> <p>water [1] 10/19</p> <p>way [5] 7/20 15/9 20/10 33/4 34/20</p> <p>we [89]</p> <p>we'll [7] 8/14 8/14 8/15 17/5 42/14 42/15 42/16</p>	<p>we're [12] 3/6 9/17 9/20 14/25 18/25 23/1 23/18 26/12 28/15 28/17 39/23 42/15</p> <p>we've [16] 10/3 15/8 23/20 24/1 24/3 25/17 25/24 26/4 26/5 26/7 26/11 26/15 27/1 36/24 37/18 40/1</p> <p>week [4] 22/13 41/8 42/16 42/17</p> <p>weeks [1] 43/5</p> <p>well [13] 9/14 11/22 11/25 12/22 19/2 19/4 26/4 26/8 28/24 34/4 37/20 38/23 38/23</p> <p>went [1] 35/24</p> <p>were [28] 6/23 6/23 7/1 8/21 8/21 8/22 9/7 11/1 11/14 16/20 16/21 23/11 23/13 26/22 28/5 28/20 30/13 30/17 32/7 35/9 35/11 36/25 37/7 37/23 39/11 40/4 44/10 45/8</p> <p>weren't [3] 23/8 23/17 23/24</p> <p>WEST [1] 2/12</p> <p>what [59]</p> <p>when [18] 7/9 10/17 10/21 11/14 13/10 13/21 15/20 16/4 18/19 20/16 20/21 23/13 24/10 31/8 34/6 41/8 42/24 43/2</p> <p>where [5] 19/19 21/8 27/19 27/19 40/7</p> <p>WHEREOF [1] 45/13</p> <p>whether [18] 3/22 4/24 7/22 19/23 19/23 20/22 22/21 22/24 23/1 27/19 29/16 34/7 34/9 34/11 36/20 38/13 38/18 39/1</p> <p>which [16] 5/1 6/16 7/2 11/19 15/8 17/6 18/20 18/22 21/19 21/20 24/3 30/7 31/14 33/2</p>	<p>37/23 40/12</p> <p>while [5] 5/8 6/19 24/4 26/24 40/11</p> <p>who [7] 9/9 15/23 17/23 18/10 25/3 31/15 35/9</p> <p>who's [1] 25/15</p> <p>whole [1] 12/5</p> <p>wholly [1] 29/9</p> <p>whom [1] 16/3</p> <p>whose [3] 13/8 17/14 42/9</p> <p>why [5] 9/15 14/5 15/19 19/21 34/4</p> <p>will [6] 7/1 21/23 22/11 22/19 34/14 42/23</p> <p>WILLIAMS [1] 1/18</p> <p>wish [1] 28/14</p> <p>withholding [2] 31/2 33/14</p> <p>within [16] 6/17 8/3 8/11 8/13 18/12 24/7 31/10 31/25 32/6 32/17 32/18 32/22 32/23 33/4 33/23 35/6</p> <p>without [1] 41/21</p> <p>WITNESS [1] 45/13</p> <p>won't [1] 13/23</p> <p>wondering [1] 34/5</p> <p>word [1] 38/4</p> <p>work [11] 24/2 25/18 26/1 27/1 27/6 27/7 28/3 28/18 30/1 35/10 41/7</p> <p>worked [2] 28/5 37/12</p> <p>working [3] 27/9 28/2 32/7</p> <p>worth [1] 26/12</p> <p>would [28] 6/10 6/21 7/6 7/6 9/2 9/6 9/9 9/10 9/16 13/12 19/6 21/10 22/14 22/18 26/14 27/9 29/15 29/22 29/23 30/9 30/25 31/7 34/6 34/19 34/20 36/11 39/25 43/8</p> <p>wouldn't [2] 7/11 37/7</p> <p>writ [2] 33/11 38/16</p>
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W written [4] 6/12 31/17 32/24 33/14 wrong [1] 27/21 Y Yeah [4] 10/6 21/13 34/22 42/19 Year [1] 3/15 yes [6] 4/3 4/22 5/4 15/1 32/16 40/23 you [83] you'll [1] 38/4 you're [6] 9/22 19/6 19/22 38/13 38/22 39/9 you've [1] 38/10 your [43] 3/11 3/14 3/25 4/10 4/22 5/4 5/11 5/19 5/24 7/14 9/22 10/7 10/14 10/23 11/4 11/9 11/11 13/13 17/20 19/3 21/11 22/6 22/9 28/24 29/24 30/20 32/12 33/6 33/19 34/19 36/1 37/19 38/5 39/23 39/25 40/14 41/6 41/23 42/18 43/7 43/19 43/22 43/23				
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1 **SUPPL**

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

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Email: maggie@nvlitigation.com

Counsel for Petitioner

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

10
11 Petitioner,

Dept. No.: XVI

12 vs.

**PETITIONER LAS VEGAS
REVIEW-JOURNAL'S
SUPPLEMENT TO MOTION FOR
ATTORNEY'S FEES AND COSTS**

13 CLARK COUNTY SCHOOL DISTRICT,

14
15 Respondent.

16
17 Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through
18 its undersigned counsel, hereby supplements its Motion for Fees and Costs (the "Motion").
19 Attached hereto as **Exhibit 1** is detail for time expended on the district court matter but not
20 including in the motion filed on October 3, 2017. Attached hereto as **Exhibit 2** is detail for
21 costs expended on the district court matter but not including in the motion filed on October
22 3, 2017. No compensation for fees and costs on matters pertaining to the appeal of this
23 Court's July 11, 2017 Order Granting Writ of Mandamus as to Withheld Records and
24 Requiring Depositions is included. As set forth in the declaration attached hereto as **Exhibit**
25 **3**, these fees and costs were reasonably incurred in connection with the fee motion in this
26 case as well as the associated briefing regarding jurisdictional issues. Further, the
27 undersigned exercised billing judgment in structuring the work, and also made reductions
28 to certain entries.

For the reasons set forth in the Motion and associated briefing, as well as for the reasons discussed at the hearings on the Motion, the Review-Journal is entitled to these fees under Nevada's Public Records Act. Nev. Rev. Stat. § 239.011(2) ("... If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.")

The totals requested for fees and costs in this matter, exclusive of appeal¹ are as follows:

<u>Item</u>	<u>Amount</u>
Fees included in Motion	\$101,367.50
Fees detailed in Exhibit 1 hereto	\$19,542.50
Costs included in Motion	\$4,330.87
Costs detailed in Exhibit 2 hereto	\$508.13
TOTAL	\$125,749.00

DATED this 11th day of January, 2018.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

701 East Bridger Ave., Suite 520

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Email: maggie@nvlitigation.com

Counsel for Petitioner

¹ The Review-Journal reserves the right to seek additional fees associated with the Coroner's appeal.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2018, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing PETITIONER LAS VEGAS REVIEW-JOURNAL'S SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES AND COSTS 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.

I hereby further certify that on the 11th day of January, 2018, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing PETITIONER LAS VEGAS REVIEW-JOURNAL'S SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES AND COSTS 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 MCLETCHIE SHELL LLC

TABLE OF CONTENTS	
Exhibit	Description
1	Attorney's Supplemental Fees
2	Attorney's Supplemental Costs and Expenses
3	Declaration of Margaret A. McLetchie

EXHIBIT 1

MCLETCHE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
9/19/17	8.5	Alina Shell	\$ 350.00	Resume drafting motion for attorney's fees and costs. Attention to identifying exhibits in support of motion and direct staff re same. Review exhibits and declaration of Ms. McLetchie.	\$2,975.00	\$1,500.00	\$1,475.00
9/19/17	0.6	Alina Shell	\$ 350.00	Attention to drafting declaration in support of rates for Kathy England. Phone calls with CCSD counsel Ms. Hanna regarding stipulation to extend deadline for filing motion for attorney fees. Confer with Ms. McLetchie re same.	\$210.00	\$0.00	\$210.00
9/19/17	1.6	Margaret McLetchie	\$ 450.00	Review and provide substantive revisions to motion for fees and associated documents (including review/revise/approval of declaration).	\$720.00	\$0.00	\$720.00
9/19/17	0.8	Leo Wolpert	\$ 175.00	Edit and proofread motion for attorney fees	\$140.00	\$140.00	\$0.00
9/19/17	3.2	Pharan Burchfield	\$ 150.00	Prepare appendix of exhibits (declarations and calculate fees and costs) in support of Motion for Attorney's Fees. Finalize Motion for Attorney's Fees. File and serve/mail all re same.	\$480.00	\$0.00	\$480.00
9/20/17	0.2	Alina Shell	\$ 350.00	Edit and proofread Errata to appendix of exhibits in support of motion for attorney's fees and costs.	\$70.00	\$70.00	\$0.00
9/20/17	0.1	Pharan Burchfield	\$ 150.00	Draft, file, incorporate revisions to, and serve (electronic) Errata to Appendix of Exhibits in Support of Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs.	\$15.00	\$15.00	\$0.00

MCLETCHE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
9/20/17	0.1	Pharan Burchfield	\$ 150.00	Email clients file-stamped copies of Motion for Attorney's Fees and its Appendix of Exhibits; review file-stamped version of Motion for Attorney's Fees and calculate upcoming deadlines and calendar accordingly.	\$15.00	\$0.00	\$15.00
9/26/17	0.2	Margaret McLetchie	\$ 450.00	Emails with Mr. Honey re scheduling re attorney fee hearing, and possible resolution of same	\$90.00	\$0.00	\$90.00
10/3/17	0.2	Alina Shell	\$ 350.00	Phone call with Mr. Honey regarding stipulation and confusion over same. Draft and send email to Mr. Honey memorializing conversation.	\$70.00	\$70.00	\$0.00
10/3/17	0.2	Alina Shell	\$ 350.00	Attention to revising stipulation.	\$70.00	\$70.00	\$0.00
10/3/17	0.1	Alina Shell	\$ 350.00	Phone call to Adam Honey regarding error in caption of our motion for attorney's fees and costs/motion for bad faith finding	\$35.00	\$35.00	\$0.00
10/3/17	0.3	Margaret McLetchie	\$ 450.00	Revise stipulation; attention to errata.	\$135.00	\$135.00	\$0.00
10/3/17	0.3	Pharan Burchfield	\$ 150.00	Draft Errata and corrected Motion for Attorney's Fees. File/serve re same.	\$45.00	\$45.00	\$0.00
10/4/17	0.1	Alina Shell	\$ 350.00	Correct proposed order. Sign for pickup by CCSD runner.	\$35.00	\$35.00	\$0.00
10/4/17	0.2	Margaret McLetchie	\$ 450.00	Attention to stipulation re hearing date / schedule for briefing on motion for attorney fees and motion to find CCSD in bad faith.	\$90.00	\$90.00	\$0.00
10/13/17	0.1	Alina Shell	\$ 350.00	Respond to email from Adam Honey regarding stipulation.	\$35.00	\$35.00	\$0.00
10/31/17	0.2	Margaret McLetchie	\$ 450.00	Review opposition to motion for fees and costs.	\$90.00	\$90.00	\$0.00

MCLETCHIE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
11/8/17	0.4	Alina Shell	\$ 350.00	Review opposition to motion for attorney's fees and costs. Compare to opposition filed by DA in that PRA case to verify CCSD counsel's copying of same. Discuss reply strategy with Ms. McLetchie.	\$140.00	\$0.00	\$140.00
11/9/17	2.5	Alina Shell	\$ 350.00	Begin drafting reply to opposition to motion for attorney's fees and costs: draft section re arguments from CCSD regarding "bad faith" and NRS 239.011.	\$875.00	\$0.00	\$875.00
11/10/17	4.1	Alina Shell	\$ 350.00	Continued work on reply to opposition to motion for fees and costs: finish argument regarding "bad faith" and NRS 239.011 and address other arguments in CCSD Opposition.	\$1,435.00	\$0.00	\$1,435.00
11/10/17	0.2	Margaret McLetchie	\$ 450.00	Confer with Ms. Shell re rate issues raised in opposition and how to address.	\$90.00	\$0.00	\$90.00
11/12/17	1.4	Alina Shell	\$ 350.00	Resume drafting reply to opposition to motion for attorney's fees: address arguments regarding block billing, prevailing party, and bad faith.	\$490.00	\$0.00	\$490.00
11/13/17	0.2	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, conduct further research regarding compensation for paralegals and support staff to address CCSD's arguments in opposition to motion for attorney's fees and costs.	\$70.00	\$0.00	\$70.00

MCLETCHE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
11/13/17	6.1	Margaret McLetchie	\$ 450.00	Review and revise reply to opposition to motion for fees (ensure all arguments are addressed; confer with Ms. Shell re strategy; research law re “block billing” and incorporate; expand policy arguments/ NRS 239.001 arguments against reading bad faith requirement into NPRA provision for fees).	\$2,745.00	\$0.00	\$2,745.00
11/13/17	0.6	Alina Shell	\$ 350.00	Per Ms. McLetchie’s direction, review transcripts from hearings on petition and amended petition for facts to include regarding discussions of redactions to produced records.	\$210.00	\$0.00	\$210.00
11/13/17	0.1	Alina Shell	\$ 350.00	Attention to finding legal citations regarding “prevailing party” and entitlement to fees for work performed on issues where party did not prevail for inclusion in reply to opposition to motion for attorney’s fees and costs.	\$35.00	\$0.00	\$35.00
11/13/17	0.3	Alina Shell	\$ 350.00	Incorporate revisions and edits to reply to opposition to motion for attorney’s fees. Email same to Ms. Burchfield to finalize.	\$105.00	\$0.00	\$105.00
11/13/17	1.8	Pharan Burchfield	\$ 150.00	Prepare and draft exhibits and declaration; finalize, file and serve/mail Reply re Motion for Attorney’s Fees and Costs.	\$270.00	\$0.00	\$270.00
11/14/17	0.4	Admin Admin	\$ 25.00	Dropped off courtesy copy of LVRJ’s Motion for Attorney’s Fees and Costs and Motion to Find CCSD in Bad Faith at the Las Vegas Regional Justice Center: 200 Lewis Ave Las Vegas NV, 89101.	\$10.00	\$0.00	\$10.00
11/16/17	4.1	Margaret McLetchie	\$ 450.00	Prepare for and attend hearing on motion for fees.	\$1,845.00	\$0.00	\$1,845.00

MCLETCHE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
11/16/17	0.2	Margaret McLetchie	\$ 450.00	Confer with Mr. Honey re stipulation re briefing schedule on jurisdictional issues; edit draft prepared by Ms. Burchfield.	\$90.00	\$0.00	\$90.00
11/16/17	0.5	Pharan Burchfield	\$ 150.00	Draft Stipulation and Order re Supplemental Briefing Schedule for attorneys' review/edits.	\$75.00	\$0.00	\$75.00
11/20/17	0.7	Admin Admin	\$ 25.00	Picked up Stipulation and Order Regarding Supplemental Briefing Schedule at the Clark County School District: 5100 W Sahara Ave, Las Vegas, NV 89146.	\$17.50	\$0.00	\$17.50
11/20/17	0.6	Admin Admin	\$ 25.00	Dropped off Stipulation and Order Regarding Supplemental Briefing Schedule at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$15.00	\$0.00	\$15.00
11/20/17	0.4	Margaret McLetchie	\$ 450.00	Emails with A. Honey re his concerns re language in stipulation. (.1) Further edits to stipulation (.1) Send to A. Honey. (.1) Direct staff re obtaining executed copy. (.1).	\$180.00	\$0.00	\$180.00
11/20/17	0.1	Margaret McLetchie	\$ 450.00	Sign stipulation to be delivered to court.	\$45.00	\$0.00	\$45.00
11/20/17	0.3	Margaret McLetchie	\$ 450.00	Further emails with Mr. Honey (.1), further revision to stip. (.1), and emails re logistics re same. (.1)	\$135.00	\$0.00	\$135.00
11/22/17	0.3	Pharan Burchfield	\$ 150.00	File Stipulation and Order Regarding Supplemental Briefing Schedule; draft, file, and serve/mail Notice of Entry of Order re same; calendar accordingly.	\$45.00	\$0.00	\$45.00
11/28/17	0.3	Margaret McLetchie	\$ 450.00	Begin drafting of supplemental motion (introduction / framing issues).	\$135.00	\$0.00	\$135.00

MCLETCHE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
11/28/17	1.1	Margaret McLetchie	\$ 450.00	Research jurisdictional issues pertaining to motion for fees for inclusion in supplemental brief.	\$495.00	\$0.00	\$495.00
11/28/17	0.3	Margaret McLetchie	\$ 450.00	Continue framing issues and drafting introduction to motion to supplemental motion.	\$135.00	\$0.00	\$135.00
12/4/17	0.5	Alina Shell	\$ 350.00	Review email from Mr. Honey regarding appendix for appeal. Compare to documents filed with district court and email Ms. McLetchie re same.	\$175.00	\$0.00	\$175.00
12/7/17	3.1	Margaret McLetchie	\$ 450.00	Continue drafting of supplemental brief, and perform research re jurisdictional issues.	\$1,395.00	\$0.00	\$1,395.00
12/7/17	0.3	Alina Shell	\$ 350.00	Proofread and edit supplemental briefing ordered by district court regarding attorney's fees and jurisdiction.	\$105.00	\$0.00	\$105.00
12/7/17	0.1	Margaret McLetchie	\$ 450.00	Update to clients.	\$45.00	\$0.00	\$45.00
12/7/17	0.4	Pharan Burchfield	\$ 150.00	Prepare for filing; file and serve/mail Petitioner Las Vegas Review-Journal's Supplement to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith.	\$60.00	\$0.00	\$60.00
12/7/17	0.1	Margaret McLetchie	\$ 450.00	Update to clients.	\$45.00	\$0.00	\$45.00
12/19/17	1.0	Margaret McLetchie	\$ 450.00	Review CCSD's Opposition and Motion to Strike.	\$450.00	\$0.00	\$450.00
12/27/17	2.3	Alina Shell	\$ 350.00	Begin writing reply to CCSD's response to supplemental brief re attorney's fees and bad faith.	\$805.00	\$0.00	\$805.00
12/28/17	2.5	Alina Shell	\$ 350.00	Complete draft of reply to CCSD's response to supplemental briefing regarding jurisdiction over motions for attorney's fees and bad faith.	\$875.00	\$0.00	\$875.00
12/28/17	0.3	Alina Shell	\$ 350.00	Final review and proofreading of reply to response to supplement regarding attorney's fees/bad faith.	\$105.00	\$0.00	\$105.00

MCLETCHE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
12/28/17	0.4	Margaret McLetchie	\$ 450.00	Confer with Ms. Shell re approach re reply on jurisdictional issue and opposition to motion to strike; review brief and approve filing.	\$180.00	\$0.00	\$180.00
12/28/17	1.1	Leo Wolpert	\$ 175.00	Edit and proofread reply to supplemental motion and opposition to motion to strike	\$192.50	\$192.50	\$0.00
12/28/17	0.3	Pharan Burchfield	\$ 150.00	Prepare 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; file and serve/mail re same.	\$45.00	\$0.00	\$45.00
12/29/17	0.6	Admin Admin	\$ 25.00	Dropped off Judge's Courtesy Copy re: Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$15.00	\$0.00	\$15.00
12/29/17	0.2	Margaret McLetchie	\$ 450.00	Direct paralegal re providing courtesy copies to court, update to clients.	\$90.00	\$0.00	\$90.00
12/29/17	0.2	Pharan Burchfield	\$ 150.00	Create courtesy copy for Honorable Judge Williams (to be delivered on Tuesday, January 2, 2018).	\$30.00	\$0.00	\$30.00
12/29/17	0.1	Pharan Burchfield	\$ 150.00	Email clients file-stamped supplemental briefing.	\$15.00	\$0.00	\$15.00
1/3/18	1.0	Margaret McLetchie	\$ 450.00	Begin preparing for 1/4/18 argument; skim contents of binder prepared by staff.	\$450.00	\$0.00	\$450.00
1/4/18	2.3	Margaret McLetchie	\$ 450.00	Finishing preparing for argument (review briefs; review case law and check case law re statutory interpretation, block billing, and jurisdiction; prepare outline).	\$1,035.00	\$0.00	\$1,035.00

MCLETCHE SHELL

Date	Time	User	Rate	Description	Time * Rate	Reduction	Total After Reduction
1/4/18	1.9	Margaret McLetchie	\$ 450.00	Attend court hearing on supplemental briefing (re jurisdictional issue) and attorney fee application.	\$855.00	\$0.00	\$855.00
1/4/18	0.2	Margaret McLetchie	\$ 450.00	Emails to clients re outcome of hearing, next steps on attorney fee application.	\$90.00	\$0.00	\$90.00
1/10/18	0.6	Margaret McLetchie	\$ 450.00	Work with paralegal on supplement.	\$270.00	\$270.00	\$0.00
1/11/18	2.0	Margaret McLetchie	\$ 450.00	Work with paralegal on supplement.	\$900.00	\$900.00	\$0.00
1/11/18	0.9	Pharan Burchfield	\$ 150.00	Prepare supplemental fees and costs for review/approval by Ms. McLetchie; file and serve/mail re same.	\$135.00	\$135.00	\$0.00
TOTAL SUPPLEMENTAL ATTORNEY'S FEES							\$19,542.50

EXHIBIT 2

MCLECHIE SHELL

Date	Description	Total
9/19/2017	E-filing fee: Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs and Appendix of Exhibits in Support of Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs.	\$ 3.50
9/19/2017	Postage: mailing expense - Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs and Appendix of Exhibits in Support of Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs sent to opposing counsel/general counsel.	\$ 13.60
9/20/2017	E-filing fee: Errata to Appendix of Exhibits in Support of Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs.	\$ 3.50
9/30/2017	Copying Costs: September 1, 2017 - September 30, 2017: 356 pages at \$0.08 per page.	\$ 28.48
9/30/2017	Legal Research: WestLawNext - charges for 8 transactions for September 2017.	\$ 10.65
10/3/2017	E-filing fee: Errata to Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs and Corrected Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith.	\$ 3.50
10/31/2017	Copying Costs: October 1, 2017 - October 31, 2017: 211 pages at \$0.08 per page.	\$ 16.88
11/13/2017	E-filing fee: 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.	\$ 3.50
11/13/2017	Postage: mailing expense - 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 sent to general/opposing counsel.	\$ 2.45
11/20/2017	Picked up Stipulation and Order Regarding Supplemental Briefing Schedule at the Clark County School District: 5100 W Sahara Ave, Las Vegas, NV 89146. Total miles: 13.0 at \$0.535 per mile.	\$ 6.95
11/22/2017	E-filing fee: Stipulation and Order Regarding Supplemental Briefing Schedule.	\$ 3.50
11/22/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
11/22/2017	Postage: mailing expense - Notice of Entry of Stipulation and Order Regarding Supplemental Briefing Schedule sent to general/opposing counsel.	\$ 0.46
11/30/2017	Copying Costs: November 1, 2017 - November 30, 2017: 1,494 pages at \$0.08 per page.	\$119.52
11/30/2017	Legal Research: WestLawNext - charges for 101 transactions for November 2017.	\$243.55
12/7/2017	E-filing fee: Petitioner Las Vegas Review-Journal's Supplement to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith.	\$ 3.50
12/7/2017	Postage: mailing expense - Petitioner Las Vegas Review-Journal's Supplement to Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith sent to opposing/general counsel.	\$ 1.19

MCLETCHE SHELL

Date	Description	Total
12/28/2017	E-filing fee: 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.	\$ 3.50
12/28/2017	Postage: mailing expense - 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 sent to opposing/general counsel.	\$ 0.88
12/31/2017	Copying Costs: December 1, 2017 - December 31, 2017: 444 pages at \$0.08 per page.	\$ 35.52
Total Supplemental Costs and Expenses		\$508.13

EXHIBIT 3

DECLARATION OF MARGARET A. MCLETSCHIE

I, MARGARET A. MCLETSCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330, as follows:

1. I have personal knowledge of the facts set forth below, and, if called as a witness, could testify to them.

2. I am an attorney duly licensed to practice law in Nevada.

3. I am a partner at the law firm of McLetchie Shell, LLC, and I am lead counsel for the Las Vegas Review-Journal in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W.

