Vol IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT, Appellant. vs. LAS VEGAS REVIEW-JOURNAL, Respondent.	Supreme Court No. 75534 District Court No. A750151 District Court Dept. No. XVI

APELLANT'S APPENDIX

VOLUME VI

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ALPHABETICAL INDEX

Volume / Page

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **APPELLANT'S APPENDIX** was filed electronically with the Nevada Supreme Court on the 7th day of September, 2018. I further certify that on the same date, I served a copy of this document upon Respondent's counsel by depositing a true and correct copy hereof in the United States mail at Las Vegas, Nevada, postage fully prepaid, addressed as follows:

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

Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through its undersigned counsel, hereby opposes Respondent Clark County School District's ("CCSD") Motion for Stay Pending Appeal. This Opposition 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 the 16th day of April, 2018.

/s/ Alina M. Shell
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

CCSD bases its Motion to Stay Pending Appeal (the "Motion") on the premise that "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) [sic]." (Motion, p. 2:20-22.) Notwithstanding the recent order issued by the Nevada Supreme Court in *See Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 24 (April 12, 2018), no judgment debtor—not even one exempted from posting a supersedeas bond as a prerequisite for a stay—is entitled to a stay pending appeal as of right. As the United States Supreme Court unambiguously held, "[a] ***stay is not a matter of right***, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)) (emphasis added). A stay is instead "an exercise of judicial discretion, and [t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id.* (internal quotation marks and citations omitted).

The bulk of CCSD's Motion is focused on arguing that CCSD should not have to post a supersedeas bond to obtain a stay. The Review-Journal does not dispute that CCSD is exempt from posting a supersedeas bond under NRCP 62(e). Rather, the Review-Journal disputes that the circumstances merit granting CCSD a stay at all. In light of the *Nken* decision, posting a supersedeas bond is a sometimes-necessary, but never-sufficient, element of obtaining a stay. Even though NRCP 62(e) exempts it from posting a supersedeas bond, CCSD must still "bear[] the burden of showing that the circumstances justify an exercise of that discretion." *Nken*, 556 U.S. at 434. For both secured and unsecured stays, this Court must examine whether a stay is warranted under the factors articulated both by the *Nken* court and Rule 8(c) of the Nevada Rules of Appellate Procedure.

Under these factors, CCSD fails to carry the heavy burden of showing that the circumstances merit the exercise of this Court's discretion in staying proceedings. CCSD cannot show that the object of its appeal will be defeated absent a stay, nor that it will suffer irreparable harm absent a stay. Most important, CCSD is unlikely to prevail on the merits of

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its appeal, as the plain language of Nev. Rev. Stat. § 239.011(2)—as well as the overall purpose of the NPRA of increasing government transparency by facilitating access to public records—does not preclude recovery of attorney's fees from governmental entities that act in "good faith." For these reasons, a stay of fees pending appeal is unwarranted.

II. PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS[1]

A. Original Requests; Filing of Action

On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey sent CCSD a request on behalf of the Review-Journal 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; she supplemented the Request on December 9, 2016. 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(2).

B. Initial Proceedings and February 22, 2017 Order

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.

The Court conducted an *in camera* review of the unredacted versions 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

[1] Unless indicated otherwise, the factual assertions in this Procedural History and Statement of Relevant Facts regarding the litigation are gleaned from this Court's March 22, 2018 Findings of Fact and Conclusions of Law and Order granting the Review-Journal's Motion for Attorney Fees and Costs.

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"February Order"); *see also* February 23, 2017 Notice of Entry of Order).

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 un-redact the names of schools, teachers, and all administrative-level employees that were not direct victims. (*Id* at ¶ 35.) CCSD did not appeal this order, or seek other relief pertaining to the February Order. To date, CCSD has disclosed 174 pages of documents to the Review-Journal, redacting consistently with the February Order. CCSD has also withheld 102 pages.

C. February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search Information

On February 10, 2017, the Review-Journal submitted a new records request to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-Journal also offered to work with CCSD to develop searches. On February 17, 2017, CCSD notified the Review-Journal via email that it was unable to provide the records listed in the February Request within the five days mandated by Nev. Rev. Stat. § 239.0107.

On March 1, 2017, Review-Journal filed its Amended Petition. On March 3, 2017, CCSD provided some documents in response to the February Request. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted information pertaining to the names of individuals who reported a complaint or concern about Trustee Child, information including potentially identifying information about students, and personal phone numbers. That same day, the Review-Journal requested CCSD provide a log of withheld documents that were responsive to the February Request and also asked CCSD to provide it with search information. CCSD responded to these requests via letter on March 13, 2017

D. Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters

The district court conducted a hearing on the amended petition on May 9, 2017. 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. In that order, the court found that CCSD had violated the NPRA by limiting the records it searched and produced, and "also

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violated the NPRA by failing to timely inform the Review-Journal of its unilateral decision to limit its search for responsive records." (June 6, 2017 Order, *on file with this court*, ¶ 44.) The court then directed CCSD to conduct emails searches of a list of additional custodians and directed CCSD to conduct a search for hard copy records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any hard copy records CCSD maintains on Trustee Child responsive to the December and February 2017 requests. The court additionally directed CCSD to provide the court and the Review-Journal with a privilege log identifying withheld and redacted documents, as well as a specific explanation of the basis for withholding each document. Additionally, the court directed CCSD to provide the court with a certification attesting to the accuracy of the searches it conducted.