4. I am making this declaration to provide information justifying the supplemental fee and costs request in this case, to authenticate documents attached as exhibits in support of Petitioner Las Vegas Review-Journal's Supplement to Motion for Attorney's Fees, and to verify factual representations contained in the Supplement.

5. The work performed by my firm is detailed in the summary attached to the Supplement as Exhibit 1. I certify that this bill accurately reflects work by my firm. I manage work flow at my firm and routinely review time entries made by other attorneys and staff at the firm, and attest that the entries listed reflect work in fact conducted by my firm in this matter, *less reductions made in the spirit of cooperation*.

6. I billed and structured my firm on this matter with an eye to avoiding duplicative work and using lower billing attorneys (or staff people) wherever possible. At the time my office performed work in this matter, I believed the work we were all doing was reasonably necessary to protect and further the interests of this client.

7. As the partner at my firm responsible for this matter, I have carefully reviewed the billing statement and corrected any errors. I also exercised my billing judgment and deducted and/or removed a number of entries to err on the side of avoiding billing for *potentially duplicative* work—and in the spirit of cooperation.

8. I exercised appropriate billing judgment and structured work on this case to maximize efficiencies, and the hours listed in the fee request are neither duplicative,

unnecessary nor excessive.

9. To keep billing as low as possible, Ms. Shell conducted work where appropriate. Further, I utilized an associate attorney and a paraprofessional to perform tasks such as research and organization to assure that attorneys with higher billing rates were not billing for tasks that lower billers could perform.

10. The rates I billed in this matter are reasonable. I manage my firm, and set the firm's billing rates, which exceed those charged in this matter. Further, the work performed by my firm in this matter was more complex and required more specialized expertise than in routine matters.

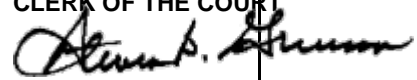
11. In all these ways, I have charged a reasonable and reduced rate for the attorneys' time.

12. I am seeking compensation for \$19,542.50 in supplemental attorney's fees incurred in this matter. (Exhibit 1.)

13. I am also seeking compensation for \$503.13 of supplemental expenses reasonably and necessarily incurred in this matter. (Exhibit 2.)

14. I certify and declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, and this declaration was executed at Las Vegas, Nevada, the 11th day of January, 2018.


MARGARET A. MCLEATCHIE



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

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

**CCSD'S RESPONSE TO LVRJ'S
SUPPLEMENT TO MOTION FOR
ATTORNEY'S FEES AND COSTS
FILED JANUARY 11, 2018**

Date of Hearing: 1/25/18

Time of Hearing: In Chambers

Clark County School District ("CCSD"), by and through its undersigned counsel of record, hereby responds to LVRJ's supplemental motion for attorney's fees and costs filed on January 11, 2018, seeking additional attorney's fees and costs.

The response is made and based on the pleadings on file herein, the attached points and authorities, and any oral argument on this matter.

Prefatory Note

CCSD incorporates all prior pleadings regarding attorney's fees and costs, bad faith and supplements thereto to this Response.

I. Statement of Relevant Facts

LVRJ filed its Motion for Attorney's Fees and Costs on October 3, 2017, pursuant to NRS 18.010(2)(b) and 239.011(2). See Motion for Attorney's Fees and Cost and Motion to Find CCSD in Bad Faith. In that motion LVRJ sought \$105,698.37 in fees and costs.

A hearing was conducted on attorney's fees and costs on January 4, 2018, at which time LVRJ sought a third opportunity to request fees after failing to do so in its previous supplemental brief filed on December 7, 2017 or LVRJ's reply of December 28, 2017, as stipulated to by the parties. See S&O dated 11/22/17 at ¶ 1. LVRJ's excuse for not complying to the stipulation and order authored by its' counsel was LVRJ counsel, "had my family in town last week, and I did not provide a supplement of our fees . . ." Ex. "1", Trans. of hrg. From 1/4/18 at 22:11-14. The preceding does not explain why the supplement for fees was not provided by December 7, 2017, as stipulated to. This court granted the LVRJ's request for a third bite at the apple and directed the parties to address the *Brunzell* factors in the additional supplemental briefs due on January 11, 2018 (LVRJ) and January 18, 2018 (CCSD). Ex. "2", Minutes from hrg. of 1/4/18.

By way of its most recent supplement filed on January 11, 2018, LVRJ now seeks an additional \$20,050.63 in attorney's fees and costs for work performed between September 19, 2017 and December 31, 2017, related solely to

1 LVRJ's seeking of fees and costs. See Suppl. to Mot. for Fees and Cost filed
2 1/11/18. \$20,050.63 is patently unreasonable in fees and costs for merely
3 seeking fees and costs. Additionally, the original \$105,698.37 originally sought by
4 LVRJ in fees and costs should be significantly reduced to accurately reflect the
5 legal acumen and time required in this matter by opposing counsel.
6

7 **II. Legal Argument**

8 **A. Under NRS 239.011(2) the attorney fees and costs sought must** 9 **be reasonable and in this instance the fees and costs sought in** 10 **the motion for attorney's fees and cost and supplement are** 11 **unreasonable given the nature of the work performed.**

12 Under NRS 239.011(2) attorney fees are only allowed if and to the degree
13 they are reasonable. In this case the fees sought are not reasonable given the
14 repetitive nature of the work and the time and skill necessary. In Nevada, "the
15 method upon which a reasonable fee is determined is subject to the discretion of
16 the court." *University of Nevada v. Tarkanian*, 110 Nev. 581, 595, 879, P.2d 1180,
17 1188 (1994). The Court may begin with any method rationally designed to
18 calculate a reasonable amount, including those based on a "lodestar" amount.
19 *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549
20 (2005). The lodestar approach involves multiplying the number of hours
21 reasonably spent on the case by a reasonable hourly rate. *Id.* at 864-65 n.98.
22 Whichever method is chosen, the court must continue its analysis by considering
23 the requested amount in light of the factors set forth in *Brunzell*, 85 Nev. at 349,
24 455 P.2d at 33; see *Shuette*, 121 Nev. at 865. Under *Brunzell*, the court should
25 consider:
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27
28

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

10
11 *Id.* In effect, a court reduces the amount of attorney's fees and costs whenever it
12 finds that the time spent and legal services rendered were excessive given the
13 nature of the action. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Given the
14 court's determination fees are warranted in an undetermined amount on January 4,
15 2018, LVRJ's attorney's fees and costs nonetheless warrant a substantial
16 reduction, because they are excessive given the work undertaken by LVRJ and in
17 regard to the original motion for fees and costs vague, as well, by virtue of the
18 block billing of distinctly separate tasks.
19

20
21 Opposing counsel has simply put forth the same straight forward
22 arguments LVRJ makes in each of these public record lawsuits. Unlike, a more
23 traditional lawsuit where petitioner or plaintiff has the burden of proof, in public
24 record matters the records are presumed public unless demonstrated otherwise
25 by respondent or defendant. As such, in this case and all other public records
26 litigation in Nevada, Respondent had the burden of proving the records sought
27 were not public records after LVRJ asserted the records should be produced.
28

1 Regardless of what defense CCSD or any other local government makes, LVRJ
2 simply argues that the provisions of NRS Chapter 239 must be construed liberally
3 pursuant to NRS 239.001(2) and cites the same half dozen Nevada Supreme
4 Court cases pertaining to public records requests. There is nothing overly
5 complicated in this argument that LVRJ has made in this and prior suits against
6 other local governments.
7

8 It is not to say the argument is right or wrong or whether this court's
9 reliance on any particular language of Chapter 239 is correct or not. Rather, the
10 point is that the LVRJ's argument were relatively simple and previously made in
11 other public records matters and did not take any great legal skill or acumen to
12 assert given the relatively short chapter at issue and the limited Nevada case law
13 on public records requests. Additionally, as to the writs, opening briefs and
14 motions for attorney's fees filed by LVRJ in this case, the same legal arguments
15 had all been previously made in recent litigation against City of Henderson and
16 the Clark County District Attorney. See Eighth J.D. Case Nos. A-16-747289-W
17 and A-14-711233-W for Writs and Motions for Fees and Costs for cut and paste
18 legal standards and arguments.
19
20

21 As where CCSD is highly regulated organization via state and federal
22 governments and its own regulations all of which must be considered to avoid
23 violation of any employees or students civil or privacy rights in responding to a
24 public records request while asserting novel defenses, LVRJ gets to simply rely on
25 the short chapter and a handful of decisions and see whether CCSD can
26 demonstrate confidentiality. Even when CCSD made novel arguments relative to
27
28

1 confidentiality, LVRJ relied upon the “liberally construed” language of NRS 239
2 rather than come up with a novel counter argument.

3 As such, LVRJ’s writs and motions are largely cut and paste documents
4 revised to fit the facts of this case. Again nothing extremely high brow and
5 certainly should not have taken the amount of time billed by LVRJ’s counsel. As
6 this case went on and numerous orders were made and motions filed, a
7 significant portion of the pleadings were repetitive in reciting factual histories and
8 arguing the same chapter and cases repeatedly. This argument is highlighted by
9 the fact that LVRJ seeks \$20,000.00 in attorney’s fees and cost for simply moving
10 for fees and costs. Clearly, the motion for fees and costs is a repetitive document
11 previously prepared by counsel in other lawsuits including public record suits
12 against Clark County and City of Henderson. *Sandy Valley*, *Blackjack Bonding*,
13 *Iodestar*, *Brunzell* and the accompanying support regarding counsels background
14 and experience is a quick cut and paste yet somehow LVRJ counsel wants to
15 overbill the entire thing to an absurd amount. Even responding to CCSD’s
16 argument as to good faith and application of NRS 239.012 is work opposing
17 counsel had previously done in *LVRJ v. Wolfson*, Case No. A-14-711233-W in
18 August 2016 wherein LVRJ replied to the same argument involving the same
19 legislative history as produced by CCSD in this case.

20 As such under *Brunzell*, the qualities of the advocate are of less
21 importance in this case because the necessary advocating was straight forward,
22 simple and repetitive of prior public record suits LVRJ has recently been involved
23 in. LVRJ did not put forth any novel positions in its writs, Opening Brief or any of
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1 its replies. It was all rather basic. This is not to say opposing counsel did not
2 perform adequately but rather that the simplicity of the work where she had no
3 burden of proof did not require her to bring much to the table. The greatest
4 criminal defense attorney in the world does not receive a large retainer to handle a
5 straight forward eviction case. The difficulty and intricacy of the work was not
6 great for LVRJ due to the nature of Nevada's public records law and the limited
7 case law available. For the same reasons as stated above, the third factor under
8 *Brunzell*, the actual work performed by counsel, was not complex or overly time
9 consuming. The fact opposing counsel chose to cite to hearsay such as emails
10 and phone calls and create declarations as to the same and attach the same to
11 her briefs does not make the work complex or unique to these set of facts. Rather
12 it is just a way to unreasonably drive up fees. At the end of the day, none of the
13 emails or declarations swayed the court to order disclosure of records or award
14 fees.
15

16
17
18 Finally, the benefit of this lawsuit was minimal. Trustee Child's alleged
19 misconduct have been published by the LVRJ going all the way back to July 2016.
20 In December 2016, prior to the instigation LVRJ's writ, LVRJ had already received
21 the guidelines for trustee visits and the recommendations from the Office of
22 Diversity and Affirmative Action from October 2016. LVRJ published 6 articles in
23 December 2016, alone based on those documents without any public records
24 having been disclosed or any litigation filed. Thus, the news story was already in
25 the public domain prior to litigation and the later articles merely added details to
26 what was already out in the open.
27
28

1 **III. Conclusion**

2 CCSD respectfully, asks this Court to substantially reduce the attorney's
3 fees and costs to a reasonable amount not to exceed \$50,348.00 in attorney's
4 fees and \$3,343.55 in costs.
5

6 DATED this 18th day of January, 2018.

7 CLARK COUNTY SCHOOL DISTRICT

8
9 /s/ Adam Honey

10 Carlos McDade, Nevada State Bar No. 11205
11 Adam Honey, Nevada State Bar No. 9588
12 Office of the General Counsel
13 Counsel for Respondent, Clark County School District

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on the 18th day of January, 2018, I served a true
16 and correct copy of the foregoing **CCSD'S RESPONSE TO LVRJ'S**
17 **SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES AND COSTS FILED**
18 **JANUARY 11, 2018** via electronic filing and electronic service through the EFP
19 Vendor System to all registered parties pursuant to the order for electronic filing
20 and service.
21

22
23 Margaret A. McLetchie, Esq.
24 MCLETCHIE SHELL LLC
25 701 East Bridger Avenue, Suite 520
26 Las Vegas, NV 89101

27 /s/Christina M. Reeves

28 AN EMPLOYEE OF THE OFFICE OF THE
GENERAL COUNSEL-CCSD

EXHIBIT “1”

1 CASE NO. A-17-750151-W

2 DOCKET U

3 DEPT. 16

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9

LAS VEGAS REVIEW JOURNAL,

)

10

Plaintiff,

)

11

vs.

)

12

CLARK COUNTY SCHOOL DISTRICT,

)

13

Defendant.

)

14

15

REPORTER'S TRANSCRIPT

16

OF

17

HEARING: MOTIONS

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED THURSDAY, JANUARY 4, 2018

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23

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REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

25

09:44:30 1 statutory scheme, I've set forth that on the record.
2 But bad faith is not a requirement to award attorney's
3 fees pursuant to the statutory scheme. And that's my
4 decision. I just want everybody to know that. I think
09:44:49 5 it's pretty clear.

6 MS. MCLETCHIE: Understood, your Honor.

7 THE COURT: So let's go to the award of
8 attorney's fees in general.

9 MS. MCLETCHIE: Your Honor, we submitted
09:44:56 10 detail on our attorney's fees in our original
11 application. I will apologize. I was intending to
12 provide a supplement. I had my family in town last
13 week, and I did not provide a supplement of our fees
14 that included the supplemental briefing. And I would
09:45:11 15 like the opportunity to do so to submit just a detail
16 showing additional time. Allow CCSD to respond to
17 that. We don't need to do a reply. But I do want -- I
18 would like the opportunity to do that.

19 But I will now address the merits of the
09:45:28 20 application. The Court has already discussed the fact
21 that whether to award fees and costs is not
22 discretionary. The Court is required to award
23 reasonable fees and costs. And so the only question
24 today is whether or not the fees and costs that we have
09:45:44 25 set forth are reasonable.

EXHIBIT “2”

**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**REPORTER:** Peggy Isom**PARTIES** Honey, Adam

Attorney for Defendant

PRESENT: McLetchie, Margaret A.

Attorney for Plaintiff

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,

PRINT DATE: 01/05/2018

Page 1 of 2

Minutes Date: January 04, 2018

2018, Defendant's response due on or before January 18, 2018; Court will provide a chambers decision on or before January 25, 2018.

A-17-750151-W

**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)

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

HEARD BY: Williams, Timothy C.

COURTROOM: CHAMBERS

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.
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.

PRINT DATE: 02/23/2018

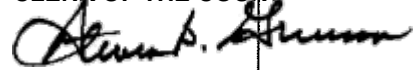
Page 1 of 2

Minutes Date: February 23, 2018

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



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 22nd 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 22nd 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 22nd 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 22nd 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
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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
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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 ¹
Alina M. Shell	88.2	\$350.00	\$30,065.00 ²
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
Total Fees Requested			\$101,367.50

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

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

² 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.

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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.

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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

1 72. The final *Brunzell* factor requires this Court to consider “the result:
2 whether the attorney was successful and what benefits were derived.” *Brunzell*, 85 Nev. at
3 349, 455 P. 2d at 33.

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

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

10 75. Having considered the *Brunzell* factors, and having considered the papers
11 and pleadings on file in this matter, including the documentation provided by the Review-
12 Journal in support of its Motion for Attorney’s Fees and Costs, the Court finds the Review-
13 Journal is entitled to all its attorney’s fees and costs through January 11, 2018 in the sum of
14 \$125,241.37.

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

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

18 **III.**

19 **ORDER**

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

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

27 ///

28 ///

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

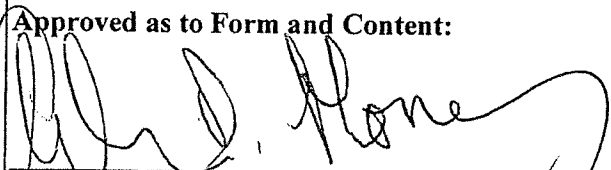
3 IT IS SO ORDERED this 19th day of March, 2018.

4
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6 
7 HONORABLE JUDGE TIMOTHY C. WILLIAMS
8 

9 Respectfully submitted,

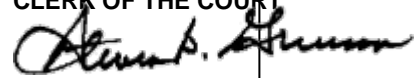
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11 
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20 *Counsel for Petitioner, Las Vegas Review-Journal*

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
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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

HEARING DATE: _____

HEARING TIME: _____

**MOTION TO STAY EXECUTION
AND ENFORCEMENT OF
ORDER GRANTING
ATTORNEY'S FEES AND COSTS
PENDING APPEAL**

CCSD moves this Court for a stay of the judgment pending appeal. NRCP 62(d), 62(e). This Court should enter the stay without bond both because NRCP 62(e) exempts CCSD from the bond requirement and the considerations in *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005), call for waiver of bond.

NOTICE OF MOTION

TO: PETITIONER LAS VEGAS REVIEW-JOURNAL; and

TO: THEIR COUNSEL OF RECORD:

1
2 PLEASE TAKE NOTICE that on the 8th day of May, 2018,
3 CLARK COUNTY SCHOOL DISTRICT ("District"), by and through its legal
4 counsel, CARLOS MCDADE, General Counsel, and ADAM HONEY, Assistant
5 General Counsel, will move at the hour of 9:00 a.m., or as soon thereafter as
6 counsel can be heard, before Department XVI, for an order to stay enforcement
7 of this Court's Order, filed on March 22, 2018, Granting Petitioner's Motion for
8 Attorney's Fees and Costs, pending appeal.
9

10 DATED this 2nd day of April, 2018.

11 Respectfully Submitted,

12 CLARK COUNTY SCHOOL DISTRICT
13 OFFICE OF THE GENERAL COUNSEL

14 /s/ Adam Honey

15 Carlos McDade, Nevada State Bar No. 11205

16 Adam Honey, Nevada State Bar No. 9588

17 5100 W. Sahara Avenue

18 Las Vegas, NV 89146

19 *Counsel for Respondent, Clark County School District*

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MEMORANDUM OF POINTS AND AUTHORITIES

Normally, a judgment debtor is entitled as a matter of right to a stay of execution on a money judgment upon posting a supersedeas bond pursuant to NRCP 629d). Where the judgment debtor is the State or a political subdivision, however, NRCP 62(e) expressly waives the bond requirement. Because school districts are instrumentalities of the State (NRS 386.010), CCSD is entitled under NRCP 62(e) to a stay of execution without a bond.

1 Even if CCSD did not fall within NRCP 62(e), this Court should enter such
2 a stay in its discretion. A stay without making the public body post a bond serves
3 the purposed of Rule 62, maintaining the status quo while avoiding irreparable
4 injury to the governmental body involved. See *Nelson v. Heer*, 121 Nev. 832,
5 834 & n. 4, 122 P.3d 1252, 1253 & n. 4 (2005) (expressly “disavow[ing]” any
6 contrary implication previously made in *State ex rel. PSC v. District Court*, 94
7 Nev. 42, 44-46, 574 P. 2d 272, 273-74 (1978)).
8

9
10 **I.
CCSD is Entitled to a Stay without Posting A
Supersedes Bond Pursuant to Rule 62(e)**

11 The majority of courts read Rules 62(d) and Rule 62(e) together to that that
12 when an exempt governmental entity seeks a stay of execution of a money
13 judgment, the stay is automatic upon application therefor.
14

15 **A. NRCP 62(e) Exempts Governmental Entities from the Obligation
to Post Security**

16 While the decision to grant a stay on appeal without a supersedeas bond
17 is generally within the district court’s discretion, see *Nelson v. Heer* at 834, the
18 rules provide for such a stay for governmental entities. NRCP 62(e) provides:
19

20 When an appeal is taken by the State or by any county, city or town
21 with the State, or an officer of agency thereof, no bond, obligation,
22 or other security shall be required from the appellant.
23 NRCP 62(e).

24 This is a broad and sweeping rule, applying not only to the State, itself, but
25 all counties, cities, towns, as well as all their agencies. It even includes the
26 officers and employees of every type of State, county, city or town agency. With
27 a rule so encompassing, it would be counterintuitive to think that it means to
28 exclude the school district.

B. Rule 62(e) Includes County School Districts

Rule 62(e) includes all entities established by the State Legislature that exercise the sovereign function of the state, including those education entities embodied as the highest priority in the Constitution. *See generally* Nev. Const. Art. 11. As such, school districts are county and State agencies for purposes of NRCP 62(e).

1. County School Districts are Political Subdivisions of the State and Agencies of the State and their Respective Counties.

NRS 386.010(2) established that a school district is a “political subdivision of the State of Nevada who purpose is to administer the state system of public education.” As a political subdivision, CCSD is “[a] division of a state that exists primarily to discharge some function of local government.” *Black’s Law Dictionary*, “political subdivision” (10th ed. 2014); see also, *id.* at “local agency” (defining “local agency” as “[a] political subdivision of a state,” “include[ing] counties, cities, school districts, etc.”).

Other jurisdictions have held that school districts are exempt entities under analogous rules because school districts are governmental agencies. *See, e.g., Belanger v. Madera Unified Sch. Dist.*, 963 F. 2d 248, 254 (9th Cir. 1992) (stating that “school districts are agencies of the state for the local operation of the state school system”) (internal citations omitted); *Dekalb Cnty Sch. Dist. V. J.W.M.*, 807 F.2d 871 (N.D. Ga. 2006) (holding that the school district was “a county agency,’ thus entitling it to a stay without posing a supersedeas bond); *Bd. of Tr. of Hattiesburg Mun. Separate Sch. Dist. V. Gates*, 467 So. 2d 216, 219 (Miss. 1985) (holding that school districts are municipal “agencies of the state and that

1 as such are exempt from giving an appeal bond”); *Harrell v. City of Jackson*, 92
2 So. 2d 240, 244 (Miss. 1957) (stating that the “school districts are governmental
3 agencies for the education of the youth of the state, they are public bodies, not
4 private”).

5 **2. Treating CCSD as Exempt under NRCP 62(e) Follows** 6 **Prevailing Practice in Nevada**

7 Both the Nevada Supreme Court and the Eighth Judicial District Court
8 previously deemed CCSD an exempt entity under NRCP 62(e).

9 In *Clark County School District v. virtual Education Software, Inc.*, Appeal
10 No. 50313, the Nevada Supreme court acknowledged CCSD's bond-exempt
11 status by citing NRCP 62(e) in support of its grant of the stay and without
12 conditioning the stay on CCSD filing a bond or other security with the district court.
13 See Ex. A. (Order Granting Stay, March 27, 2008)).¹ Another department of this
14 Court, too, has confirmed CCSD's exempt status. In *Lloyd's Refrigeration, Inc. v.*
15 *Richardson Constr., et al.*, Case No A398694, the Court granted CCSD's request
16 for a stay without a supersedeas bond pursuant to NRCP 62(e) because “CCSD
17 is a political subdivision of the State of Nevada for which no supersedeas bond
18 need be filed by CCSD for the stay of execution to take effect.” See Ex. B (Order
19 Granting Stay of Execution of J. Against the Clark Cnty. Sch.Distr., Dec. 10,
20 2002).

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26 ¹ Although unpublished order before 2016 are not citable under NRAP 36(c)(3),
27 CCSD does not cite the order as binding or persuasive authority, only to apprise
28 this Court of the Supreme Court's practice with respect to this issue.

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1 **A. Even without Rule 62(e), Courts have Authority to Grant Stays**
2 **Without Security.**

3 “[C]ourts retain the inherent power to grant a stay in the absence of a full
4 bond,” and “a supersedeas bond should not be the judgment debtor’s sole
5 remedy.” *Nelson*, 121 Nev. At 834, 122P.3d at 1254; *McCulloch v. Jeakins*, 99
6 Nev. 122, 123, 2P.2d 302, 303 (1983) (stating that a bond securing a stay
7 pending appeal need not always be for the full amount of the judgment),
8 overruled on other grounds by *Nelson*, 121 Nev. At 833, 122 P.3d at 1252.

9 The proper considerations for a district court in determining whether
10 security necessary for a stay is (1) to maintain the status quo and (2) to protect
11 the judgment creditor pending an appeal” and prevent undue harm to the
12 judgment debtor *Nelson*, 121 Nev. At 834, 122 P.3d at 1254. Along these lines,
13 the *Nelson* court adopted five factors from the Seventh Circuit. *Nelson*, 122 Nev.
14 at 835, 122 P.3d at 1254. The five factors to consider are:

15 (1) the complexity of the collection process; (2) the amount of time
16 required to obtain a judgment after it is affirmed on appeal; (3) the
17 degree of confidence that the district court has in the availability of
18 funds to pay the judgment; (4) whether the defendant’s ability to
19 pay the judgment is so plain that the cost of a bond would be a
20 waste of money; and (5) whether the defendant is in such a
21 precarious financial situation that the requirement to post a bond
22 would place other creditors of the defendant in an insecure position.

23 *Id.* (citing *Dillon v. City of Chicago*, 866 F.2d 902, 904-05 (7th Cir. 1988)).

24 As Judge Posner noted, the cost of an appeal bond is not necessarily
25 “small change.” *N. Ind. Pub. Serv. Co. v. Carbon Cnty. Coal Co.*, 799 F.2d 265,
26 281 (7th Cir. 1986). “[I]f the district judge is satisfied that the expenditure is
27 unnecessary to protect the appellee, he does not have to insist that it be spent.”
28

1 *Id.* In that case, the defendant utility was “in no financial jeopardy” and was “not
2 about to place its assets beyond the reach of this judgment creditor.” *Id.* It was,
3 “in short, good for” the judgment. *Id.*

4 **B. The Circumstances Merit a Stay Without Bond**

5 Simply put, taxpayer money should not be spent paying bond premiums
6 and tying up funds, where petitioner need not feel any insecurity whether the
7 judgment will be paid if affirmed on appeal. The school district can serve a
8 higher policy purpose using these taxpayer dollars to educate children. An
9 application of the *Nelson* factors reinforces this conclusion.
10

11 The first two factors deal with the complexity and time involved in
12 executing after the appeal if the respondent does not post a supersedeas bond.
13 These factors are useful in determining if there would be unfair prejudice to
14 petitioner in delaying execution. This case does not present such a prejudice,
15 however, CCSD is located within the same county as the district court, and there
16 is simply no realistic argument that the school district would or even could avoid
17 paying a rightful judgment after appeal. The third and fourth factors deal with
18 financial ability and waste. This is the essential point. CCSD is capable of
19 paying the judgment, but again, taxpayer money should not be wasted to post a
20 supersedeas bond rather than perform essential governmental functions.
21

22 And the waste is appreciable. To obtain a supersedeas bond, CCSD
23 would have to pay a premium to an approved surety. Normally, moreover, a
24 judgment debtor is also required to fully collateralize the bond, which may require
25 posting funds as collateral to a separate financial institution and paying premiums
26
27
28

1 for letters of credit. These expenses tie up governmental resources and also
2 incur unreturnable expense at the same time. This is irreparable harm to the
3 school district. In the interests of the county school system and taxpayer's funds,
4 CCSD should not be required to post any bond for the stay.

5 In addition, there is no reasonable concern that CCSD would transfer or
6 dispose of all its assets in an attempt to avoid the judgment. *See Miami Intern.*
7 *Realty Co. v. Paynter*, 807 F.2d 871, 874 (10th Cir. 1986) (allowing stay
8 conditioned on injunction against disposing of assets of defendant aside from
9 normal operation of business.) The respondent is a public agency engaged in
10 the people's business. If the judgment is affirmed, CCSD will be able to satisfy it,
11 and it is not expected that petitioner will argue otherwise. There is no need to
12 incur the expense of a bond. *See N. Ind. Publ. Serv. Co.*, 799 F.2d at 281.
13

14 Under these conditions, a stay without bond is appropriate in this case
15 pursuant to either Rule 62(e) or *Nelson v. Heer*.
16

17 **IV.**
18 **CONCLUSION**

19 This Court should grant a stay pending appeal without bond.

20 DATED this 2nd day of April, 2018.

21 Respectfully Submitted,

22 CLARK COUNTY SCHOOL DISTRICT
23 OFFICE OF THE GENERAL COUNSEL

24 /s/ Adam Honey

25 Carlos McDade, Nevada State Bar No. 11205
26 Adam Honey, Nevada State Bar No. 9588
27 5100 W. Sahara Avenue
28 Las Vegas, NV 89146
Counsel for Respondent, Clark County School District

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of April, 2018, I served a true and correct copy of the foregoing **MOTION TO STAY EXECUTION AND ENFORCEMENT OF ORDER GRANTING ATTORNEY’S FEES AND COSTS PENDING APPEAL** via electronic filing and electronic service through the EFP Vendor System to all registered parties pursuant to the order for electronic filing and service.

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

/s/ Susan Gerace
AN EMPLOYEE OF THE OFFICE OF THE
GENERAL COUNSEL-CCSD

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,
A NEVADA POLITICAL SUBDIVISION,
Appellant,
vs.
VIRTUAL EDUCATION SOFTWARE,
INC., A NEVADA CORPORATION,
Respondent.

No. 50313

FILED

MAR 27 2008

TRASIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. J. Wasado
DEPUTY CLERK

ORDER GRANTING STAY

This is an appeal from a district court judgment entered on a jury verdict in a defamation action. Appellant has moved to stay execution of the district court judgment and any proceedings to enforce the judgment during the pendency of this appeal. Respondent has not opposed appellant's request for a stay.

In deciding whether to issue a stay, this court generally considers whether (1) the object of the appeal will be defeated if the stay is denied, (2) appellant will suffer irreparable or serious injury if the stay is denied, (3) respondent will suffer irreparable or serious injury if the stay is granted, and (4) appellant is likely to prevail on the merits of the appeal.¹

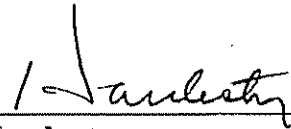
Having considered appellant's motion and supporting documentation in light of those factors, we conclude that a stay pending our consideration of the appeal is warranted.² Accordingly, we stay

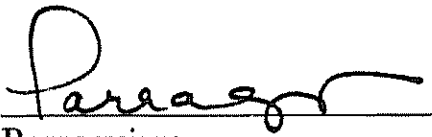
¹See NRAP 8; Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

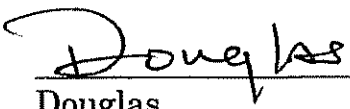
²NRAP 8; NRCP 62(e).

execution of the district court's judgment entered on August 27, 2007,
pending this court's resolution of this appeal.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Valorie Vega, District Judge
Clark County School District Legal Department
Jolley Urga Wirth Woodbury & Standish
Eighth District Court Clerk

EXHIBIT B

DEC 10 2002

ORIGINAL

FILED

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Shirley D. Langione
CLERK

1 **ORDR**

2 Alan J. Lefebvre, SBN 848
3 LEFEBVRE & ASSOCIATES, CHTD.
4 1424 S. Jones Blvd.
5 Las Vegas, NV 89146
6 Telephone: 702-383-8668
7 Facsimile: 702-383-6828

8 ATTORNEYS FOR THE CLARK
9 COUNTY SCHOOL DISTRICT

DISTRICT COURT

CLARK COUNTY, NEVADA

10 LLOYD'S REFRIGERATION, INC., a
11 Nevada corporation,

12 Plaintiff,

13 v.

14 RICHARDSON CONSTRUCTION, INC., a
15 Nevada corporation; HARTFORD FIRE
16 INSURANCE COMPANY, and DOES I
17 through X, inclusive,

18 Defendants.

19 RICHARDSON CONSTRUCTION, INC.,
20 a Nevada corporation,

21 Counterclaimant,

22 v.

23 LLOYD'S REFRIGERATION, INC., a
24 Nevada corporation,

25 Counterdefendant.

26 RICHARDSON CONSTRUCTION, INC., a
27 Nevada corporation, and HARTFORD FIRE
28 INSURANCE COMPANY,

Third Party Plaintiffs,

v.

CLARK COUNTY SCHOOL DISTRICT,
DOES I through X, inclusive,

Third Party Defendant.

CASE NO. A398694
DEPT. NO. XII

**ORDER GRANTING STAY OF
EXECUTION OF JUDGMENT
AGAINST THE CLARK COUNTY
SCHOOL DISTRICT**

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ATTORNEYS AT LAW
1424 SOUTH JONES BLVD.
LAS VEGAS, NEVADA 89146
TELEPHONE (702) 383-8668
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COUNTY CLERK

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1 This matter came on for hearing on December 10, 2002, before the Court upon an
2 Order Shortening Time for a stay pursuant to Rule 62 of the Nevada Rules of Civil Procedure, Alan
3 J. Lefebvre appeared on behalf of the Third-Party Defendant, the Clark County School District,
4 Bradley M. Ballard, Esq. appeared on behalf of the Plaintiff, Lloyd's Refrigeration, Inc., and Eric
5 L. Abbott, Esq. appeared on behalf of the Third-Party Plaintiff, Richardson Construction, Inc., the
6 Court having thoroughly reviewed the papers and submissions by the parties, having entertained
7 arguments of counsel, and otherwise being fully apprized in the premises

8 ORDERS, ADJUDGES AND DECREES that the Clark County School District's
9 Motion For Stay pursuant to Rule 62 of the Nevada Rules of Civil Procedure is granted, during the
10 pendency of an appeal and/or the disposition of any NRCP Rule 59 motions which may be filed
11 within the time allowed by law. The Court recognizes that CCSD is a political subdivision of the
12 State of Nevada for which no supersedeas bond need be filed by CCSD for the stay of execution to
13 take effect.

14 DATED this 10th day of December, 2002.

15
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17 
District Judge

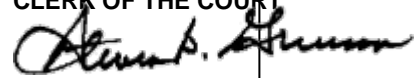
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19 SUBMITTED BY:

20 LEFEBVRE & ASSOCIATES, CHTD.

21
22
23 BY: 

24 Alan J. Lefebvre
1424 S. Jones Blvd.
Las Vegas, NV 89146

25 ATTORNEYS FOR THE CLARK
26 COUNTY SCHOOL DISTRICT
27
28



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Counsel for Respondent

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 22nd 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 2nd day of April, 2018.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

/s/ Adam Honey

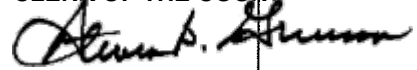
Carlos McDade, Nevada State Bar No. 11205
Adam Honey, Nevada State Bar No. 9588
Counsel for Respondent, Clark County School District

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

CCSD1177

EXHIBIT A



1 **NEOJ**

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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 22nd 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 22nd 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 22nd 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 22nd 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 MCLETTCHIE SHELL LLC

EXHIBIT 1



1 **FFCL**
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
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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

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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

1 CCSD's Motion to Stay.
2
3 27. On July 27, 2017, CCSD filed an Emergency Motion For Stay Pending
4 Appeal with the Nevada Supreme Court; that same day, the Supreme Court assigned CCSD's
5 Emergency Motion to the Court of Appeals.

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

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

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

11 30. In its Motion and supporting exhibits, the Review-Journal requested
12 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 ¹
Alina M. Shell	88.2	\$350.00	\$30,065.00 ²
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
Total Fees Requested			\$101,367.50

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

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

21 33. CCSD filed an Opposition to the Review-Journal's Motion on October 31,
22 2017, and the Review-Journal filed a Reply on November 13, 2017.

23 34. In its Opposition, CCSD asserted that pursuant to Nev. Rev. Stat. §
24 239.012, a provision of the NPRA which provides immunity from damages for public
25

26 ¹ This total reflected voluntary reductions for some time entries, made by counsel for the
27 Review-Journal in her billing discretion.

28 ² 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.

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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.

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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 72. The final *Brunzell* factor requires this Court to consider “the result:
2 whether the attorney was successful and what benefits were derived.” *Brunzell*, 85 Nev. at
3 349, 455 P. 2d at 33.

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

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

10 75. Having considered the *Brunzell* factors, and having considered the papers
11 and pleadings on file in this matter, including the documentation provided by the Review-
12 Journal in support of its Motion for Attorney’s Fees and Costs, the Court finds the Review-
13 Journal is entitled to all its attorney’s fees and costs through January 11, 2018 in the sum of
14 \$125,241.37.

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

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

18 **III.**

19 **ORDER**

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

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

27 ///

28 ///

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

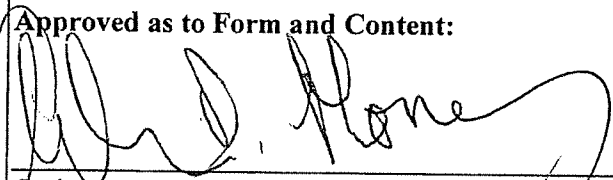
3 IT IS SO ORDERED this 19th day of March, 2018.

4
5
6 
7 HONORABLE JUDGE TIMOTHY C. WILLIAMS
8 

9 Respectfully submitted,

10
11 
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21 **Approved as to Form and Content:**

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Counsel for Respondent, Clark County School District

1 **Vol IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 **CLARK COUNTY SCHOOL**
3 **DISTRICT,**

4 Appellant.

5 vs.

6 **LAS VEGAS REVIEW-JOURNAL,**

7 Respondent.

Supreme Court No. 75534

District Court No. A750151

District Court Dept. No. XVI

Electronically Filed
Sep 07 2018 12:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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11 **APELLANT'S APPENDIX**
12 **VOLUME V**
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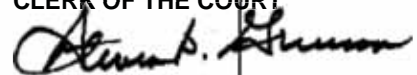
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9 *Counsel for Petitioner*

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.

**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**

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

17 Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through
18 its undersigned counsel, hereby submits this Reply to Respondent Clark County School
19 District's ("CCSD") Oppositions to the Review-Journal's Motion for Attorney's Fees and
20 Costs and Motion to Find CCSD in Bad Faith.

21 This reply is supported by the attached Memorandum of Points and Authorities,
22 any attached exhibits, the papers and pleadings already on file herein, and any oral argument
23 the Court may permit at the hearing of this Motion.

24 DATED this the 13th day of November, 2017.

25
26 */s/ Margaret A. McLetchie*

27 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

28 **MCLEATCHIE SHELL LLC**

Counsel for Petitioner

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Petitioner is entitled to attorney's fees and a finding by this Court that CCSD acted
4 in bad faith in failing to disclose the records at issue in this case. Many of CCSD's arguments
5 in its Opposition to the Review-Journal's Motion for Attorney's Fees and Costs and Motion
6 to Find CCSD in Bad Faith focus on a re-hashing of arguments it lost.¹ (*See, e.g.,* Opp.
7 ("Opp."), pp. 2:23-6:3 (addressing claims regarding the confidentiality of employee
8 information, the legal weight of CCSD Regulations, and the applicability of EEOC
9 guidelines to its assertions of confidentiality).) CCSD also attempts—for the first time in the
10 lengthy history of this case—to explain its failure to respond to the Review-Journal's records
11 request. Specifically, according to CCSD, the failure to timely provide a meaningful response
12 to the Review-Journal's December 2016 records requests was simply the result of it trying
13 to protect its employees. (Opp., pp. 6:23-7:20.) Yet, CCSD never explained this to the
14 Review-Journal prior to the initiation of this matter, and it is notable that CCSD entirely
15 ignored the Review-Journal's requests until this litigation commenced. In any case, the
16 mandates of the Nevada Public Records Act ("NPRA") are plain—pursuant to Nev. Rev.
17 Stat. § 239.0107(1)(d), CCSD had a duty to respond to a public records request within five
18 business days by either (1) producing the requested record; (2) providing a date and time

19
20 ¹ Although not germane to the issue of whether the Review-Journal is entitled to attorney's
21 fees and costs, CCSD's continued assertion that its Regulations are "laws" relies on a
22 misrepresentation of Nevada Supreme Court precedent. For example, CCSD cites *CCSD et*
23 *al. v. Beebe*, 92 Nev. 347, 550 P.2d 416 (1976) to support its proposition that CCSD
24 Regulation 4110 is a "law." (Opp., p. 5:23-24.) *Beebe*, however, did not reach such a
25 conclusion, nor was that even an issue in the appeal. Rather, in *Beebe*, the "principle issues"
26 were whether the Nevada Fair Employment Practices Act as amended by chapter 577,
27 Statutes of Nevada 1973, has nullified the Clark County School District's policy of forcing
28 the involuntary retirement of its teachers on the sole basis of age, and, if so, when such
nullification became effective." *Beebe*, 91 Nev. at 166–67, 533 P.2d at 162. Thus, the
question was whether CCSD had a *policy* in place which conflicted with Nevada *law*.
Moreover, CCSD's argument continues to ignore that Nev. Rev. Stat. § 386.350 specifically
prohibits local school boards from exercising powers that "conflict[] with the Constitution
and the laws of the State of Nevada." Thus, even the statute CCSD repeatedly relies
distinguishes between local regulations and state law.

1 when the record would be available for inspection; or (3) providing specific notice that it was
2 withholding the records. It did none of those things, which is what forced the Review-Journal
3 to file a petition pursuant to Nev. Rev. Stat. § 239.011(2). In the meantime, it is likely
4 responsive records were destroyed.

5 CCSD attempts—and fails—to rationalize the decisions it made regarding its
6 efforts to search for and preserve potentially responsive records, and its decision to
7 unilaterally limit the email accounts it searched in response to the Review-Journal's records
8 requests. (*See* Opp., p. 7:1-12.) Of course, CCSD never explained any of this to the Court,
9 despite ample opportunity to do so. Moreover, CCSD's late explanation fails to fully address
10 the fact that it did not take appropriate steps to preserve potentially responsive emails once
11 it was directed by this Court to conduct a fuller search of CCSD email accounts. This is
12 particularly egregious in light of the fact that in prior public records matters, CCSD took
13 appropriate measures to preserve potentially responsive records. (*See* Exh. 6 to Motion for
14 Attorney's Fees at p. 12:6-11 (testimony from CCSD Chief Technology Officer Dan Wray
15 regarding email preservation efforts in prior public records matter).)

16 CCSD finally argues that even if this Court were to award attorney's fees and costs
17 to the Review-Journal, those fees should be reduced because the hourly rates for the Review-
18 Journal's counsel are higher than the market rate, and should also be reduced because the
19 Review-Journal allegedly engaged in "block billing." (Opp., pp. 20:15-24:24.) As set forth
20 in the Review-Journal's Motion, and discussed below, the rates requested by counsel for the
21 Review-Journal are reasonable, fully documented, and are under market for the experience
22 brought to bear in this action. Accordingly, the Review-Journal is entitled to a full award for
23 its attorney's fees and costs.

24 II. LEGAL ARGUMENT

25 A. The Review-Journal's Entitlement to Attorneys' Fees is Clear, and Not 26 Premised on Disproving "Good Faith."

27 Although public officials are immune from *damages* pursuant to Nev. Rev. Stat. §
28 239.012 ("A public officer or employee who acts in good faith in disclosing or refusing to
disclose information and the employer of the public officer or employee are immune from

1 liability for damages, either to the requester or to the person whom the information
2 concerns”), that does not eviscerate the provisions of the NPRA which, separately and
3 plainly, provide for attorney’s fees. Nev. Rev. Stat. § 239.011(2) provides in part that “[i]f
4 the requester prevails, the requester **is entitled to** recover his or her costs and reasonable
5 attorney’s fees in the proceeding from the governmental entity whose officer has custody of
6 the book or record.” (Emphasis added.) Thus, “good faith” is irrelevant to the analysis
7 regarding entitlement to fees. And, this Court does not, contrary to CCSD’s arguments to the
8 contrary, have discretion to deny fees (Opp., p. 18): the statute plainly mandates that a
9 prevailing requested be awarded fees and costs.²

10 To read a “good faith” exception from a separate section regarding damages into
11 the provision is incorrect and inconsistent with Nev. Rev. Stat. § 239.001 (“Legislative
12 findings and declaration”) which, first and foremost reinforces the important nature of the
13 NPRA. Nev. Rev. Stat. § 239.001(1) (“[t]he purpose of this chapter is to foster democratic
14 principles by providing members of the public with access to inspect and copy public books
15 and records to the extent permitted by law”). Nev. Rev. Stat. § 239.001(2) then mandates
16 that “[t]he provisions of this chapter must be construed liberally to carry out this important
17 purpose.” The legislature also mandates that “[a]ny exemption, exception or balancing of
18 interests which limits or restricts access to public books and records by members of the public
19 must be construed narrowly.” Nev. Rev. Stat. § 239.001(3). Bootstrapping a limitation on
20 damages from one statute in the chapter into another statute addressing fees would violate
21 these legislative mandates (as well as basic rules of statutory interpretation).

22 ///

23 ///

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27 _____
28 ² Even if fees were discretionary, the Court should of course grant them to the Review-Journal
in this case.

Moreover, CCSD elides the fact that the provision regarding good faith immunity from damages specifically only refers to immunity for “[a] public officer or employee,” (i.e., an individual) whereas the provision on fees makes “governmental entities” liable for fees. Nev. Rev. Stat. § 239.005 (5) defines “governmental entity” as follows:

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

Thus, while non-elected or non-appointed officers and employees have good faith immunity from *damages*, governmental entities such as CCSD who fall within the definition of Nev. Rev. Stat. § 239.005(5) do not; in short, even if the immunity from liability provision applied, at best it only protects “[a] public employee or officer” (Nev. Rev. Stat. § 239.0112) and CCSD is neither.

CCSD also ignores the express legislative mandate contained in the NPRA to interpret the NPRA’s terms broadly to effectuate its purpose, and instead seeks to rely on outside “legislative history,” which of course does not carry the same weight. This is at odds with Nevada Supreme Court case law. As the Nevada Supreme Court has explained

When interpreting a statute, legislative intent “is the controlling factor.” *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). The starting point for determining legislative intent is the statute’s plain meaning; when a statute “is clear on its face, a court cannot go beyond the statute in determining legislative intent.” *Id.*; see also [*State v.*] *Catania*, 120 Nev. [1030] at 1033, 102 P.3d [588] at 590 (“We must attribute the plain meaning to a statute that is not ambiguous.”).

State v. Lucero, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011).

In addition, there is a broad body of case law holding that damages and fees are different. *See, e.g., Carolina Cas. Ins. Co. v. Merge Healthcare Sols. Inc.*, 728 F.3d 615, 617

(7th Cir. 2013) (“an award of attorneys’ fees differs from ‘damages.’”); *cf. City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986) (discussing whether the amount of damages recovered by a plaintiff in a civil rights matter affects the calculation of an award of attorney’s fees under 28 U.S.C. § 1988). In addition, the NPRA can be contrasted with Nevada statutory provisions such as Nev. Rev. Stat. § 40.655 which expressly defines attorneys’ fees as an element of damages. *See also Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 414, 132 P.3d 1022, 1025 (2006) (“... although NRS 40.655 allows constructional defect claimants to recover attorney fees and costs as an element of damages, NRS 40.655 does not preclude application of the penalty provisions of NRCP 68(f) and NRS 17.115(4)”; *Liu v. Christopher Homes, LLC*, 130 Nev. Adv. Op. 17, 321 P.3d 875, 878 (2014) (attorney fees may be awarded as “special damages,” but only in “limited circumstances”). Additionally, in *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 35 P.3d 964 (2001), the Nevada Supreme Court dedicated several paragraphs discussing the procedural differences between “attorney fees as a cost of litigation” and “attorney fees as foreseeable damages arising from tortious conduct or a breach of contract.” *Sandy Valley*, 117 Nev. at 956, 35 P.3d at 969. As the court explained:

Procedurally, when parties seek attorney fees as a cost of litigation, documentary evidence of the fees is presented to the trial court, generally in a post-trial motion. . . If the fees are authorized, the trial court examines the reasonableness of the fees requested and the amount of any award. Thus, when a court is requested to award attorney fees as a cost of litigation, the matter is decided based upon pleadings, affidavits and exhibits. . .

In contrast, when a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct or a breach of contract, such fees are considered special damages. They must be pleaded as special damages in the complaint pursuant to NRCP 9(g) and proved by competent evidence just as any other element of damages. . .

Id. Here, Nev. Rev. Stat. § 239.011 provides that a requester is entitled to recover his or her costs and reasonable attorney’s fees to compensate the requester for the costs of having to bring a petition to obtain public records. There is no provision indicating that he or she must request the fees as special damages, nor is there any requirement that the requester must

1 demonstrate the governmental entity from whom he or she is trying to recoup its fees and
2 costs acted in bad faith. The language of Nev. Rev. Stat. § 239.011(2) is plain: when a
3 requester prevails on a petition to force a governmental entity to comply with the mandates
4 of the NPRA, “the requester is entitled to recover his or her costs and reasonable attorney’s
5 fees in the proceeding from the governmental entity whose officer has custody of the book
6 or record.”³

7 In this case, through its failure to respond to the Review-Journal’s records requests
8 in a manner consistent with the NPRA, CCSD forced the Review-Journal to bring the instant
9 action. The Review-Journal prevailed in the action. Thus, under the plain language of Nev.
10 Rev. Stat. § 239.011(2), the Review-Journal is entitled to compensation for the fees and costs
11 it expended in this matter.

12 Further, accepting CCSD’s contorted interpretation of the NPRA to disallow fees
13 absent a finding of bad faith would run afoul of the Legislature’s mandate that the NPRA’s
14 provisions “must be construed liberally to carry out [the NPRA’s] important purpose” (Nev.
15 Rev. Stat. § 239.001(2)), which is to “foster democratic principles by providing members of
16 the public with access to inspect and copy public books and records to the extent permitted
17 by law” (Nev. Rev. Stat. § 239.001(1)). If a requester has to file suit to get an entity to respond
18 to NPRA requests and provide the public with access to records *and* has to bear its own fees
19 and costs even when it prevails as resoundingly as the Review-Journal had done in this case,
20 that would of course not foster access. Instead, it would discourage enforcement of the NPRA
21 and encourage disregard for the NPRA’s terms. Similarly, reading a bad faith requirement
22 into the NPRA’s fees and costs provision would run afoul of the Legislature’s additional
23 mandate that “[a]ny exemption, exception or balancing of interests which limits or restricts
24 access to public books and records by members of the public must be construed narrowly.”
25 Nev. Rev. Stat. § 239.001(3).

26 _____
27 ³ While the legislative history is not relevant because the statute—and even how it should be
28 applied—is clear from the text of the NPRA, the legislative history does not support CCSD’s
position.

1 This Court should therefore reject CCSD's argument that attorney's fees in a public
2 records case may only be awarded upon a finding of bad faith. In any case, as detailed below,
3 CCSD did engage in bad faith—specifically, it withheld records without explaining what and
4 why, and did so at the behest of its General Counsel's office. Indeed, it repeatedly indicated
5 it would respond further when it never intended to provide records.

6 **B. The Review-Journal is the Prevailing Party on All Claims in This Case.**

7 CCSD asserts in passing that the Review-Journal "did not prevail on all matters in
8 their entirety" in this case because the Court permitted CCSD to make some redactions to
9 the documents it eventually produced. (Opp., p. 1:22-24.) Although the Review-Journal did
10 initially request the Court order CCSD to produce the requested records in unredacted form,
11 the Review-Journal noted at the February 14, 2017 hearing on this matter that it did not
12 oppose redactions so long as CCSD met its burden under the NPRA of proving by a
13 preponderance of the evidence that its interest in nondisclosure of the redacted information
14 outweighed the public's interest in access. (*See, e.g.*, February 14, 2017 transcript, pp. 9:18-
15 10:21.) This Court held that CCSD in fact had not met its burden, and ordered CCSD to limit
16 the redactions it made to responsive records. (*Id.*, pp. 29:17-30:3.) Thus, contrary to CCSD's
17 argument, the Review-Journal did prevail on every significant issue in this litigation. *Valley*
18 *Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Moreover, in light of
19 the fact that CCSD ignored the requests, and information was withheld, it is entirely unclear
20 how the Review-Journal would have been able to specify which records could be properly
21 redacted.

22 In any case, the Review-Journal need not prevail on every single issue to be
23 considered the prevailing party (*Valley Elec. Ass'n*, 121 Nev. 7, 10, 106 P.3d 1198, 1200),
24 and where work on related issues in litigation is combined in such cases, the prevailing party
25 is entitled to be fully compensated. *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983) ("[w]here
26 a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have
27 his attorney's fee reduced simply because the district court did not adopt each contention
28 raised").

1 Accordingly, the Review-Journal is entitled to a full award of attorney’s fees.

2 **C. The Hourly Rates for Attorney and Paralegal Work Are Reasonable.**

3 *This Case Was Not Simple.*

4 CCSD also takes issue with the reasonable hourly rate counsel for the Review-
5 Journal has requested for the work performed by attorneys, a paralegal, and support staff.
6 CCSD asserts that hourly rates should be reduced because the “law surrounding the NPRA
7 is not particularly sophisticated or specialized.” CCSD then argues that the hourly rates
8 should be reduced to conform to hourly rates set by the United States District Court for the
9 District of Nevada in comparatively straightforward civil cases. (Opp., pp. 20:22-21:19.)
10 This position is contrary to CCSD’s own statements regarding the complexity of the issues
11 at play in this case. This case involved not just an analysis and application of the NPRA—as
12 CCSD’s Opposition demonstrates, this case required careful consideration of protecting the
13 rights and interests of CCSD employees and the public’s right to information regarding
14 alleged misconduct by an elected official. (Opp., pp. 2:23-4:8.) Further, while none of the
15 arguments prevailed, CCSD borrowed from a number of areas of law to establish
16 confidentiality. Counsel for the Review-Journal was required to perform extensive research
17 of state and federal case law to effectively litigate this matter. Moreover, CCSD’s contradicts
18 is separate argument that “this matter is a case of first impression;” thus, both CCSD and the
19 Review-Journal “had no case law as to these unique set of facts.” (Opp., p. 6:8-12.)⁴

20 *The Rates Sought Are Reasonable.*

21 With regards to CCSD’s argument regarding the appropriate hourly rate for the
22 attorneys and paralegal support in this matter, the cases cited by CCSD as establishing the
23 “reasonable” hourly rates are inapposite to the instant case. Each of the cases involved
24 disputes in comparatively straightforward civil matters. For example, *Archway Ins. Servs.,*
25 *LLC v. Harris*, 2014 WL 384530 (D. Nev. 2014), one of the cases cited by CCSD (Opp., p.

26 _____
27 ⁴ Finally, CCSD’s arguments about the simplicity of the NPRA and its terms fly in the fact
28 of its failures to comply with its most basic provisions, such as Nev. Rev. Stat. §
239.0107(1)(d).

21:2), involved a dispute over the reasonable hourly rate in a case involving fraud and breach of contract claims that were dismissed by the district court because of plaintiffs' motion for voluntary dismissal. Another case cited by CCSD, *Convoy v. Wynn Las Vegas, LLC*, 2014 WL 4079483 (D. Nev. 2014), involved a determination of the reasonable hourly rate in a federal torts action. By contrast here, the Review-Journal filed a complex petition asking the Court to mandate CCSD compliance with the NPRA. This litigation was complex, and required significant counsel to expend significant time and resources in successfully litigating the case.

Ms. McLetchie, the primary attorney in this matter, has several years' experience litigating complex civil rights and public records cases—both as an attorney with the ACLU, and while an attorney in private practice. Her hourly rate reflects that breadth of experience. Ms. Shell's hourly rate reflects her years of experience litigating complex federal criminal defense issues while working with the Federal Public Defender for the District of Nevada, and her work on complex civil rights and public records cases after transitioning into private practice in 2015. As reflected in the declaration of attorney Kathleen J. England, an attorney with 37 years of experience practicing in Nevada, the billing rates of McLetchie Shell are reasonable, "and might even be considered low for the experience, talent and mastery that McLetchie Shell brings to all of its legal work." (Exh. 7 (Declaration of Kathleen J. England), ¶¶ 13-15.)

In fact, the requested rates for Ms. McLetchie and Ms. Shell are reasonable when compared to the rates of another firm that was hired to litigate against McLetchie Shell in another recent NPRA matter. On March 20, 2017, the Review-Journal submitted a public records request to the City of Henderson "seeking all public records related to the retention and payment of the law firm Bailey Kennedy pertaining to legal services" it provided in *Las Vegas Review-Journal v. City of Henderson*, Eighth Judicial District Court Case No. A-16-747289-W, another public records matter. (Exh. 8 (March 20, 2017 PRA request letter); see also Declaration of Margaret A. McLetchie ("McLetchie Decl.") at ¶ 5.) Henderson provided documents responsive to that request on April 4, 2017 reflecting payments made to Bailey

1 Kennedy for legal services provided between November 30, 2016 and February 28, 2017.
2 (Exh. 9 (April 4, 2017 PRA response); McLetchie Decl. at ¶ 6.) Bailey Kennedy’s top
3 billers—Sarah E. Harmon and Dennis L. Kennedy—billed at a rate of \$495.00 per hour,
4 while its lowest biller—Kelly B. Stout, a 2010 law graduate—billed at a rate of \$300.00 per
5 hour. (*Id.* at ¶ 7) Moreover, the undersigned believes that these rates are *reduced* rates.

6 Moreover, CCSD’s quibbles with McLetchie Shell LLC’s billing rates reflect
7 inaccurate factual assertions about Ms. McLetchie’s and Ms. Shell’s years of practice and
8 paralegal Pharan Burchfield’s paralegal experience. For example, CCSD states that “Ms.
9 McLetchie has been practicing law for no more than 14 years” (Opp., p. 21:21-23); the
10 undersigned has now practiced for almost 15 years.⁵ Additionally, Shell has been practicing
11 for eight years—not six.⁶ Thus, contrary to CCSD’s arguments, the requested rates are
12 reasonable, and reflect the experience and abilities of counsel for the Review-Journal.

13 Further, contrary to CCSD’s unsupported assertions, paralegal time is
14 compensable, as is the time of support staff. *See, e.g., Missouri v. Jenkins by Agyei*, 491 U.S.
15 274, 285 (1989) (“Clearly, a ‘reasonable attorney’s fee’ cannot have been meant to
16 compensate only work performed personally by members of the bar. Rather, the term must
17 refer to a reasonable fee for the work product of an attorney. Thus, the fee must take into
18 account the work not only of attorneys, but also of secretaries, messengers, librarians,
19 janitors, and others whose labor contributes to the work product for which an attorney bills
20 her client.”); *see also LVMPD v. Yeghiazarian*, 129 Nev. Adv. Op. 81, 312 P.3d 503, 510
21 (2013) (holding that the district court did not abuse its discretion by including charges for
22 paralegal and administrative services in its calculation of attorney fees).

23 **D. The Review-Journal’s Billing Statements Are Accurate, And Support the Fee**
24 **Request.**

25 In addition to its arguments about the reasonableness of counsel’s requested rates,
26 CCSD also argues that any overall award of fees to the Review-Journal should be reduced to

27 ⁵See <http://members.calbar.ca.gov/fal/Member/Detail/223240>.

28 ⁶See <https://www.nvbar.org/find-a-lawyer/?usearch=Alina+Shell>

1 reflect that counsel engaged in “block billing.” (Opp., pp. 22:24-24:24.) CCSD also includes
2 a hand-notated copy of McLetchie Shell’s billing statement which, among other things,
3 indicates entries CCSD asserts reflect “block billing.” (See Exh. G to Opp.) CCSD arguments
4 are misplaced.

5 First, CCSD conflates block billing with providing *detail*. *Hernandez v. Chipotle*
6 *Mexican Grill, Inc.*, 257 F. Supp. 3d 100 * 10 (D.D.C. 2017) (rejecting request to reduce fees
7 in part because “[t]he defendant appears to conflate entries in which plaintiff’s counsel has
8 provided greater detail with impermissible block billing.”) In the *Chipotle* case, the court
9 considered complaints about entries such as “Review closing statement; email P. Grossi
10 feedback re: same” or “Confer with P. Grossi regarding arguments for surreply; research
11 EEOC position statement case law for surreply”. *Id.* The court explained that “[t]hese entries,
12 and the many entries like them, are not examples of block billing.” *Id.* Instead, “[e]xplaining
13 the related tasks that went into drafting the closing statement, or in scheduling a conference
14 call, or in drafting and researching a surreply is not block billing, but is detailing the specific
15 tasks performed related to a larger overarching task.” *Id.* Thus, “[t]he inclusion of greater
16 detail in these entries does not “mak[e] it impossible” for the Court “to evaluate their
17 reasonableness.” *Id.*

18 The entries CCSD complains about are strikingly similar to those upheld in the
19 *Chipotle* case. For example, CCSD asserts that a June 15, 2017 entry by Ms. Shell reflects
20 “block billing.” That entry states as follows: “Assist Ms. McLetchie with preparation for
21 hearing on privilege log/in camera documents: print cases identified by LVRJ and CCSD;
22 identify exhibits for use in hearing.” (Exh. G, p. 19.) That does not reflect block billing for
23 multiple tasks; rather, it reflects an effort by counsel to comprehensively describe her efforts
24 to assist Ms. McLetchie in preparing for a hearing before this Court. The same applies to
25 other entries by counsel; the entries are consistent with McLetchie Shell’s efforts to err on
26 the side of fully describing the work performed in any given matter, albeit in a manner that
27 is appropriate for a motion for fees.

28 ///

1 In short, the Review-Journal properly supported and established the work it did and
2 CCSD has not overcome the presumption that the lodestar provides for the proper award. In
3 such circumstances, some “block” entries do not defeat an entitlement to fees. *See Fitts v.*
4 *Unum Life Ins. Co. of Am.*, 680 F. Supp. 2d 38, 42 (D.D.C. 2010) (“fee application need not
5 specify “the exact number of minutes spent nor the precise activity to which each hour was
6 devoted nor the specific attainments of each attorney.”) (citations and quotation marks
7 omitted); *see also Chipotle*, 257 F. Supp. 3d * 10 (noting, *inter alia*, that “the defendant has
8 not identified any hours spent on unsuccessful claims”).

9 Thus, this Court should reject CCSD’s argument that any fees award should be
10 reduced to reflect alleged “block billing.”

11 **E. The Costs Sought Are Proper.**

12 CCSD also complains about some of the costs sought (Opp., pp. 24-26). With
13 regard to E-filing fees, those are not ordinary overhead, contrary to CCSD’s arguments.
14 Instead, such fees were necessarily incurred in connection with this case. CCSD’s argument
15 with regard to costs is untenable; the Review-Journal’s counsel’s copier is set up with a
16 system that requires a client code be entered to print; the cost statement corresponds to all
17 copies printed specific to this matter. (McLetchie Dec. at ¶¶ 9-10);

18 **F. CCSD Acted in Bad Faith.**

19 An award of attorney’s fees under Nev. Rev. Stat. § 239.011(2) does not require a
20 finding that a governmental entity acted in bad faith in refusing to disclose public records.
21 Nevertheless, the record of this matter demonstrates that CCSD did in fact act in bad faith in
22 (1) failing to respond to the Review-Journal’s records requests, and (2) failing to take
23 necessary steps to preserve potentially responsive records. As discussed in the Review-
24 Journal Motion for Attorney’s Fees, the paper first sought records in December of 2016.
25 CCSD failed to timely provide a meaningful response to those requests as required by the
26 NPRA, and the deposition testimony of CCSD Public Records Officer Cynthia Smith-
27 Johnson made plain that CCSD’s failure to provide a meaningful response was attributable
28 to the actions (or inactions) of CCSD general counsel. According to Ms. Smith-Johnson, she

could not provide a response to the Reporter's request without permission from CCSD general counsel. (*See, e.g.*, Motion Exh. 4, pp. 14:2-14 (testimony that she could not proceed with the request because she was "waiting [on] legal for direction what to do"); *see also* 18:16-19:2; 20:20-22; p. 23:1-7, 17-19; 23:12-19.) No matter how CCSD tries to rationalize its failure to respond, it cannot deny the fact that its general counsel delayed production of public records, and also failed to provide the Review-Journal with any explanation for that delay. More disturbingly, as discussed in the Review-Journal's Motion for Attorney's Fees, the testimony of CCSD Chief Technology Officer Dan Wray demonstrates that CCSD failed to take necessary efforts to preserve potentially responsive records. As Mr. Wray testified, emails in CCSD mailboxes have a default expiration date of 90 days. (Exh. 6, MAFC203, ll. 5-7.) CCSD does not fully address this issue in its Opposition; while it does indicate that Superintendent Pat Skorkowsy's email account "is set to never expire" (Opp., p. 6:27-28), it is not clear that setting was in any place and CCSD does not provide any indication that other custodians' email accounts it searched are similarly set to never expire. Thus, the Review-Journal and this Court may never know if potentially responsive records were destroyed.

1. The Review-Journal Has Set Forth a Workable Standard.

CCSD both argues for a carve-out from fees and costs based on its purported lack of bad faith (in its Opposition to the Motion for Fees and Costs) and argues that there is no workable standard to establish bad faith (in its Opposition to LVRJ's Motion to Find Bad Faith ("Bad Faith Opposition" or "Bad Faith Opp.")). In any case, the Review-Journal did set forth a workable standard in its Motion. As discussed therein, in determining whether this potential destruction of evidence is indicative of bad faith, this Court should be guided by precedent from the Nevada Supreme Court and other courts regarding spoliation. As the Nevada Supreme Court has explained, when presented with a spoliation allegation, "the threshold question should be whether the alleged spoliator was under any obligation to preserve the missing or destroyed evidence." *Bass-Davis v. Davis*, 122 Nev. 442, 450, 134 P.3d 103, 108 (2006). This obligation to preserve evidence "springs from a variety of sources,

1 including ethical obligations, statutes, regulations, and common law.” *Id.* (citations omitted).
2 Significantly, “the prelitigation duty to preserve evidence is imposed once a party is on
3 ‘notice’ of a potential legal claim.” *Id.* Here, CCSD’s obligation to preserve potentially
4 responsive emails was triggered when CCSD received the Review-Journal’s December 2016
5 records requests.

6 Indeed, as discussed in the Motion for Attorney’s Fees, CCSD has previously
7 evidenced an understanding of the duty it had to preserve electronic records in anticipation
8 of litigation of a public records matter. (*See* Exh. 6, p. 12:6-11 (testimony of Mr. Wray in
9 *Karen Gray v. Clark County School District*, Eighth Judicial District Court Case No.
10 A843861 regarding email preservation efforts conducted at the direction of CCSD general
11 counsel).) Here, by contrast, CCSD failed to similarly instruct Mr. Wray to preserve
12 potentially responsive records. (Exh. 5, p. 71:7-10.) While he searched some custodians, he
13 entirely ignored other aspects of the request, at the direction of CCSD counsel for months.

14 Moreover, of import to the motion for fees, CCSD Counsel’s direction to staff was
15 to essentially ignore the requests. Not only is this impermissible, but the refusals by CCSD
16 to provide records or meaningful information necessitated this litigation. Further, the refusals
17 harmed the Review-Journal’s ability to report on the news—and interfered with the public’s
18 right to assess the actions of one of its elected officials.

19 Moreover, according to CCSD counsel the terms of the NPRA are plain and easy to
20 understand. Indeed, the Review-Journal would agree that the NPRA explicitly plainly
21 provides for access to records and sets forth a procedure for refusing to provide records. It
22 also places duties on governmental entities and officers for handling public records requests.
23 Despite all this, the case evidences that CCSD’s counsel not only did not follow the law but
24 also that it instructed its so-called “public information” staff and Information Technology
25 staff to ignore the law. CCSD kept telling Review-Journal reporter Amelia Pak-Harvey it
26 would essentially “get back to her later” when it never had any intention of providing records.
27 According to CCSD’s own quoted definitions of “bad faith,” CCSD’s General Counsel’s
28 Office unquestionably engaged in bad faith—both deception and the refusal to meet

obligations and duties set forth by law.⁷

2. The Gray Case Is Not Distinguishable.

Contrary to the bald assertions in the Bad Faith Opposition, the *Gray* case is not distinguishable. That a board member and different counsel were involved does not change that CCSD appropriately preserved records in that case but failed to do so here.

3. The Motion to Find CCSD In Bad Faith Was Timely.

The Review-Journal's Motion followed the depositions in this case and was timely. Contrary to CCSD's representation, the Court of Appeals stayed only this Court's order to produce records. (*See* attached Exh. 10.) All CCSD has appealed is one part of this Court's ruling, and CCSD's appeal of this Court's July 11, 2017 order does not divest this Court of jurisdiction over the attorney fee application and motion to find CCSD acted in bad faith—particularly when CCSD has argued that lack of bad faith immunizes it from fees. While the Review-Journal disagrees with that position, this Court can and should consider the bad faith motion at this time.

CCSD acted in bad faith in refusing to disclose public records. Thus, even under CCSD's interpretation of the NPRA, it is not immune from fees—and CCSD and its General Counsel are additionally liable under the NPRA.

III. CONCLUSION

For these reasons, and for the reasons set forth in the Review-Journal's Motion for Attorney's Fees and Costs and Motion to Find CCSD in Bad Faith, the Review-Journal respectfully requests that this Court ward the Review-Journal all its attorneys' fees and costs, pursuant to Nev. Rev. Stat. § 239.011(2), in the total amount of \$105,698.37, and also requests this Court enter an order finding CCSD and its General Counsel acted in bad faith in refusing to disclose public records. Further, the Review-Journal requests that the Court permit it to supplement its motion to include time spent on the fee application.

⁷ CCSD misunderstands the Review-Journal's argument—it is not that CCSD General Counsel should not be involved, but that he and his deputies should not have instructed staff responsible for responding to requests and preserving records to ignore NPRA requests.

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Respectfully submitted this the 13th day of November, 2017.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

Telephone: (702) 728-5300

Facsimile: (702) 425-8220

Email: maggie@nvlitigation.com

Counsel for Petitioner

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WWW.INVULGATTIGATION.COM

/s/ Pharan Burchfield
An Employee of MCLETCHIE SHELL LLC

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TABLE OF CONTENTS		
Exhibit	Description	Bates No.
8	March 20, 2017 Public Records Act Request to City of Henderson.	MAFC283-284
9	April 4, 2017 City of Henderson’s Response to March 20, 2017 Request.	MAFC285-294
10	August 28, 2017 Order Granting Stay in <i>Clark County School District v. Las Vegas Review-Journal</i> (Nevada Court of Appeals Case No. 73525).	MAFC295-296

1 **DECLARATION OF MARGARET A. MCLETCHIE**

2 I, MARGARET A. MCLETCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330,
3 as follows:

4 1. I have personal knowledge of the facts set forth below, and, if called as a
5 witness, could testify to them.

6 2. I am an attorney duly licensed to practice law in Nevada.

7 3. I am a partner at the law firm of McLetchie Shell, LLC, and I am lead
8 counsel for the Las Vegas Review-Journal in *Las Vegas Review-Journal v. Clark County*
9 *School District*, Clark County District Court Case No. A-17-750151-W.

10 4. I am making this declaration to provide information justifying the fee and
11 costs request in this case, to authenticate documents attached as exhibits in support of
12 Petitioner Las Vegas Review-Journal's Omnibus Reply to Respondent's Opposition to
13 Motion for Attorney's Fees, and to verify factual representations contained in the Reply.

14 5. On March 20, 2017, my office submitted a public records request to the City
15 of Henderson "seeking all public records related to the retention and payment of the law firm
16 Bailey Kennedy pertaining to legal services" it provided in *Las Vegas Review-Journal v. City*
17 *of Henderson*, Eighth Judicial District Court Case No. A-16-747289-W, another public
18 records matter. Attached as Exhibit 8 is a true and correct copy of that request, maintained
19 by my office as a regular course of litigation.

20 6. The City of Henderson provided documents responsive to that request on
21 April 4, 2017 reflecting payments made to Bailey Kennedy for legal services provided
22 between November 30, 2016 and February 28, 2017. Attached as Exhibit 9 is a true and
23 correct copy of the response sent to my office from City of Henderson.

24 7. Bailey Kennedy's top billers—Sarah E. Harmon and Dennis L. Kennedy—
25 billed at a rate of \$495.00 per hour, while its lowest biller—Kelly B. Stout, a 2010 law
26 graduate—billed at a rate of \$300.00 per hour. (*See* Exhibit 9.)

27 8. CCSD complains about some of the costs sought. With regard to E-filing
28 fees, those are not ordinary overhead, contrary to CCSD's arguments. Instead, such fees were

1 necessarily incurred in connection with this case. CCSD's argument with regard to costs is
2 untenable.

3 9. My office's copier is set up with a system that requires a client code be
4 entered to print; the cost statement corresponds to all copies printed specific to this matter.

5 10. I certify and declare under the penalty of perjury under the law of the State
6 of Nevada that the foregoing is true and correct, and this declaration was executed at Las
7 Vegas, Nevada, the 13th day of November, 2017.

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MARGARET A. MCLETCHIE

EXHIBIT 8

VIA MAIL AND E-MAIL

March 20, 2017

Josh M. Reid, City Attorney
City of Henderson
240 Water Street, MSC 144
Henderson, Nevada 89015
E-Mail: Josh.Reid@cityofhenderson.com

Re: **PUBLIC RECORDS REQUEST**

Dear Mr. Reid

Pursuant to Nevada's Public Records Act (Nevada Revised Statutes § 239.010 *et. seq.*, the "NPRA"), I am requesting an opportunity to inspect or obtain copies of the City of Henderson public records described below.

The NPRA provides public access to public records and requires that its terms be construed liberally and mandates that any exception be construed narrowly. NRS § 239.001(2), (3). As the Nevada Supreme Court has made clear:

The NPRA provides that all public books and public records of governmental entities must remain open to the public, unless "otherwise declared by law to be confidential." NRS 239.010(1). The Legislature has declared that the purpose of the NPRA is to further the democratic ideal of an accountable government by ensuring that public records are broadly accessible. NRS 239.001(1). Thus, the provisions of the NPRA are designed to promote government transparency and accountability.

Reno Newspapers, Inc. v. Gibbons, 127 Nev. Adv. Op. 79, 266 P.3d 623, 626 (2011).

Records Sought

I am requesting all public records related to the retention and payment of the law firm of Bailey Kennedy pertaining to legal services it has provided to the City Henderson for representation in legal matters concerning the Review-Journal's request for records pertaining to certain public records pertaining to the City's retention of Elizabeth Trosper and/or Trosper Communication (including representation in *Las Vegas Review-Journal v. City of Henderson*, Dist. Ct. Case No. A-16-747289-W). This would include, I expect, any and all agreements, contracts or memoranda of understanding for Bailey Kennedy providing those services, invoices, and all documents showing amounts paid to Bailey Kennedy for legal services provided in this matter as of the date of this letter. This request is not intended to invade the attorney client or work product privilege such as that which might be contained in the daily detail of Bailey Kennedy's work. However, all records containing nonexempt information should be provided. For example with regard to billing statements, the general title of the matter being handled, the dates the services were performed, and the hours, rate, and money charged for the services should be provided.

If costs for this litigation are being paid directly by the City of Henderson (*i.e.*, not advanced by Bailey Kennedy and billed to the City of Henderson), then please consider this letter a request for the documentation for those expenditures.

Duty to Redact

In order to both comply with the NPRA and protect exempt material, please redact or separate out any privileged material (or any other information you contend is confidential) rather than withholding records in their entirety, as required by Nev. Rev. Stat. § 239.010(3). Again, please cite the statutory provision you rely upon to redact or withhold part of a record, and keep in mind that you have the burden of showing that the record is confidential. NRS § 239.0113.

Costs

If you intend to charge any fees for obtaining copies of these records, please contact me immediately (no later than five (5) days from today) if the cost will exceed \$50.

Timing

NRS § 239.0107 requires that you respond to this public records request within five (5) business day. However, I am mindful that it might take more time to assemble the requested records. If timely compliance is not practical or would cause an inconvenience to you or your staff, please let me know and I would be more than happy to agree to a reasonable extension of the time.

However, if you deny access to any of the records requested, please explain your basis for doing so in writing within five (5) days, citing the specific statutory provision or other legal authority you rely upon to deny access. NRS § 239.107(1)(d).

Further, if some records are not immediately available but others are, please do not wait to fill the entire request, but send each part or contact me as it becomes available.

Thank you in advance for your cooperation with this request, and please feel free to contact me with any questions whatsoever.

Regards,



Alina M. Shell

AS/pb
cc: file

EXHIBIT 9

Bailey Kennedy, LLP8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148(702) 562-8820
Tax ID 20-3951680Statement as of February 28, 2017
Statement No. 29300Henderson City Attorney
Josh M. Reid
240 Water Street
Henderson, NV 89015

10713-016: Las Vegas Review-Journal

Professional Fees

2/17/2017 DLK



Hours	Rate	Amount
0 50	495.00	247.50

Sub-total Fees: 247.50

Rate Summary			
Dennis L. Kennedy	0.50 hours at \$	495.00 /hr	247.50
Total hours:	<u>0.50</u>		

Payments

3/1/2017 Payment ACH 170228 268.50

Sub-total Payments: 268.50

Total Current Billing:	<u>247.50</u>
Previous Balance Due:	268.50
Total Payments:	268.50
Finance Charges:	0.00
Total Now Due:	<u>247.50</u>

INVOICE REVIEW/PAYMENT APPROVAL	
Routing Date: <u>3/7/17</u>	Reviewer: <u>Josh</u>
Review Date: _____	Initials: _____
Comments: <u>OK to pay</u>	
City Attorney Review: <u>3/7</u>	<u>JMR</u>
Date	Initials

RECEIVED

MAR - 6 2017

CITY ATTORNEY
CITY OF HENDERSONATTORNEY-CLIENT
PRIVILEGE

MAFC286

CCSD974

CITY OF HENDERSON
PAYMENT APPROVAL

Vendor Name: Bailey Kennedy, LLP

Purchase Order Number: 0000657072

Invoice Number: 29279

	PO Line #	Amount	Account Coding
Amount Authorized:	9.1	268.50	1001-0601-601009-00000

TOTAL PAYMENT	\$ 268.50
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Date: February 15, 2017

Anna Pearson
Authorized Signature (required)

Additional Approval Signature (optional)

Notes (optional):

LVRJ - 29279

PREPARED BY: Donna Crosson x1218

**ATTORNEY-CLIENT
PRIVILEGE**

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

(702) 562-8820
Tax ID 20-3951680

Statement as of January 31, 2017
Statement No. 29279

RECEIVED

FEB - 7 2017

**CITY ATTORNEY
CITY OF HENDERSON**

Henderson City Attorney
Josh M. Reid
240 Water Street
Henderson, NV 89015

10713-016: Las Vegas Review-Journal

Professional Fees

			Hours	Rate	Amount
1/3/2017	KBS	[REDACTED]	0.20	300.00	60.00
1/9/2017	DLK	[REDACTED]	0.30	495.00	148.50
1/9/2017	KBS	[REDACTED]	0.20	300.00	60.00
Sub-total Fees:					268.50

Rate Summary			
Dennis L. Kennedy	0.30 hours at \$	495.00 /hr	148.50
Kelly B. Stout	0.40 hours at \$	300.00 /hr	120.00
Total hours:	0.70		

Payments

2/1/2017	Payment	ACH	7,065.00
Sub-total Payments:			7,065.00

INVOICE REVIEW/PAYMENT APPROVAL	
Routing Date: <u>2/1/17</u>	Reviewer: <u>JBH</u>
Review Date: _____	Initials: _____
Comments: <u>Stout</u>	
City Attorney Review: <u>2/10</u>	<u>JR</u>
Date	Initials

MAFC288

CCSD976

Bailey Kennedy, LLP
Matter ID 10713-016

Page: 2
Stmt No: 29279
February 3, 2017

Total Current Billing:	<u>268.50</u>
Previous Balance Due:	7,065.00
Total Payments:	7,065.00
Finance Charges:	0.00
Total Now Due:	<u>268.50</u>

MAFC289

CCSD977

CITY OF HENDERSON
PAYMENT APPROVAL

Vendor Name: Bailey Kennedy LLP

Purchase Order Number: 0000657072

Invoice Number: 28771

	PO Line #	Amount	Account Coding
Amount Authorized:	9.1	7,065.00	1001-0601-601009-00000

TOTAL PAYMENT	\$ 7,065.00
----------------------	--------------------

Date: January 19, 2017

Anna Karason
Authorized Signature (required)

Additional Approval Signature (optional)

Notes (optional):

Las Vegas Review Journal 28771

PREPARED BY: Donna Crosson x1218

Document Number: 31974

MAFC290

CCSD978

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

(702) 562-8820
Tax ID 20-3951680

Statement as of December 31, 2016
Statement No. 28771

RECEIVED

JAN - 5 2017

**CITY ATTORNEY
CITY OF HENDERSON**

**ATTORNEY-CLIENT
PRIVILEGE**

Henderson City Attorney
Josh M. Reid
240 Water Street
Henderson, NV 89015

10713-016: Las Vegas Review-Journal

Professional Fees

		Hours	Rate	Amount
11/30/2016	SEH	4.50	495.00	2,227.50
11/30/2016	DLK	0.80	495.00	396.00
11/30/2016	KBS	2.20	300.00	660.00
12/1/2016	SEH	0.20	495.00	99.00
12/2/2016	SEH	3.50	495.00	1,732.50

MAFC291

CCSD979

12/27/2016	KBS	[REDACTED]	1.50	300.00	450.00
12/29/2016	KBS	[REDACTED]	1.50	300.00	450.00
12/30/2016	KBS	[REDACTED]	1.00	300.00	300.00
12/31/2016	KBS	[REDACTED]	2.50	300.00	750.00

Sub-total Fees: 7,065.00

Rate Summary

Sarah E. Harmon	8.20 hours at \$	495.00 /hr	4,059.00
Dennis L. Kennedy	0.80 hours at \$	495.00 /hr	396.00
Kelly B. Stout	8.70 hours at \$	300.00 /hr	2,610.00

Total hours: 17.70

Total Current Billing:	<u>7,065.00</u>
Previous Balance Due:	0.00
Total Payments:	0.00
Finance Charges:	0.00
Total Now Due:	<u>7,065.00</u>

INVOICE REVIEW/PAYMENT APPROVAL	
Routing Date: <u>1/5/17</u>	Reviewer: <u>JOSM</u>
Review Date: _____	Initials: _____
Comments: <u>[Signature]</u>	
City Attorney Review: <u>6/1/16</u>	<u>JMP</u>
Date	Initials

Cash Requirements Register
12/21/16-02/01/17

Reference	Date	Remit. Vndr.	Name	Sum Amount	Void/Cancel	Cancelled
0000335805	1/24/2017	0000027753	ALLIED BARTON SECURITY SERVICES LLC	7,161.19		
0000335507	1/24/2017	000002920	SAFE HOUSE	7,146.81		
0000033953	1/4/2017	0000001798	GCW, INC	7,141.06		
0000034247	1/31/2017	0000025632	BAILEY KENNEDY, LLP	7,065.00		
0000335241	1/18/2017	0000013605	BANK OF NEVADA	7,000.00		
0000034053	1/10/2017	0000022089	DANA KEPNER COMPANY INC	6,975.71		
0000009281	1/18/2017	0000001913	HENDERSON ELECTRIC MOTORS INC	6,930.40		
0000033949	1/4/2017	0000001682	HENDERSON CITY EMPLOYEES ASSOC	6,850.00		
0000335152	1/10/2017	0000027361	LAW OFFICE OF ROCHELLE T. NGUYEN, LTD	6,825.00		
0000335153	1/10/2017	0000027362	L MANINGO, LLC	6,825.00		
0000034143	1/24/2017	0000001682	HENDERSON CITY EMPLOYEES ASSOC	6,780.00		
0000334918	1/4/2017	0000024598	CA GROUP INC	6,745.50		
0000335833	1/31/2017	0000001385	CLARK COUNTY TREASURER	6,728.92		
0000009348	1/31/2017	0000002636	OFFICE DEPOT	6,499.81		
0000334997	1/10/2017	0000001017	LEXISNEXIS RISK SOLUTIONS	6,498.95		
0000009272	1/10/2017	0000026776	INDUSTRIAL SAFETY SUPPLY CORPORATION	6,435.14		
0000335038	1/10/2017	0000003068	STATE OF NEVADA TREASURER	6,425.00		
0000009289	1/18/2017	0000011729	PRECISION CRANE & HOIST SERVICES INC	6,421.00		
0000335981	1/31/2017	0000024556	CRUMP & CO INC	6,400.99		
0000334947	1/4/2017	0000026581	SONYA BASTENDORFF	6,396.25		
0000334900	1/4/2017	0000022990	HERNDON SOLUTIONS GROUP	6,305.05		
0000335049	1/10/2017	0000004316	ENDRESS HAUSER, INC	6,178.42		
0000034230	1/31/2017	0000022099	DANA KEPNER COMPANY INC	6,128.30		
0000034206	1/31/2017	0000002228	LAS VEGAS PAVING CORP	6,101.60		
0000335784	1/24/2017	0000026917	SILVER STATE TRUCK & TRAILER	6,059.26		
0000334915	1/4/2017	0000024448	SUNRISE REFRIGERATION	6,048.58		
0000335553	1/24/2017	0000012245	CREELE PRINTING COMPANY	6,000.00		

Cash Requirements Register

02/02/17-02/28/17

Reference	Date	Remit Vndr	Name	Sum Amount	Void/Cancel	Cancelled
0000336755	2/21/2017	0000026565	CITY ELECTRIC SUPPLY	268.56		
0000034519	2/28/2017	0000025632	BAILEY KENNEDY, LLP	268.50		
0000336462	2/14/2017	0000025614	MMC CONTRACTORS WEST, INC	265.17		
0000336253	2/7/2017	0000027213	R AND C PEST CONTROL LLC	265.00		
0000336739	2/21/2017	0000026022	GREENFIELDS OUTDOOR FITNESS, INC	265.00		
0000009474	2/14/2017	0000026641	GET FRESH SALES, INC	263.33		
0000336584	2/21/2017	000004348	CITY OF HENDERSON/CULTURAL ARTS	262.00		
0000336232	2/7/2017	0000026062	HEALTHCARE PARTNERS OF NEVADA	260.20		
0000336165	2/7/2017	0000021531	CREATIVE FIT	260.00		
0000336169	2/7/2017	0000021531	DANIEL TILTON	260.00		
0000336947	2/28/2017	0000021531	SH ARCHITECTURE	260.00		
0000336386	2/14/2017	0000021512	JENNY MORRISON	259.59		
0000336264	2/7/2017	0000027428	AAA AIR FILTER COMPANY	253.70		
0000009499	2/21/2017	0000002999	SIMPSON NORTON CORP	252.00		
0000336485	2/14/2017	0000026062	AMERIGROUP	251.74		
0000034318	2/7/2017	0000026709	STERLING TALENT SOLUTIONS	251.00		
0000336446	2/14/2017	0000021531	BRADY J RICHARDS	251.00		
0000009387	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009388	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009389	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009390	2/7/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009437	2/14/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009438	2/14/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000009439	2/14/2017	0000002588	NEVADA SHERIFF AND CHIEFS ASSOCIATION	250.00		
0000336041	2/7/2017	0000001102	ANDREW S.T. FRITZ ESQ	250.00		
0000336238	2/7/2017	0000026322	PRECISION CONCRETE CUTTING	250.00		
0000336349	2/14/2017	0000004744	BOYS & GIRLS CLUBS OF SOUTHERN NEVADA	250.00		

EXHIBIT 10

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,
Appellant,
vs.
LAS VEGAS REVIEW-JOURNAL,
Respondent.

No. 73525

FILED

JUL 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER REGARDING MOTION FOR STAY

This appeal, currently pending before the supreme court, challenges the district court's July 11, 2017,¹ "Order Granting Writ of Mandamus as to Withheld Records." On July 27, 2017, the supreme court transferred appellant's emergency motion for a stay of the challenged order pending appeal to this court for resolution.² Shortly thereafter, appellant filed a status report indicating that the district court had denied its motion for stay that had been filed with that court. *See* NRAP 8.

Based on our review of the motion and its attachments, it appears that a response to the motion for stay from respondent would be helpful in this court's resolution of the matter. Accordingly, respondent shall have 7 days from the date of this order to file a response to the motion.

¹In the motion, appellant refers to the order "entered on July 12, 2017." We note that the order attached to the motion is file-stamped on July 11, 2017, with the notice of entry of that order being filed-stamped on July 12, 2017.

²All other matters related to this appeal were retained by the supreme court. *See Clark Co. School Dist. v. Las Vegas Review-Journal*, Docket No. 73525 (Order, July 27, 2017); NRAP 17.

See NRAP 27. Appellant shall have 5 days from the date of filing of the response to file any reply in support of the motion. *Id.* Pending receipt and consideration of the response and reply to the motion, we temporarily stay enforcement of the district court's July 11, 2017, Order Granting Writ of Mandamus as to Withheld Records. All filings with this court regarding the pending motion for stay shall be made by facsimile transmission on the appropriate due date, with originals of any such documents submitted by mail.³

It is so ORDERED.⁴


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Timothy C. Williams, District Judge
Clark County School District Legal Department
McLetchie Shell LLC
Eighth District Court Clerk

³The response and reply shall be faxed to the clerk's office at: (775) 684-1601. See NRAP 25(a)(2) and (4).

⁴The Honorable Abbi Silver, Chief Judge, voluntarily recused herself from this matter and did not participate in this decision.

1 CASE NO. A-17-750151-W

2 DOCKET U

3 DEPT. 16

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 LAS VEGAS REVIEW JOURNAL,)

10 Plaintiff,)

11 vs.)

12 CLARK COUNTY SCHOOL DISTRICT,)

13 Defendant.)

14 -----)

15 REPORTER'S TRANSCRIPT

16 OF

17 MOTION

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21 DATED THURSDAY, NOVEMBER 16, 2017

22

23

24 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

1 APPEARANCES:

2 FOR THE PLAINTIFF:

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11 FOR THE DEFENDANT:

12 OFFICE OF THE GENERAL COUNSEL
13 CLARK COUNTY SCHOOL DISTRICT
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18 AHONEY@INTERACT.CCSD.NET

19 * * * * *

1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 16, 2017

2 9:34 A.M.

3 P R O C E E D I N G S

4 * * * * *

5
6 THE COURT: All right. We're going to move
7 on. Next up page 15 on the contested calendar,
8 Las Vegas Review Journal versus Clark County School
9 District.

09:33:46 10 THE COURT REPORTER: Does either side want
11 this reported?

12 MR. HONEY: Yes, please.

13 MS. McLEITCHIE: The school district does.

14 MR. HONEY: Good morning, your Honor. Adam
09:34:40 15 Honey for the school district.

16 MS. McLEITCHIE: Good morning, your Honor.
17 Maggie McLetchie for the plaintiff or the petitioner
18 Las Vegas Review Journal.

19 THE COURT: All right. Good morning. And
09:34:49 20 here's my first question and here's something that has
21 to be resolved. Tell me why do I have or do not have
22 jurisdiction in this case. Because we have an appeal
23 pending, right, it's my understanding. Is it before
24 the Court of Appeals?

09:35:01 25 MR. HONEY: It is before the Court of Appeals.

09:35:02 1 THE COURT: All right. I know someone
2 accepted the writ. And my question is this, and I
3 understand that there's a request for fees and costs.
4 And I have to make a factual determination even before
09:35:12 5 we get there. But it seems to me that potentially the
6 decision of the Court of Appeals could significantly
7 impact whatever decision I would make, number one;
8 right?

9 And number two, the overwhelming overriding
09:35:29 10 issue is whether I even have jurisdiction. Let's talk
11 about that.

12 MR. HONEY: Correct. And I -- I split my
13 response. There was two separate motions filed.

14 THE COURT: Yes.

09:35:39 15 MR. HONEY: Motion for bad good-faith, motion
16 for fees.

17 THE COURT: Yeah.

18 MR. HONEY: For organizational purposes, I'm
19 just used to federal court, I filed two separate
09:35:45 20 oppositions.

21 THE COURT: I understand.

22 MR. HONEY: I believe I raised the
23 jurisdictional issue up specifically in the bad faith
24 motion. I don't recollect whether I brought the
09:35:53 25 jurisdiction up in the motion for fees. That being

09:35:56 1 said, I do agree with the points that you made because
2 what, typically, will happen in situations, the Court
3 may rule on attorney fees, Supreme Court rule in a
4 matter that ends up being contrary, and then a
09:36:11 5 respondent like myself is then going back to petitioner
6 asking for fees back, which probably is not the best
7 way to do that.

8 THE COURT: But, and I get that. I understand
9 all that. I mean, from my perspective, I mean,
09:36:25 10 hypothetically, there could be a couple of different
11 ways this goes. Say hypothetically, I ruled that there
12 was bad faith, then that goes up. And then I get
13 reversed on one issue. Then I get reversed on the next
14 issue. Then I get reversed potentially on the issue as
09:36:38 15 to whether I even had jurisdiction, right?

16 MR. HONEY: Potentially.

17 THE COURT: And you have to understand this,
18 two things. Number one, as far as rulings I make,
19 typically, I don't make them unless I have confidence
09:36:53 20 first of all. So I feel very confident on the ruling.

21 But just as important too, I respect all
22 appellate rights because we need guidance, you know.
23 That's no problem with me. I told you that a long
24 time. But last, but not least, how do I have
09:37:06 25 jurisdiction to hear this? That's really the

09:37:09 1 overriding issue. But they accepted a writ as it
2 relates to my decision; right?

3 MR. HONEY: Correct.

4 THE COURT: Yeah.

09:37:16 5 MS. McLETCHE: Your Honor, if I may, with
6 regard to the attorney's fees issue, I think there's
7 two different questions. The attorney's fees motion,
8 the courts do have jurisdiction over attorney fees
9 applications after an appeal has been filed. And I'd

09:37:31 10 be happy -- this issue is not raised by CCSD.
11 Obviously, jurisdiction is an issue that the Court can
12 and should raise sua sponte if the Court is concerned.

13 THE COURT: Right. I always -- I mean, I sit
14 here and I say to myself. Because, you know, one of
09:37:44 15 the things, please understand this, I understand my
16 role as an independent arbiter. I mean, I get that.
17 For example, if you were in trial in this case in front
18 of a jury, in all probability I wouldn't ask any
19 questions because I never do.

09:38:00 20 I might ask questions of the veniremen during
21 the voir dire process to kind of warm them up for you.
22 But after that, I'm basically done because I don't get
23 involved in the case at all.

24 Just as important, there might be issues that
09:38:17 25 are raised vis-à-vis motions in limine, and I'll rule

09:38:21 1 on that. But if there's issues that are glaringly
2 there and no one brings it up and I see it, I'm not
3 going to touch it because it's up to you to advocate
4 your position.

09:38:31 5 But just as important too, when I see
6 something glaringly like a jurisdictional matter, and
7 we're not talking about jurisdiction as to whether the
8 case should be dismissed or not, it's jurisdiction as
9 to whether I should even decide specific issues. That
09:38:42 10 kind of jumps out at me. And I think it's something
11 that has to be addressed.

12 MS. McLETCHE: Your Honor, if I may, I'm
13 happy to submit further briefing on the jurisdiction of
14 the Court to hear attorney fees applications after an
09:38:53 15 appeal has been entered. And if the Court is inclined
16 to not -- not issue an order today granting fees and
17 costs, then I would request the opportunity to do that
18 before the Court makes a final decision on that.

19 With regard --

09:39:06 20 THE COURT: And you know what I'm going to do;
21 right? I mean, you know what I would do. I would
22 never -- before I make any decision I want to make sure
23 that it's been properly vetted for a lot of reasons.

24 MS. McLETCHE: Of course, your Honor. I
09:39:19 25 absolutely understand.

09:39:20 1 THE COURT: Yeah.

2 MS. McLETCHE: With regard to fees and costs,
3 though, your Honor, I do believe that it is clear that
4 the Court has jurisdiction to grant fees and costs.

09:39:25 5 And one thing I want to point out is that while they
6 have -- they have filed an appeal in this case,

7 regardless of what happens on appeal, the Review
8 Journal is fully entitled to be -- to be compensated
9 for its fees and costs in this matter. And that is

09:39:44 10 because they've only appealed a small portion of this
11 Court's ruling. Granted they're some of the most
12 important documents, but they're a very small portion
13 of the Court's documents.

14 Even if we ultimately lose at the Nevada
09:39:56 15 Supreme Court, all that we need to establish in order
16 to be the prevailing party in this litigation is that
17 we succeeded on a significant issue of importance in
18 the case. And we have. We have seen results. We --

19 until we filed our petition, the school district did
09:40:14 20 not even respond to our motion for -- motion -- I'm
21 sorry, our Public Records Act request, your Honor.

22 And throughout the litigation we've got -- we
23 got numerous orders granted in our favor awarding --
24 providing that we -- providing that the school district
09:40:33 25 produce documents, that they produce documents in less

09:40:36 1 redacted form than they did. That the school district
2 provide a privilege log. And we have prevailed.

3 They did appeal one order, not all the orders
4 in the case. And regardless of what happens on appeal
09:40:50 5 under this -- under the Nevada Supreme Court's
6 precedent regarding both who's a prevailing party, and
7 if you prevail on an issue if the work is intertwined,
8 whether you are entitled to -- whether you're entitled
9 to all your fees and costs even if you don't prevail on
09:41:10 10 anything, we fully briefed this in our motion, your
11 Honor.

12 And it's our position that all of the work in
13 this case was intertwined except perhaps the work on
14 the stay at the end of the case. But every other --
09:41:22 15 all the other work in this case, we -- all the issues
16 were intertwined whether they had to respond to the
17 Public Records request, what their deadline was to
18 respond, whether they had to produce documents, and we
19 did get documents, your Honor. Because of the stay
09:41:37 20 granted by the appellate court, we haven't gotten each
21 and every document in this case, but we did get
22 documents. We only got documents because we filed our
23 petition. And I think not awarding fees at this
24 juncture would be -- would be impermissible.

09:41:56 25 And should they appeal an award of fees,

09:42:00 1 certainly then the Nevada Supreme Court could look at
2 that issue together, for example, in Blackjack Bonding
3 in which the Nevada Supreme Court found in favor of a
4 requester, they also remanded for the district court
09:42:13 5 to -- they also found the district court improperly
6 denied fees. These issues can be consolidated on
7 appeal if the school district files an appeal and stays
8 the order. But it's our petition, your Honor, that all
9 of the work was intertwined. Regardless of what
09:42:30 10 happens on appeal, in this district court matter we
11 have necessarily been the prevailing party.

12 And with regard to the mandates of the Public
13 Records Act itself, it says that all the provisions in
14 the Public Records Act are supposed to be construed
09:42:46 15 liberally in order to promote access to records.

16 If the school district is rewarded for
17 delaying and delaying in providing records and then
18 appealing, and not having to reward -- to compensate
19 the Review Journal for the fees it necessarily had to
09:43:02 20 incur just to secure basic compliance not just with
21 regard to providing documents, but even an answering
22 request, your Honor, I think that would run afoul of
23 the Public Records Act mandates with regard to
24 interpretation.

09:43:15 25 THE COURT: See, probably 80-90 percent of

09:43:18 1 what you just set forth in the record, I understand.
2 But my only question is this, it's not a question of
3 whether -- I guess, the bad faith -- I mean, I think
4 clearly I can't make that determination until we hear
09:43:32 5 what the Supreme Court -- the Court of Appeals has to
6 say.

7 But when it comes to the fees and costs issue,
8 I have to take a real close look. And maybe this is
9 why additional briefing should be done, so I can really
09:43:50 10 focus on the thrust and scope of the writ, and make a
11 determination as to whether I should not decide that
12 issue based upon the fact that potentially I don't have
13 jurisdiction or I don't have jurisdiction. Or I could,
14 and it still is in my -- on my plate, and I haven't had
09:44:11 15 a chance to really look at it from that perspective. I
16 just want to tell you what I'm thinking.

17 And I think it serves both of you well.
18 Because I do know this Court, Court of Appeals and/or
19 the Supreme Court, what they do is this, and I think
09:44:26 20 lawyers often overlook this, I don't because they've
21 told me this, they do enjoy reading transcripts and
22 discussion with the trial judge and lawyers. They read
23 the transcripts. Believe me, they do. You know. And
24 just as important, it's been my impression it has
09:44:44 25 served me well by having a dialogue just like we're

09:44:48 1 having right now in open court because regardless of
2 what my ultimate decision is, they tend to -- they do
3 give deference to the trial court in many respects once
4 they realize what's been discussed and what was the
09:45:02 5 thrust and scope of the narrowness of the issue and
6 those things.

7 Mr. Honey, you want to say something?

8 MR. HONEY: Well, if it's your determination
9 that you're going to order additional briefing on
09:45:12 10 jurisdiction, I don't have anything else further to
11 say.

12 THE COURT: Yeah.

13 MR. HONEY: If you're --

14 THE COURT: I think that is --

09:45:16 15 MR. HONEY: If you're wavering, I'll talk.

16 THE COURT: No. I think there's -- but see, I
17 don't like to waver.

18 MR. HONEY: Sure.

19 THE COURT: Do you understand what I mean? I
09:45:23 20 really don't. It's kind of -- and the reason for it is
21 this: Sometimes you do get tough calls; right? But
22 and I don't mind pulling the trigger on a tough call,
23 and I'll tell you why. But if something is patently
24 apparent, and I -- hypothetically, I don't -- because
09:45:42 25 my instinctually -- I said, Wait a second here. This

09:45:45 1 is up on an appeal. I don't have jurisdiction over
2 this anymore. That was my initial instincts when I
3 started reviewing; right?

4 And so if I'm going to hear these issues, I
09:45:54 5 want to make sure I'm right. Because I don't -- this
6 is what I don't want to have, ma'am. I don't want to
7 have an obvious appellate issue that creates more work
8 for both of you. And I understand you have to do work
9 sometimes, no question about it, and I feel -- if I
09:46:09 10 feel fairly strongly about my decision, that's your
11 job, but I just want to make sure it's right.

12 MR. HONEY: I understand, your Honor.

13 THE COURT: You see where I'm going? And
14 right now, I'm not sure.

09:46:21 15 MR. HONEY: Very well.

16 MS. McLEITCHIE: Your Honor, if I may.

17 THE COURT: Absolutely.

18 MS. McLEITCHIE: While the school district
19 asserted that the entire case was stayed by the
09:46:34 20 appellate ruling, in fact what the appellate stay did
21 was appeal the enforcement of one order. So I just --

22 THE COURT: You can focus on that.
23 Absolutely.

24 MS. McLEITCHIE: Yeah. And I do -- but I do
09:46:43 25 agree with the Court that as a general rule, of course,

09:46:45 1 when anything is on appeal, it divests the Court of
2 jurisdiction.

3 THE COURT: Right?

4 MS. McLEITCHIE: And the attorney's fees are an
09:46:49 5 exception to that, and I'll be happy to brief this
6 issue --

7 THE COURT: And you can.

8 MS. McLEITCHIE: -- further for the Court.

9 THE COURT: Absolutely.

09:46:55 10 MS. McLEITCHIE: But if I may be -- I think the
11 strange peculiar nature of our motion for fees is that
12 we also requested a finding of bad faith because we
13 anticipated exactly the argument that the school
14 district would make that its failure to act in -- its
09:47:14 15 failure to act in bad faith immunized it from fees.

16 And the school district has taken the position
17 in this litigation that it hasn't acted in bad faith.
18 We take the position that it has. And we think we have
19 evidence to that extent. But more importantly, it's my
09:47:29 20 position that this Court, just to be clear, doesn't
21 need to make that bad faith determination in order to
22 award fees, and there's two reasons for that.

23 First, the first reason is that I don't think
24 that that separate provision about bad faith has
09:47:44 25 anything to do with fees and costs. I think the

09:47:47 1 statute is clear. It says the district court shall
2 award the prevailing party fees and costs. There's a
3 separate provision from immunization from liability.
4 That separate provision also only specifically
09:48:01 5 immunizes government officials and employees.

6 THE COURT: You know what, ma'am, I'm going to
7 tell you this.

8 MS. McLETCHE: Yeah.

9 THE COURT: And I'm listening to everything
09:48:09 10 you are saying. I forget exactly what the term of art
11 is, but there's a term of art, and I forget what type
12 of, you know, the motion. I just can't think of it
13 right now. But it's like when you have a certain
14 portion of the case pending before the appellate court
09:48:30 15 and there still remains an issue before the district
16 court, and the district court might realize they
17 potentially might be divested of jurisdiction; however,
18 the district court potentially could issue a ruling
19 this is how I would rule that would tee it up for the
09:48:46 20 people up top.

21 And there's a -- there's a -- I can't remember
22 the name of it, but it's a -- there's -- it's called a
23 something motion. I can't remember what it is, but
24 it's out there.

09:48:57 25 MS. McLETCHE: I think -- your Honor, in

09:48:59 1 thinking about this, I think that, again, I think that
2 fees and costs are different from a situation --

3 THE COURT: And they might be --

4 MS. McLEITCHIE: -- such as that.

09:49:04 5 THE COURT: -- but I'm not sure.

6 MS. McLEITCHIE: Here's one of the reasons why,

7 your Honor, just to start discussing this with you.

8 And one of them is I think we're entitled to interest

9 on our fees and costs. And so it would make no sense

09:49:14 10 to not be able to enter a timely order on fees and

11 costs and to also then allow for interest on fees and

12 costs while the matter was appealed.

13 But I'll be happy to brief this issue further.

14 THE COURT: Absolutely.

09:49:26 15 MS. McLEITCHIE: When would your Honor like the

16 briefing and in what order?

17 THE COURT: Well, this is what -- I'm just

18 thinking of a couple of things. And I might be wrong

19 on this, but I think cases like this, don't they tend

09:49:39 20 to work a little quicker on cases of public interest

21 and the like?

22 MR. HONEY: At the Supreme Court level?

23 THE COURT: Yeah.

24 MR. HONEY: Yes, your Honor.

09:49:45 25 THE COURT: Okay.

09:49:46 1 MS. McLEITCHIE: In my experience --

2 THE COURT: Which is a good thing.

3 MS. McLEITCHIE: In my experience, your Honor,
4 the Public Records Act cases, although in the statute
09:49:51 5 it says that they are supposed to be expedited by the
6 district court above all other civil matters, and I
7 do -- and I think the appellate courts should expedite
8 them --

9 THE COURT: But the don't.

09:50:01 10 MS. McLEITCHIE: They don't always do that. So
11 in my experience having a few cases that are sitting up
12 there now, I can tell you they're not always very
13 quick.

14 And again, that's a reason I think in favor of
09:50:15 15 awarding fees and costs.

16 MR. HONEY: Well -- in that regard, though,
17 and correct me if I'm wrong, I mean, it was better, but
18 just looking over Review Journal cases in the Supreme
19 Court, wasn't there one just filed recently with Clark
09:50:27 20 County in July or August that's already in the process
21 of being set for oral argument?

22 MS. McLEITCHIE: No. That's a case that --
23 Mr. Honey is referring to a case in which the Review
24 Journal sued the district attorney, the Clark County
09:50:39 25 District Attorney's office for fees for -- I'm sorry,

09:50:42 1 for public records regarding payments to witnesses --

2 THE COURT: Yes.

3 MS. McLEITCHIE: -- that may have been
4 undisclosed in criminal cases. That case is quite old.

09:50:52 5 I was at a different firm when I first started working
6 on that case.

7 And the district court judge did rule on the
8 attorney's fees motion after the Court -- that matter
9 was appealed. So that's a different -- that's a

09:51:05 10 different -- that case is not as new as you might
11 think.

12 THE COURT: Here's my question. And this is
13 one of the issues that is on a tangential level
14 somewhat important to me. I don't know how important
09:51:19 15 this is to you. But I -- as far as any additional
16 briefing, I do want to take into consideration the
17 holidays. Right?

18 MR. HONEY: Much appreciated. The school
19 district is on a new schedule. Kids are out of school
09:51:33 20 all of next week in their entirety.

21 THE COURT: What I mean by that is, and not
22 just the fact that the school district is out of -- I
23 guess, school is out, but just as important too, I feel
24 very strongly about this, I mean, we work hard as

09:51:52 25 professionals. And we do. But you do need down time,

09:51:56 1 and I think your down time during the week of
2 Thanksgiving should be with family and friends and not
3 briefing and the like. Because you can do that when
4 you get back to work, right?

09:52:08 5 MR. HONEY: Agreed.

6 MS. McLEITCHIE: Appreciated, your Honor.

7 THE COURT: Yeah. There's how -- I am very
8 sensitive to that issue. And it's kind of like the
9 same thing when you get close to Christmas. I feel the
09:52:17 10 exact same way. And so this is all I'm hinting to is
11 if you want to come up with a briefing schedule you
12 both can work with, and I'll set a hearing, you can
13 talk about it for a few moments.

14 I guess, number two, who would be first to
09:52:31 15 brief or first to file? I think you raised it, right,
16 so, I guess, maybe you should come out first with the
17 issues, Mr. Honey. And you give an opposition, and
18 then maybe a reply. We're done. Or you want to do it
19 vice versa? How do you want to do this? Because it's
09:52:43 20 a fairly straightforward issue, I think.

21 MS. McLEITCHIE: I think the Court first --

22 THE COURT: I did.

23 MS. McLEITCHIE: -- is the one that raised the
24 issues, but I think that since we're the ones arguing
09:52:50 25 for jurisdiction, I think it -- you know, we're sort of

09:52:52 1 taking the --

2 THE COURT: That's fine.

3 MS. McLETCHE: We're the plaintiff for
4 jurisdiction, your Honor.

09:52:56 5 THE COURT: That's fine.

6 MS. McLETCHE: So I'd like the chance to file
7 the first motion. Plus, while I do want to take
8 Thanksgiving off, my work schedule isn't as limited as
9 CCSD counsel's.

09:53:07 10 THE COURT: We'll do that.

11 MR. HONEY: That's fine. I do want to add,
12 though, for the record I think Ms. McLetchie went a
13 little bit beyond the jurisdiction. The question you
14 asked today was making some argument in regards to the
09:53:19 15 bad faith and whether it applies to fees and stuff.

16 Just so for the record, clearly, the school district
17 opposes and does not agree with her point on that. I
18 just want to make sure I said that on the record as
19 opposed to remaining silence to -- silent to her
09:53:34 20 comments in that regard.

21 THE COURT: Ma'am. How much time do you want?

22 MS. McLETCHE: So today is the 15, is that
23 correct?

24 THE COURT: It's the 16th.

09:53:44 25 MS. McLETCHE: The 16th. See I don't even

09:53:45 1 know what day it is, and I don't have a calendar in
2 front of me.

3 THE COURT: Thanksgiving is the 23rd, right,
4 everyone?

09:53:51 5 THE COURT CLERK: Yes.

6 MR. HONEY: Excuse me. Do you want to just
7 talk between the two of us?

8 MS. McLEITCHIE: Yeah. We can take a brief
9 break, and then --

09:53:57 10 MR. HONEY: And we can let the Court know.

11 MS. McLEITCHIE: But I'd like to set the
12 schedule today.

13 THE COURT: That's why I teed it up that way.

14 MS. McLEITCHIE: Let's take a brief break.

09:54:01 15 MR. HONEY: I caught that, your Honor. Thank
16 you.

17 (A discussion was held off the record.)

18

19 THE COURT: Okay. We can go back on the
10:00:03 20 record.

21 MS. McLEITCHIE: So, your Honor, Mr. Honey and
22 I were wheeling and dealing out there, both on
23 deadlines on his opening brief on the appellate matter
24 and on the deadlines in this case.

10:00:15 25 The Review Journal would really like this to

10:00:18 1 be resolved in this calendar year. And, but I can --
2 he has a deadline in the appellate court and, but I can
3 file our brief on the 28th of November. And he,
4 Mr. Honey indicates that CCSD can do their brief two
10:00:42 5 weeks later, so that would be the 12th of December.

6 THE COURT: Okay.

7 MS. McLEITCHIE: And when is -- when is court
8 dark for the Christmas holiday, your Honor?

9 THE COURT: We go dark --

10:00:56 10 THE COURT CLERK: On the 18th.

11 THE COURT: We're dark the 18th through the
12 29th.

13 MS. McLEITCHIE: (Descriptive Sound).

14 MR. HONEY: Do you want to change? Do you
10:01:08 15 want to just submit something to him later, tell him
16 what days we agreed on so that they --

17 MS. McLEITCHIE: One thing we talked about out
18 there was since this isn't really a motion, we also
19 just talked about just filing each -- each party filing
10:01:20 20 a supplemental brief. And if the parties -- which I
21 think is actually more appropriate, your Honor. And if
22 we could -- if the parties could do --

23 When could you do that by, Adam, if we chose
24 that route? Could you do that by --

10:01:33 25 THE COURT: So you're talking about a

10:01:35 1 supplemental briefing, and then set it for --

2 MR. HONEY: She raised the issue of just
3 doing -- each doing a brief on the jurisdiction issue
4 without opposition and reply.

10:01:42 5 THE COURT: I thought about that.

6 MR. HONEY: I didn't agree to that, but I said
7 I would consider it when I got back to the office.

8 MS. McLEITCHIE: Well, this Court certainly has
9 the discretion to order it that way.

10:01:50 10 THE COURT: Absolutely I can, but --

11 MR. HONEY: Well, can we just contact -- sorry
12 if I pronounce this wrong, Ms. Pasquale? Pasquale?

13 THE LAW CLERK: Close. Pasquale.

14 MR. HONEY: Pasquale. Okay.

10:02:00 15 THE COURT: Yes.

16 MR. HONEY: Can we contact her through email
17 today? Indicate what we've decided and agreed upon
18 both on whether they're just going to be supplemental,
19 each file one, or the days, and Maggie and I can --

10:02:14 20 MS. McLEITCHIE: Sure.

21 MR. HONEY: -- hammer that out.

22 MS. McLEITCHIE: Sure.

23 THE COURT: This is what I'll do. I mean,
24 just for the purposes of making sure we don't drop the
10:02:21 25 ball, I'll set this for a status check in a week and

10:02:24 1 just to make sure everything gets done. And then
2 assuming we have a stipulation and order to sign, we'll
3 vacate the status check.

4 MS. McLEITCHIE: Okay.

10:02:33 5 THE COURT: And I can -- I mean, I'll do it
6 that way. I think it makes perfect sense. Right?

7 MR. HONEY: Sure.

8 MS. McLEITCHIE: Your Honor --

9 MR. HONEY: Yeah, it puts us -- puts us under
10:02:40 10 the hot iron to get a stipulation done. It makes
11 perfect sense, your Honor.

12 THE COURT: It does.

13 MS. McLEITCHIE: Your Honor, if let's just say
14 the parties aren't able to agree, to submit briefs by
10:02:49 15 the 5th, would that enable the Court to hold a hearing
16 on this before it goes dark for the holiday?

17 THE COURT: Let me see. That's a good
18 question because we -- I do tell you this. I haven't
19 looked at it from this perspective. Right before the
10:03:07 20 holidays we're going extremely heavy on law and motion.

21 I have a six-month construction defect case starting
22 right after the holidays. And that's what's going on.
23 And they're coming in certain days for -- we have an
24 evidentiary hearing on foundational issues as to their
10:03:24 25 extrapolation expert.

10:03:25 1 MS. McLETCHE: Right?

2 THE COURT: We have --

3 MR. HONEY: Forty motions in limine?

4 THE COURT: I think it's more than that.

10:03:30 5 MR. HONEY: Probably is.

6 THE COURT: Right.

7 MR. HONEY: I understand.

8 MS. McLETCHE: Maybe we should work -- your

9 Honor, perhaps it would help me and Mr. Honey in

10:03:37 10 determining a schedule to know when the Court could

11 hear --

12 THE COURT: I'd hear it the first week we get

13 back.

14 MS. McLETCHE: And that's the first week in

10:03:42 15 January.

16 THE COURT: Yes.

17 MS. McLETCHE: Okay. So some time --

18 THE COURT: Yeah. Let's go with the first

19 week in January. Because it really makes things

10:03:49 20 easier.

21 MS. McLETCHE: Then we can just go with the

22 briefing schedule I think that we had talked about with

23 some wiggle room.

24 MR. HONEY: You didn't raise the point earlier

10:03:55 25 about down time and spending time with family and

10:03:59 1 stuff. I will say that the district's schedule is --
2 holiday schedule has changed this year, so kids are out
3 22nd through the first week of January. So I'm not
4 even scheduled to be at work that week. That being
10:04:12 5 said, if the Court orders it, I will come in that first
6 week and argue this.

7 MS. McLETCHE: I don't want to make Mr. Honey
8 come in and lose time with his family. I will just
9 say, though, that the Review Journal is eager to get
10:04:26 10 this matter resolved.

11 THE COURT: I understand. And so am I. I'm
12 eager. Two things. I'm eager to get it done and
13 resolved. But I just want to make sure we do it right.

14 MS. McLETCHE: Understood.

10:04:35 15 THE COURT: That's all.

16 MS. McLETCHE: So ...

17 THE COURT: I'm eager. I'm very eager.

18 MS. McLETCHE: So are we now talking going
19 backwards from the hearing date, the week of the 8th?

10:04:44 20 THE COURT: I don't have January's calendar in
21 front of me.

22 MR. HONEY: I don't have my calendar in front
23 of me. I do know that I did schedule myself one day in
24 the office the first week of January.

10:04:55 25 MS. McLETCHE: Well, that's going to be the

10:04:56 1 day we have the hearing.

2 MR. HONEY: And there's flexibility on that.

3 So if you set the --

4 THE COURT: And gentlemen --

10:05:01 5 MR. HONEY: -- if you set the hearing --

6 THE COURT: Ladies and gentlemen, this is what

7 we'll do. If you're going to be in the office that

8 week, we'll do it at 9:00 o'clock. You'll be out of

9 here by 9:30. You can have the rest of your day. And

10:05:11 10 it will be a real simple issue on jurisdiction.

11 I'll -- and I'll issue a decision that day.

12 And then somebody will prepare an order. But

13 we can do that.

14 MR. HONEY: And I know I shouldn't put this on

10:05:22 15 the record, but quite frankly, a morning of down time

16 away from the three little kids probably will be

17 beneficial to me at that time.

18 MS. McLEITCHIE: Your Honor, I realize I have a

19 lot of questions today. So your Honor is only going to

10:05:34 20 hear the jurisdictional matter or will the Court also

21 hear the fees application the same day?

22 THE COURT: Well, we can be prepared to argue

23 both, but I will decide the jurisdictional issue first.

24 And, hypothetically, if I determine there's no

10:05:48 25 jurisdiction, that will be the end of the discussion

10:05:50 1 that day.

2 MS. McLETCHE: Okay.

3 THE COURT: How is that?

4 MR. HONEY: Sounds good, your Honor.

10:05:53 5 THE COURT: And this is what we'll do. Have

6 you decided which -- because we'll hear this on a

7 Tuesday or Thursday the first week.

8 THE COURT CLERK: Thursday.

9 THE COURT: Thursday. What's Thursday.

10:06:05 10 THE COURT CLERK: January 4.

11 MS. McLETCHE: January 4 it is, 9:00 a.m.

12 THE COURT: 9:00 a.m.

13 MS. McLETCHE: Mr. Honey and I will

14 collaborate on a briefing schedule.

10:06:15 15 THE COURT: And prepare a stipulation and

16 order.

17 MS. McLETCHE: Absolutely.

18 THE COURT: We don't need a status check next

19 week so ...

10:06:19 20 MS. McLETCHE: Okay. Thank you, your Honor.

21 MR. HONEY: Very good, your Honor.

22 MS. McLETCHE: I hope you and all of your

23 Court staff have a wonderful holiday.

24 THE COURT: I mean, aren't holidays important?

10:06:28 25 MR. HONEY: They are important.

10:06:29 1 MS. McLETCHE: Yes. You know why they're
2 important because one of the only times of the year
3 where your clients do not call you. You know,
4 Christmas and Thanksgiving, New Years Day, generally
10:06:39 5 your clients aren't thinking you might be at the
6 office.

7 THE COURT: We can go off the record now.

8

9

10 (THE PROCEEDINGS WERE CONCLUDED.)

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16

17

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19

20

/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

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MR. HONEY: [44] MS. McLEITCHIE: [60] THE COURT CLERK: [4] 21/4 22/9 28/7 28/9 THE COURT REPORTER: [1] 3/9 THE COURT: [78] THE LAW CLERK: [1] 23/12	9 9:00 [1] 27/8 9:00 a.m [2] 28/11 28/12 9:30 [1] 27/9 9:34 [1] 3/2 : : SS [1] 30/2 A A-17-750151-W [1] 1/1 a.m [3] 3/2 28/11 28/12 ABILITY [1] 30/11 able [2] 16/10 24/14 about [14] 4/11 7/7 13/9 13/10 14/24 16/1 18/24 19/13 22/17 22/19 22/25 23/5 25/22 25/25 above [1] 17/6 absolutely [7] 7/25 13/17 13/23 14/9 16/14 23/10 28/17 accepted [2] 4/2 6/1 access [1] 10/15 ACCURATE [1] 30/11 act [7] 8/21 10/13 10/14 10/23 14/14 14/15 17/4 acted [1] 14/17 actually [1] 22/21 ADAM [3] 2/12 3/14 22/23 add [1] 20/11 additional [3] 11/9 12/9 18/15 addressed [1] 7/11 advocate [1] 7/3 afoul [1] 10/22 after [5] 6/9 6/22 7/14 18/8 24/22 again [2] 16/1 17/14 agree [5] 5/1 13/25 20/17 23/6 24/14 agreed [3] 19/5 22/16 23/17 AHONEY [1] 2/14 all [22] 3/6 3/19	4/1 5/9 5/20 5/21 6/18 6/23 8/15 9/3 9/9 9/12 9/15 9/15 10/8 10/13 17/6 18/20 19/10 26/15 28/22 30/5 allow [1] 16/11 already [1] 17/20 also [7] 10/4 10/5 14/12 15/4 16/11 22/18 27/20 although [1] 17/4 always [3] 6/13 17/10 17/12 am [2] 19/7 26/11 and/or [1] 11/18 answering [1] 10/21 anticipated [1] 14/13 any [3] 6/18 7/22 18/15 anymore [1] 13/2 anything [4] 9/10 12/10 14/1 14/25 apparent [1] 12/24 appeal [14] 3/22 6/9 7/15 8/6 8/7 9/3 9/4 9/25 10/7 10/7 10/10 13/1 13/21 14/1 appealed [3] 8/10 16/12 18/9 appealing [1] 10/18 Appeals [5] 3/24 3/25 4/6 11/5 11/18 APPEARANCES [1] 2/1 appellate [9] 5/22 9/20 13/7 13/20 13/20 15/14 17/7 21/23 22/2 application [1] 27/21 applications [2] 6/9 7/14 applies [1] 20/15 appreciated [2] 18/18 19/6 appropriate [1] 22/21 arbitrer [1] 6/16 are [13] 6/25 7/1 9/8 10/14 14/4 15/10 16/2 17/5 17/11 18/19 26/2 26/18 28/25	aren't [3] 24/14 28/24 29/5 argue [2] 26/6 27/22 arguing [1] 19/24 argument [3] 14/13 17/21 20/14 art [2] 15/10 15/11 as [24] 5/14 5/18 5/18 5/21 6/1 6/16 6/24 7/5 7/7 7/8 11/11 11/24 13/25 16/4 18/10 18/10 18/15 18/15 18/23 18/24 20/8 20/8 20/18 24/24 ask [2] 6/18 6/20 asked [1] 20/14 asking [1] 5/6 asserted [1] 13/19 assuming [1] 24/2 at [16] 6/23 7/10 8/14 9/14 9/23 10/1 11/15 16/22 18/5 24/19 26/4 27/8 27/17 29/5 30/6 30/8 attorney [4] 5/3 6/8 7/14 17/24 attorney's [5] 6/6 6/7 14/4 17/25 18/8 August [1] 17/20 AVE [1] 2/4 AVENUE [1] 2/12 award [3] 9/25 14/22 15/2 awarding [3] 8/23 9/23 17/15 away [1] 27/16 B back [6] 5/5 5/6 19/4 21/19 23/7 25/13 backwards [1] 26/19 bad [10] 4/15 4/23 5/12 11/3 14/12 14/15 14/17 14/21 14/24 20/15 ball [1] 23/25 based [1] 11/12 basic [1] 10/20 basically [1] 6/22 be [37] because [22] 3/22 5/1 5/22 6/14 6/19 6/22 7/3 8/10 9/19 9/22 11/18 11/20	12/1 12/24 13/5 14/12 19/3 19/19 24/18 25/19 28/6 29/2 been [7] 6/9 7/15 7/23 10/11 11/24 12/4 18/3 before [11] 1/18 3/23 3/25 4/4 7/18 7/22 15/14 15/15 24/16 24/19 30/6 BEFORE-ENTITLED [1] 30/6 being [4] 4/25 5/4 17/21 26/4 believe [3] 4/22 8/3 11/23 beneficial [1] 27/17 best [2] 5/6 30/11 better [1] 17/17 between [1] 21/7 beyond [1] 20/13 bit [1] 20/13 Blackjack [1] 10/2 Bonding [1] 10/2 both [7] 9/6 11/17 13/8 19/12 21/22 23/18 27/23 break [2] 21/9 21/14 BRIDGER [1] 2/4 brief [10] 14/5 16/13 19/15 21/8 21/14 21/23 22/3 22/4 22/20 23/3 briefed [1] 9/10 briefing [10] 7/13 11/9 12/9 16/16 18/16 19/3 19/11 23/1 25/22 28/14 briefs [1] 24/14 brings [1] 7/2 brought [1] 4/24 Bus [1] 6/1 but [44] C calendar [5] 3/7 21/1 22/1 26/20 26/22 call [2] 12/22 29/3 called [1] 15/22 calls [1] 12/21 can [25] 6/11 10/6 11/9 13/22 14/7 17/12 19/3 19/12 19/12 21/8 21/10 21/19 22/1 22/2
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(1) MR. HONEY: - can

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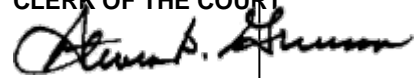
(5) please... - stay

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(6) stay... - when

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(7) when... - your



SUPPL

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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

**PETITIONER LAS VEGAS
REVIEW-JOURNAL'S
SUPPLEMENT TO MOTION FOR
ATTORNEY'S FEES AND COSTS
AND MOTION TO FIND CCSD IN
BAD FAITH**

Hearing Date: January 4, 2018

Hearing Time: 9:00 a.m.

Pursuant to Court order and stipulation of the parties, Petitioner the Las Vegas Review-Journal (the "LVRJ"), by and through its undersigned counsel, hereby supplements its Motion for Fees and Motion to Find Respondent Clark County School District ("CCSD") In Bad Faith. This Supplement is based on the following Memorandum of Points and Authorities, any attached exhibits, the papers and pleadings already on file herein, and any oral argument the Court may permit at the hearing of this Motion.

DATED this 7th day of December, 2017.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

MCLEATCHIE SHELL LLC

Counsel for Petitioner, Las Vegas Review-Journal

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court has jurisdiction to consider and rule on the Review-Journal’s Motion for Fees and Costs. Because requests for fees and costs are collateral to the underlying judgment, an appeal does not divest courts of jurisdiction to rule on them. Indeed, in light of the legislative mandates contained in the text of Nevada’s Public Records Act (the “NPRA”) to expedite proceedings (Nev. Rev. Stat. § 239.011(2)) and to promote access (Nev. Rev. Stat. § 239.001), this Court should not delay ruling.

The additional request to find that CCSD acted in bad faith does not change this outcome. First, contrary to the assertions of CCSD, the Review-Journal is entitled to fees and costs from CCSD without any finding of bad faith. Second, even adopting CCSD’s position, if a bad faith determination is necessary to an evaluation of fees and costs then, because this Court can and should rule on the fees and costs motion, it would necessarily follow that it has jurisdiction to evaluate whether CCSD acted in bad faith such that fees and costs should be awarded.

Further, the Review-Journal is entitled to supplement its motion for fees and costs to include the time spent since its Motion was filed, and will file a statement detailing those fees and costs on or around December 11, 2017.

II. LEGAL ARGUMENT

A. This Court Has Jurisdiction to Enter an Award of Fees and Costs.

The Nevada Supreme Court has made clear that a district court can entertain a motion for fees and costs, even if an appeal has been filed and this is an exception to the general rule that a notice of appeal divests the district court of jurisdiction. *See Emerson v. Eighth Judicial Dist. Court of State, ex rel. County of Clark*, 127 Nev. 672, 677–78, 263 P.3d 224, 228 (2011); *Kantor v. Kantor*, 116 Nev. 886, 894–95, 8 P.3d 825, 830 (2000) (holding that, although a timely notice of appeal divests the district court of jurisdiction and vests jurisdiction in the Nevada Supreme Court, the district court had jurisdiction to award attorney fees while an appeal of the underlying divorce decree was pending because the “collateral

1 matter did not affect the merits of [the appellant’s] appeal”). Other courts have held likewise.
2 *Thomas v. Capital Sec. Services, Inc.*, 812 F.2d 984, 987 (5th Cir.1987) (holding that even
3 though an appeal is pending, “the district court retains jurisdiction to entertain and resolve a
4 motion requesting attorney’s fees or sanctions”).

5 **B. This Court Should Not Delay Awarding Fees and Costs.**

6 The Review-Journal respectfully contends that this Court should rule on the fees
7 and costs motion without delay—and that there are multiple reasons for doing so.

8 First, fees and costs are mandatory in a case such as this: “If the requester prevails,
9 the requester **is entitled to** recover his or her costs and reasonable attorney’s fees in the
10 proceeding from the governmental entity whose officer has custody of the book or record.”
11 Nev. Rev. Stat. § 230.011(2) (emphasis added). This entitlement to fees is of less force if
12 fees and costs are delayed until after appeal in a case such as this one, where the Review-
13 Journal prevailed on all issues and CCSD only appealed a limited aspect of this Court’s
14 rulings.¹

15 Second, the NPRA specifically mandates that courts expedite the handling of public
16 records matters. Nev. Rev. Stat. § 239.001(2) (“The court shall give this matter priority over
17 other civil matters to which priority is not given by other statutes...”). Accordingly, it would
18 run afoul of this mandate to delay ruling on the motion for fees and costs until the completion
19 of the appeal.

20 Third, awarding fees and costs without delay is necessary to be consistent with the
21 mandate to interpret the NPRA in favor of access. The Nevada Legislature was so intent on
22 ensuring that the NPRA was interpreted broadly and in favor of access that it wrote that
23 directly into the statute. The NPRA explicitly states that the legislative intent underpinning

24 _____
25 ¹ For this reason, even if CCSD somehow prevails on appeal, that does not change the fact
26 that the Review-Journal is entitled to all its fees in this case. As the United States Supreme
27 Court explained in *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983), “[w]here a lawsuit
28 consists of related claims, a plaintiff who has won substantial relief should not have his
attorney’s fee reduced simply because the district court did not adopt each contention raised.”
Accord Cinevision Corp. v. City of Burbank, 745 F.2d 560, 581 (9th Cir. 1984).

the NPRA is to foster democratic principles by ensuring easy and expeditious access to public records. Nev. Rev. Stat. § 239.001(1); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 878, 266 P.3d 623, 626 (2011). It also sets forth that to further that overarching goal, all provisions of the NPRA—which necessarily includes the fees and costs provision—be construed liberally and any limitation on the public’s access to public records must be construed narrowly. Nev. Rev. Stat. §§ 239.001(2) and 239.001(3).

The fees and costs provision furthers access to records, and should be interpreted to provide for prompt fees and costs awards to so. The provision promotes access by disincentivizing public entities from failing to comply with its terms; they need to pay fees and costs if they illegally withhold records. It also promotes access by compensating requesters for fees and costs if they must go to court to get records. Here, CCSD did not even meaningfully respond to the requests at issue until the Review-Journal filed suit. It would be unfair to have the Review-Journal wait any longer to get the fees and costs to which it is already entitled.

C. The LVRJ Is Entitled to Fees and Costs Without Establishing Bad Faith.

1. Bad Faith Is Not A Prerequisite to an Award for Fees and Costs.

As set forth more fully in the LVRJ’s Reply In Support of Its Motion for Fees and Costs and Motion to Find CCSD In Bad Faith, submitted to this Court on November 13, 2017, a finding of bad faith is not a prerequisite for an award of fees. Although public officials are immune from *damages* pursuant to Nev. Rev. Stat. § 239.012 (“A public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns”), that does not eviscerate the attorney fees and costs provisions of the NPRA.

Indeed, reading a “good faith” exception from a separate section regarding damages into the provision is incorrect and inconsistent with the legislative mandates set forth above. Nev. Rev. Stat. § 239.001(1) (“[t]he purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records

to the extent permitted by law”); Nev. Rev. Stat. § 239.001(2) (“[t]he provisions of this chapter must be construed liberally to carry out this important purpose.”); Nev. Rev. Stat. § 239.001(3) (“[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.”) Bootstrapping a limitation on damages from one statute in the chapter into another statute addressing fees would violate these legislative mandates (as well as basic rules of statutory interpretation).²

2. The Legislative History Is Irrelevant.

Despite the fact that the statute is clear on its face—the Review-Journal is entitled to fees and costs—and despite the fact that the legislative intent favoring access is spelled out in the NPRA itself, CCSD asks this Court to look at the legislative history to interpret the statute. This runs afoul of basic canons of statutory interpretation. *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (“when a statute is clear on its face, a court cannot go beyond the statute in determining legislative intent”) (citation and internal quotation marks omitted). Despite all this, CCSD is asking this Court to rely on outside “legislative history” to negate an important provision of the NPRA. It should not do so.

3. The Legislative History Does Not Support CCSD’s Position.

CCSD misreads the legislative history. Even if it were properly before the Court, the legislative history in fact supports awarding fees—and doing so expeditiously to further access.

First, as the Society for Professional Journalists explained, the bill was designed “so a signal is sent to the public employees who hold public records that it is their job to

² Moreover, CCSD elides the fact that the provision regarding good faith immunity from damages specifically only refers to immunity for good faith acts by “[a] public officer or employee,” (i.e., an individual) whereas the provision on fees makes “governmental entities” liable for fees. *See* Nev. Rev. Stat. § 239.005 (5) (defining “governmental entity”) Thus, governmental entities such as CCSD who fall within the definition of Nev. Rev. Stat. § 239.005(5) are not immunized if they act in bad faith; in short, even if the immunity from liability provision applied, at best it only protects “[a] public employee or officer” (Nev. Rev. Stat. § 239.0112) and CCSD is neither.

1 ensure the public has easy access to those documents which indeed are open to review by
2 taxpayers.” (Attached as Exhibit E to Respondent’s Opposition to LVRJ’s Motion for
3 Attorney’s Fees and Costs, p. 1018.) Rendering the fees and costs provision meaningless
4 would be inconsistent with this purpose, which, as detailed above, is now enshrined in the
5 NPRA. Second, the history regarding the bill makes clear that there is no bad faith
6 requirement in the fees and costs provision. Section 2 addressed fees and costs and Section
7 3 separately addressed good faith liability from damages. With regard to Section 2, on May
8 7, 1993, there was discussion making clear that, as initially written, Section 2 mandated that,
9 if the requester prevails, “he was entitled to recover his costs and fees and attorney’s fees in
10 the proceeding, from the agency whose officer had custody of the record. (*Id.*, pp. 43-44.)
11 That is all it said as originally written. During the subcommittee hearing, there was some
12 discussion about whether an agency should be entitled to fees if it prevailed—an idea which
13 was rejected because it would restrict people from going to court. (*Id.*, p. 44.) The Legislative
14 did, however, write one (and only one) limitation into the fees and costs provision: it added
15 the word “reasonable” to qualify the fees and costs to which a requester is entitled. (*Id.*, p.
16 44.) Then, a separate discussion ensued regarding Section 3 (addressing good faith
17 immunity) (*id.*, p. 44.) (*after passing a motion finalizing the fees and costs language*, the
18 committee went on to discuss Section 3). There was explanation that Section 3 “was for a
19 civil penalty to be imposed on a public employee who acted in bad faith.” (*Id.*, p. 45.)

20 Thus, the bill was designed to revamp and strengthen access to public records. It
21 set forth a mechanism by which a requester could go to court—and get fees and costs upon
22 prevail. It also separately replaced a prior provision that impose criminal liability with one
23 limiting civil liability to those cases in which the governmental officer or employee did not
24 act in good faith. Nothing in the record shows that Section 3 was intended as a limitation on
25 Section 2. For example, while there was testimony to the committee that costs and fees
26 “granted only when it was a denial of what was clearly a public record,” that sentence was
27 sandwiched with a discussion of frivolous lawsuits; Ms. Edelson was not urging a limitation
28 on the fees and costs provision—she was assuring legislators that public agencies would not

be on the hook for fees and costs if a lawsuit was frivolous. In any case, such “legislative history” certainly cannot be relief on to turn the plain text of the NPRA on its head.

D. The Court Could Consider CCSD’s Bad Faith If It Determines It Is Relevant.

Because the Court has jurisdiction over the fees and costs motion, assuming *arguendo* CCSD is immune from fees and costs if acted in good faith, this Court can consider the question of bad faith as part of its evaluation of the motion for fees and costs. Courts, including the Nevada Supreme Court, have held that ancillary matters such as fees and sanctions can be entertained by a district court after a notice of appeal is filed. *See, e.g., Emerson v. Eighth Judicial Dist. Court of State, ex rel. County of Clark*, 127 Nev. 672, 677–78, 263 P.3d 224, 228 (2011). Further, this Court could also now entertain evaluation of bad faith such that CCSD officials—including its counsel who ignored and violated both the spirit and letter of the NPRA—could be additionally held liable pursuant to Nev. Rev. Stat. § 239.012, consistent with this authority.

III. CONCLUSION

Based on the foregoing, the Review-Journal respectfully requests that this Court, award the Review-Journal all its attorneys’ fees and costs, pursuant to Nev. Rev. Stat. § 239.011(2), including any additional amounts accrued since the Motion was filed that the Review-Journal documents to the Court—and requests that this Court do so without further delay.

Respectfully submitted this 7th day of December, 2017.

/s/ Margaret A. McLetchie

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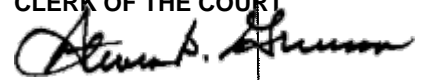
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2017, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing PETITIONER LAS VEGAS REVIEW-JOURNAL'S SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES AND COSTS AND MOTION TO FIND CCSD IN BAD FAITH 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.

I hereby further certify that on the 7th day of December, 2017, pursuant to Nev. R. Civ. P. 5(b)(2)(B) I mailed a true and correct copy of the foregoing PETITIONER LAS VEGAS REVIEW-JOURNAL'S SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES AND COSTS AND MOTION TO FIND CCSD IN BAD FAITH 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



CARLOS MCDADE, Nevada Bar No. 11205
ADAM D. HONEY, Nevada Bar No. 9588
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
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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

**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**

Clark County School District ("CCSD"), by and through its undersigned counsel of record, hereby opposes the supplemental motion for attorney's fees and costs and to find CCSD in bad faith filed by Petitioner LAS VEGAS REVIEW-JOURNAL, ("LVRJ") and moves to strike improper argument contained therein.

The opposition and motion to strike is made and based on the pleadings on file herein, the attached points and authorities, and any oral argument on this matter.

///

///

1 **I. Statement of Relevant Facts**

2 LVRJ filed its Motion for Attorney's Fees and Costs on September 19,
3 2017.

4 On October 3, 2017, LVRJ filed Errata to their motion of September 19,
5 2017, to clarify that LVRJ was in fact filing two (2) distinct motions: one for
6 attorney's fees and costs and a separate motion to find CCSD in bad faith.
7

8 CCSD filed its timely oppositions to each of Petitioner's motions on
9 October 31, 2017. CCSD raised a defense of lack of jurisdiction as to the
10 separate and distinct motion to find CCSD in bad faith, only. LVRJ filed its Reply
11 on November 13, 2017.
12

13 A hearing was conducted relative to each of LVRJ's pending motions on
14 November 16, 2017. At said hearing this Court was concerned about jurisdiction
15 raised in CCSD's opposition to LVRJ's motion to find CCSD in bad faith. The
16 Court ordered additional briefing as to jurisdiction, only. Additionally, this Court
17 ordered the parties to return on January 4, 2017, to hear both motions.
18

19 On November 21, 2017, the Court executed the parties' stipulation and
20 order allowing the supplemental briefing requested by this Court to include:

21 This brief shall address the jurisdictional issues raised by the
22 Court, and may also address supplemental fees and costs the
23 LVRJ seeks compensation from CCSD for that was not included in
24 the initial fee application. S&O at 1:23-26.

25 The agreement of the parties was that LVRJ could supplement for the
26 attorney's fees and costs not included in the original application. Supp. to Mot.
27 at 2:16-18. There was no agreement that LVRJ could utilize the supplemental
28

1 briefing to assert additional substantive arguments for fees as LVRJ had already
2 filed its application and reply. See Suppl. Mot. at 4:15-7:2.

3 **II. Legal Argument**

4 **A. LVRJ created an unnecessary jurisdictional issue by filing a**
5 **separate motion to find CCSD in bad faith, and the stay should**
6 **be honored as to the separate motion to the extent it requires**
7 **consideration of the withheld documents.**

8 LVRJ has two (2) distinct motions pending before this Court. First, is
9 LVRJ's motion for fees and costs, second, LVRJ's motion to find CCSD in bad
10 faith. Errata to mot. for att'y fees and costs, 10/3/17. CCSD has asserted a
11 jurisdictional defense as to the motion to find CCSD in bad faith, only. See
12 opps. to mot. for fees and costs and mot. to find CCSD in bad faith 10/31/17.
13 CCSD has not asserted any jurisdictional defense to the motion for fees and
14 costs. Nonetheless, once LVRJ filed a separate and distinct motion to find
15 CCSD acted in bad faith despite the fact the matter had previously been stayed
16 on the basis of the appeal to the Nevada Supreme Court, LVRJ created a
17 jurisdictional issue.
18

19
20 CCSD appealed this matter on a limited basis, the investigative materials
21 and memoranda this Court ordered to be produced. Not. of Appeal 7/12/17. As
22 such, any further proceedings in this Court, that require consideration of the
23 appealed issued has been stayed. Therefore, CCSD is of the position that to
24 the degree that LVRJ's separate and distinct motion to find CCSD in bad faith
25 requires any consideration of the investigative materials and CCSD's assertion
26 of confidentiality relative to the same, results in this Court's loss of jurisdiction as
27 those issues will be decided by the Nevada Supreme Court. If this Court were
28

1 to rule, a contrary result may come down from the Nevada Supreme Court
2 requiring an unwinding of a district court decision made while the issue was on
3 appeal.

4 Obviously, LVRJ is master of its suit and is free to file motions as it
5 deems fit. But here by filing the motion to find CCSD in bad faith as a separate
6 motion, LVRJ has created this jurisdictional issue. CCSD is of the opinion that
7 the separate motion to find CCSD in bad faith is redundant and unnecessary to
8 the determination of fees and costs because CCSD raised the defense of "good
9 faith" under NRS 239.012 in its opposition to LVRJ's motion for fees and costs.
10 CCSD's opp. to LVRJ's mot. to find bad faith. Thereafter, LVRJ argued "good
11 faith" is not relevant in its omnibus reply and that CCSD acted in "bad faith".¹
12 Pet. LVRJ omnibus reply to Resp. opp. to mot. for att'y fees and costs and mot.
13 to find CCSD in bad faith at 3:25-8:5 and 13:18-16:17.

14
15
16
17 **B. LVRJ's substantive argument against "good faith" is an**
18 **improper supplemental reply not allowed for by the**
19 **Court or any agreement between the parties and should**
20 **be stricken from the record.**

21 CCSD moves this Court to strike the improper vagrant and fugitive
22 argument made by LVRJ in its supplemental brief. LVRJ has improperly taken it
23 upon them to utilize the limited supplemental briefing ordered by the Court to
24 further supplement its omnibus reply to CCSD's opposition to LVRJ's motion for
25 attorney's fees and costs.

26 The Court has broad discretion in managing its docket. See, e.g., *Landis*
27 *v. N. American Co.*, 299 U.S. 248, 254 (1936) (court has inherent power to
28

¹ "Bad faith" is not specifically included in the statute in question. NRS 239.012.

1 "control the disposition of the causes on its docket with economy of time and effort
2 for itself, for counsel, and for litigants"). In exercising that discretion, the Court is
3 guided by the goals of securing the just, speedy, and inexpensive determination of
4 every action. NRCP 1. Federal courts have an inherent "traditional power to
5 manage their own affairs so as to achieve the orderly and expeditious disposition
6 of cases." *In re Lavender*, 180 F.3d 1114, 1118 (9th Cir. 1999) *citing Chambers v.*
7 *NASCO, Inc.*, 501 U.S. 32, 43 (1991) *citing Link v. Wabash R. Co.*, 370 U.S. 626,
8 630-31 (1962).

10 Such action can include **striking** procedurally defective briefs or other
11 papers improperly filed with the court. See generally, *In re Lavender*, 180 F.3d at
12 1118; *Chambers v. NASCO, Inc.*, 501 U.S. at 43; *Link*, 370 U.S. at 629-31; and
13 *Peabody v. Maud Van Cortland Hill Schroll Trust*, 892 F.2d at 777 (emphasis
14 added). Such improperly-filed briefs have been referred to as "vagrant" or
15 "fugitive" documents. See, *U.S. v. 0.13 Acre*, 318 F.Supp.2d 351, 352 fn.2 (S.D.
16 WV, 2004); *State ex rel Mathews v. Murray*, 70 Nev. 116, 119, 258 P.2d 982, 983
17 (1953); *Craig v. Harrah*, 65 Nev. 294, 311, 195 P.2d 688, 695 (1948).

20 Here, the Court ordered additional briefing as to the limited jurisdictional
21 issue raised by CCSD. Additionally, the parties stipulated LVRJ could supplement
22 its application for fees to include the time LVRJ had expended since filing its
23 application. S&O at 1:23-26. There was no request for order, order or agreement
24 between the parties allowing LVRJ to further supplement its substantive
25 arguments relative to its motion for fees and costs. It is prejudicial to CCSD and
26 fundamentally inequitable allow LVRJ a third swing at presenting its argument for
27
28


1 fees and costs by way of the supplement filed on December 7, 2017. As such,
2 this Court should assert its inherent authority to strike the vagrant and fugitive
3 argument in LVRJ's supplemental brief beginning at section II. C. and running
4 from page 4 line 15 through page 7 line 2.

5
6 **III. Conclusion**

7 This Court should not rule on the separate motion to find CCSD in bad
8 faith if it involves any consideration of the withheld documents because of the
9 stay. Additionally, the improper argument contained in LVRJ's supplemental brief
10 should be stricken as untimely, prejudicial and inequitable.

11
12 DATED this 18th day of December, 2017.

13 CLARK COUNTY SCHOOL DISTRICT

14 
15 Carlos McDade, Nevada State Bar No. 11205

16 Adam Honey, Nevada State Bar No. 9588

17 Office of the General Counsel

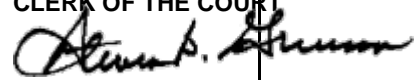
18 Counsel for Respondent, Clark County School District
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of December, 2017, I served a true and correct copy of the foregoing **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** via electronic filing and electronic service through the EFP Vendor System to all registered parties pursuant to the order for electronic filing and service.

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

/s/Christina M. Reeves
AN EMPLOYEE OF THE OFFICE OF THE
GENERAL COUNSEL-CCSD



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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

**ERRATA TO 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 SUPPLEMENT**

Clark County School District ("CCSD"), inadvertently failed to include a Notice of Motion for its motion to strike improper argument filed on September 18, 2017.

The undersigned apologizes for the oversight, and respectfully submits the attached Corrected 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 Supplement.

CCSD has also modified the caption to include less words and has added the date and time for the hearing on LVRJ's motions.

1 As the Court and LVRJ will see on the caption, CCSD is willing to waive its
2 right to file a reply to any opposition to its motion to strike filed by LVRJ so that all
3 matters can be heard on January 4, 2018.

4 DATED this 19th day of December, 2017.

5 CLARK COUNTY SCHOOL DISTRICT

6
7 /s/ Adam Honey

8 Carlos McDade, Nevada State Bar No. 11205

9 Adam Honey, Nevada State Bar No. 9588

10 Office of the General Counsel

11 Counsel for Respondent, Clark County School District

12
13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on the 19th day of December, 2017, I served a
15 true and correct copy of the foregoing **ERRATA TO CCSD'S OPPOSITION TO**
16 **LVRJ'S SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES AND COSTS**
17 **AND MOTION TO FIND CCSD IN BAD FAITH AND CCSD'S MOTION TO**
18 **STRIKE IMPROPER ARGUMENT IN LVRJ'S SUPPLEMENTAL MOTIONS** via
19 electronic filing and electronic service through the EFP Vendor System to all
20 registered parties pursuant to the order for electronic filing and service.
21
22

23 Margaret A. McLetchie, Esq.

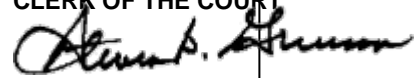
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27 /s/Christina M. Reeves

28 AN EMPLOYEE OF THE OFFICE OF THE
GENERAL COUNSEL-CCSD



RPLY

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Counsel for Petitioner, Las Vegas Review-Journal

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

**(1) REPLY TO CCSD'S
OPPOSITION TO SUPPLEMENT
TO MOTION FOR ATTORNEY'S
FEES AND COSTS AND MOTION
TO FIND CCSD IN BAD FAITH**

AND

**(2) OPPOSITION TO CCSD'S
MOTION TO STRIKE IMPROPER
ARGUMENT**

Hearing Date: January 4, 2018

Hearing Time: 9:00 a.m.

Petitioner the Las Vegas Review-Journal (the "LVRJ"), by and through its undersigned counsel, hereby submits this Reply to Respondent Clark County School District's ("CCSD") Opposition to the LVRJ's Supplement to its motion for attorney's fees and costs and Response in Opposition to CCSD's motion to strike.

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This combined Reply and Opposition is based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument the Court may permit at the continued hearing on the LVRJ’s motion for attorney’s fees and costs.

DATED this 28th day of December, 2017.

/s/ Margaret A. McLetchie

MARGARET A. MCLETSCHIE, Nevada Bar No. 10931

MCLETSCHIE SHELL LLC

Counsel for Petitioner, Las Vegas Review-Journal

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

At the November 16, 2017 hearing on the LVRJ’s Motion for Attorney’s fees and Costs and Request for Order Finding CCSD in Bad Faith (“the Motions”), this Court directed the parties to submit supplemental briefing regarding the Court’s jurisdiction to entertain the Motions. Pursuant to the November 22, 2017 stipulation and order agreed to by the parties and entered by the Court, on December 7, 2017 the LVRJ submitted a supplement (the “Supplement”) addressing the Court’s jurisdiction to consider the Motions. The Supplement explained that this Court has jurisdiction over the Motions. This Court has entered three orders in this matter pertaining directly to the LVRJ’s public records petition. Of those three orders, CCSD has appealed only one and, by its own admission, only a small portion of that order. Given that the LVRJ’s Motions are collateral to the issues CCSD is pursuing on appeal, this Court retains jurisdiction to decide both Motions. Moreover, in light of the self-proclaimed narrowness of CCSD’s appeal and the fact that the work on this case was intertwined, the LVRJ is entitled to all its fees and costs—regardless of what occurs on appeal.

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Rather than addressing the substantive arguments in the LVRJ’s Supplement regarding this Court’s jurisdiction to consider the Motions,¹ CCSD dedicates most of its Opposition to faulting the LVRJ for “creat[ing] an unnecessary jurisdictional issue” (Opp., p. 3:4), and asserting that the LVRJ has improperly supplemented its substantive arguments regarding its Motion for Attorney’s Fees and Costs.

CCSD’s request to strike portions of the LVRJ’s Supplement ignores the fact that to properly address the jurisdictional questions posed by the Court, the LVRJ necessarily had to address CCSD’s arguments regarding “bad faith.” The LVRJ contends that this Court has jurisdiction to entertain both Motions at this stage. However, should the Court determine that it cannot evaluate bad faith at this time, the LVRJ contends that the Court still has jurisdiction over the fees Motion because bad faith is irrelevant to a fees and costs motion. Thus, as part and parcel of addressing the Court’s jurisdiction, the LVRJ was required to address the fact that an award of attorney’s fees and costs in a Nevada Public Records Act (“NPRA”) case is not dependent upon a finding of bad faith.

As for the initial bad faith Motion that CCSD complains of, the LVRJ briefed bad faith for two reasons. First, contrary to CCSD’s arguments, Nev. Rev. Stat. § 239.012 is a separate provision that makes clear that “[a] public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person whom the information concerns.” Conversely, such an officer, employee, or employer is not immune when acting without good faith, i.e. in bad faith. Second, the LVRJ anticipated CCSD’s argument in connection with fees and sought a finding of bad faith in case the Court

¹ Notably, CCSD’s Opposition does not contest the LVRJ’s argument (*see* Supplement, pp. 2:20-3:4) that this Court has jurisdiction to consider the LVRJ’s Motion for Attorney’s Fees and Costs; indeed, CCSD does not address it all. This Court should construe CCSD’s failure to address the LVRJ’s arguments regarding that issue as a concession that this Court has jurisdiction to decide the Motion for Attorney’s Fees and Costs. *Cf. Polk v. State*, 126 Nev. 180, 181, 233 P.3d 357, 357–58 (2010) (discussing the “unforgiving consequences” of failing to respond to a constitutional claim raised on appeal and finding that failing to do so can be construed as a confession of error) (citing NRAP 31(d)).

determined it was critical to the fees and costs motion. With regard to timing, the LVRJ also took depositions that provided support for the Motion to find CCSD in bad faith, which thus could not have been brought before the depositions were taken.

Finally, CCSD questions the LVRJ's omission of a supplement pertaining to its fees and costs. A supplement detailing time will be submitted at the conclusion of this briefing.

II. RELEVANT PROCEDURAL HISTORY

The Orders

On February 22, 2017, the Court entered an Order granting the Review-Journal's Petition for Writ of Mandamus (the "February Order"). (*See also* February 23, 2017 Notice of Entry of Order.) In the February Order, the Court found that CCSD had failed to timely assert any claims of confidentiality, and failed to meet its burden under the NPRA of demonstrating that any interest in confidentiality justified CCSD's heavy and unnecessary redactions of certain public records pertaining to complaints about CCSD School Board Trustee Kevin Child. (*See generally* February Order at ¶¶ 28-34.)

Later, on June 5 2017, the Court entered an order granting the LVRJ's Amended Petition for Writ of Mandamus (the "June Order"). (*See also* June 6, 2017 Notice of Entry of Order.) As part of that order, the Court found that CCSD had violated the NPRA by unilaterally limiting the records it searched and produced and by failing to inform the LVRJ of its decision to narrow the scope of its searches. (June Order, ¶ 44.) The Court directed CCSD to conduct email searches for public records responsive to the LVRJ's records requests, including emails of school principals, school board trustees, and the emails of CCSD Diversity and Affirmative Action Program staff. (*See* June Order, ¶ 45.) The Court further directed CCSD to search hard copy records for responsive documents, and to produce certifications to affirm the accuracy of its searches and demonstrate compliance with the Court's directives. (June Order, ¶¶ 45, 47.)

Finally, on July 11, 2017, the Court entered the order from which CCSD has now taken its appeal (the "July Order"). (*See also* July 12, 2017 Notice of Entry of Order.) In that

order, the Court found that CCSD still had not met its burden of demonstrating by a preponderance of evidence that its interests in keeping records pertaining to the Office of Diversity and Affirmative Action’s investigation of Trustee Child outweighed the public’s right of access to those records. (*See generally* July Order, ¶¶ 69-87.) The Court then ordered CCSD to produce those documents to the LVRJ. (*Id.*, ¶ 88.)

CCSD’s Narrow Appeal

On July 12, 2017, CCSD filed a notice of appeal from the July Order. In a motion filed that same day, CCSD requested the Court stay enforcement of the July Order pending appeal (“Motion to Stay”). In the Motion to Stay, CCSD specified it was appealing only the portion of the July Order “that requires disclosure of the ‘withheld documents’ that consist of the investigative file of CCSD’s Office of Diversity and Affirmative Action regarding its investigation of alleged discrimination of CCSD employees by Trustee Kevin Child.” (Motion to Stay, p. 6:17-21 (citing July Order, ¶¶ 41 and 88).)

III. LEGAL ARGUMENT

A. The Court Still Has Jurisdiction Over the LVRJ’s Motions.

While a timely notice of appeal typically divests district courts of jurisdiction to rule on issues pending before the Nevada Supreme Court or Court of Appeals,² CCSD’s appeal does not divest this Court of its ability to consider the LVRJ’s Motions. CCSD tacitly concedes that this Court retains jurisdiction over the LVRJ’s Motion for Attorney’s Fees and Costs, and admits the Court also retains jurisdiction over the request for a finding of bad faith, although it asserts that the Court must exclude the issues now pending on appeal from its consideration. (*Id.*, p. 3:23-26 (arguing that the Court lacks jurisdiction over the LVRJ’s bad faith request only “to the degree that LVRJ’s separate and distinct motion to find CCSD in bad faith requires any consideration of the investigative materials and CCSD’s assertion

² *See Mack–Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (“[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal’s merits”)

of confidentiality relative to the same”).)

Regarding its Motion for Attorney’s Fees and Costs, because all the LVRJ’s claims for relief—and the work its counsel performed in pursuing those claims—were so interrelated, this Court must consider the overall relief the LVRJ obtained, including the portion of the July Order which is now pending appeal. As the federal district court for the District of Nevada has explained, “[i]n cases where the claims for relief are related, much of counsel’s time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. In such cases, the Court evaluates the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.” *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 915 F. Supp. 2d 1179, 1188 (D. Nev. 2013), *aff’d*, 778 F.3d 1059 (9th Cir. 2015) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983)) (internal punctuation omitted). As CCSD notes in its Opposition, it has “appealed this matter on a limited basis,” challenging only this Court’s order to disclose investigative materials and memoranda pertaining to its investigation of Trustee Child. (Opp., p. 3:20-21.) Thus, regardless of what occurs on appeal, the LVRJ is entitled to all its fees and costs.

The LVRJ has won every round of this public records battle, and the work performed in achieving those successes was so interrelated that any attempt to circumscribe this Court’s consideration would be both impossible and contrary to established law. Thus, this Court can and should consider the entirety of the history of this case and the fact that the LVRJ is the prevailing party as to every substantial issue in this matter in considering both the LVRJ’s Motions, without apportioning or limiting its consideration based on CCSD’s pending appeal.

Indeed, requiring a requester to wait until after a governmental entity appeals a portion of a district court order granting fees and costs would not be consistent with the legislative mandate to interpret the provisions of the NPRA broadly to further its important purpose. The NPRA explains in that “[t]he purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books

and records to the extent permitted by law” (Nev. Rev. Stat. § 239.001(1)), and that “[t]he provisions of this chapter must be construed liberally to carry out this important purpose” (Nev. Rev. Stat. § 239.001(2)). The fees and costs provision is designed to facilitate access to records by requiring that an entity resisting disclosure bear the expenses incurred when a requester has to go to court to get records. Delaying resolving a motion for fees and costs in a case such as us would run afoul of the mandate to interpret the NPRA’s provisions so as to promote access. Further, should CCSD appeal an order granting fees and costs, such litigation could be efficiently addressed in tandem with the current appeal—rather than tacked on at the end of a potentially lengthy appeals process.

B. The Court Should Deny CCSD’s Motion to Strike.

CCSD moves this Court to strike the sections from the LVRJ’s Supplement regarding Nev. Rev. Stat. § 239.011 and CCSD’s “good faith” arguments, asserting that the LVRJ improperly exceeded the scope of the Court’s Order directing supplemental briefing on the jurisdictional issues. This motion should be denied, because CCSD’s assertions regarding its purported good faith in this matter necessitated analysis in addressing the jurisdictional questions this Court directed the parties to address.

As noted by CCSD, the LVRJ’s request for fees and costs and its request for a finding of bad faith—although filed in a combined document—are two separate, unrelated requests. CCSD asserts that the LVRJ “created an unnecessary jurisdictional issue” by separately moving the Court for an award of fees and costs and a finding that CCSD acted in bad faith in refusing to disclose the requested records pertaining to Trustee Child. (Opp., pp. 3:5-4:16.) This argument is premised on CCSD’s incorrect assumption that its purported “good faith” negates the LVRJ’s entitlement to recoup the attorney’s fees and costs it expended in this action. (Opp., p. 4:7-10.)

As discussed in the LVRJ’s Reply and Supplement, however, Nev. Rev. Stat. § 239.011(2) does not tether recoupment of fees and costs to a determination that a governmental entity acted in bad faith in refusing to disclose public records. (*See generally* Reply, pp. 3:24-8:5 and Supplement, pp. 4:15-6:2.) As set forth in those papers, Nev. Rev.

In its Opposition to the LVRJ's Motion for Attorney's Fees and Costs, it was CCSD that broached the issue of bad faith, asserting that the Court could only award the LVRJ its fees and costs if the Court determined CCSD acted in bad faith by refusing to disclose the requested records. (*See generally* Opposition to Motion for Attorney's Fees and Costs, pp. 9-20.) To address this Court's questions regarding jurisdiction, the LVRJ necessarily had to address CCSD's arguments regarding bad faith. Thus, its request to strike the portions of the LVRJ's brief dealing with that issue is misplaced, and should be denied.

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IV. CONCLUSION

Based on the foregoing, and for all the reasons set forth in the LVRJ’s Motions and Supplement, the LVRJ respectfully requests that this Court, award the LVRJ all its attorneys’ fees and costs, pursuant to Nev. Rev. Stat. § 239.011(2), including any additional amounts accrued since the Motion was filed that the LVRJ documents to the Court—and requests that this Court do so without further delay.³

Respectfully submitted this 28th day of December, 2017.

/s/ Margaret A. McLetchie

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³ As noted above, as part of the November 22, 2017 Stipulation and Order regarding this supplemental briefing, the Court granted the LVRJ leave to address supplemental fees and costs the LVRJ seeks compensation from CCSD for that were not included in the initial fee application. (November 22, 2017 Order, ¶ 1.) Because this litigation is ongoing and the LVRJ continues to accrue fees and costs, the LVRJ has not provided an accounting of its supplemental fees, but will do so as expeditiously as possible should this Court determine it has jurisdiction and finds the LVRJ is entitled to an award of fees and costs.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2017, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing 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 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.

I hereby further certify that on the 28th day of December, 2017, pursuant to Nev. R. Civ. P. 5(b)(2)(B) I mailed a true and correct copy of the foregoing 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 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 MCLETSCHIE SHELL LLC