On May 30, 2017, CCSD submitted the redacted documents to the district court *in camera*. On June 5, 2017, CCSD provided the Review-Journal with an additional 38 pages of previously withheld documents. On June 6, 2017, CCSD provided the Review-Journal with the court-ordered privilege log along with certifications from Ms. Smith-Johnson and Chief Technology Officer Dan Wray.

On June 27, 2017, the Court held a hearing on CCSD's final privilege log and May 30, 2017 *in camera* submission. On July 12, 2017, the Court entered an order directing CCSD to produce the withheld records but allowing CCSD to make redactions consistent with the February 23, 2017 Order. CCSD filed a notice of appeal from that order on July 12, 2017. In a motion for stay pending appeal filed that same day, CCSD specified it was appealing only the portion of the July 12, 2017 order which required it to release withheld records pertinent to the investigation conducted by CCSD's Office of Diversity and Affirmative Action. (*See* July 12, 2017 Motion to Stay, p. 6:17-25; *see also* July 12, 2017 Case Appeal Statement, p. 4:1-9.)[2]

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[2] Briefing in CCSD's first appeal is now completed, and the matter is currently pending review by the Supreme Court.

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E. The Motion for Attorney Fees and Costs and Appeal

On October 3, 2017, the Review-Journal filed a corrected motion for attorney's fees and costs pursuant to Nev. Rev. Stat. § 239.011(2). CCSD filed an opposition on October 31, 2017. Relying on an improper conflation of two provisions of the NPRA, CCSD asserted it should not be required to pay the Review-Journal's fees and costs because it acted in good faith in refusing to disclose the requested records. (October 31, 2017 Opposition, pp. 9:19-20:13.) The Review-Journal filed a reply on November 13, 2017.

The Court held a hearing on the Review-Journal's motion for fees on November 16, 2017. At that hearing, the Court directed the parties to submit supplemental briefing regarding whether it retained jurisdiction to rule on the motion for fees and costs while CCSD's appeal was pending before the Nevada Supreme Court. Both parties submitted briefs on this issue. At a hearing on January 4, 2018, the Court found that it retained jurisdiction over the Review-Journal's motion for fees and costs and directed the Review-Journal to submit a supplement regarding the additional attorneys' fees it accrued after submitting the motion for fees.

On March 22, 2018, this Court issued a written order mandating that CCSD pay the Review-Journal $125,241.37 to compensate it for the costs and reasonable attorney's fees it expended through January 11, 2018 in litigating this matter. On April 2, 2018, CCSD filed Notice of Appeal of the March 22, 2018 Order and the Motion for a Stay that the Review-Journal now opposes.

III. LEGAL ARGUMENT

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

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

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This Court must consider the following factors in deciding whether to issue a stay: (1) "whether the object of the appeal will be defeated if the stay is denied;" (2) "whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;" (3) "whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted;" and (4) "whether appellant/petitioner is likely to prevail on the merits in the appeal." *Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing NRAP 8(c) and *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)); *accord Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). In addition, as the United States Supreme Court has held, courts must also consider "where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations omitted); *see also Nken*, 556 U.S. at 434; *accord NML Capital, Ltd. v. Republic of Argentina*, No. 2:14-CV-492-RFB-VCF, 2015 WL 3489684, at *4 (D. Nev. June 3, 2015).

The Nevada Supreme Court has "not indicated that any one factor carries more weight than the others," and instead "recognizes that if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38 (citing *Hansen*, 116 Nev. 650, 6 P.3d 982 (2000)).[3] However, the United States Supreme Court has held that the "most critical" of these four factors are the appellant's likelihood of success on the merits and whether the applicant will suffer "irreparable harm" absent a stay. *Nken*, 556 U.S. at 434. Taken as a whole, the factors of NRAP 8(c) weigh against a stay of this Court's Order even without affording special weight to factors 2 and 4 of the four-factor NRAP 8(c) analysis. Moreover, the balance of the equities does not weigh in favor of stay. Instead, the NPRA and the case law interpreting its provisions demonstrate that the public interest lies with immediate payment to the Review-Journal.

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

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B. CCSD Is Not Entitled to a Stay.

CCSD spends much of its Motion explaining that NRCP 62(e) exempts governmental entities from requirement to post a supersedeas bond as a prerequisite to a stay pending appeal (Motion, p. 3:14-27) and that CCSD is a governmental entity under NRCP 62(e). (Motion, pp. 4:1 – 5:22.) The Review-Journal does not contest these arguments. However, CCSD's leap of logic—that "when a governmental entity seeks a stay of execution of a money judgment, the stay is automatic upon application therefor" (Motion, p. 3:11-13)—is untenable. Merely because CCSD need not post a security does not mean that a stay is merited in the first place.

CCSD claims, without citation, that the "majority of courts read Rules [sic] 62(d) and Rule 62(e) together to that [sic] that when an exempt governmental entity seeks a stay of execution of a money judgment, the stay is automatic upon application therefor." (Motion, p. 3:11-13.) To support this flawed premise, CCSD points to two "authorities:" (1) past court orders in which CCSD was granted a stay; and (2) the Supreme Court's dicta in *Nelson v. Heer* stating that "[m]ost federal courts interpreting the rule generally recognize that FRCP 62(d) allows an appellant to obtain a stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount." *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), *as modified* (Jan. 25, 2006). As argued below, neither of these are sufficient to demonstrate that CCSD is entitled to a stay as a matter of right.[4]

[4] The Nevada Supreme Court has recently held that Nev. R. Civ. P. 62(d) and 62(e) operate to grant state entities a stay on appeal as a matter of right. *See Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 24 (April 12, 2018). In that decision, the Nevada Supreme Court did not acknowledge the United States Supreme Court's controlling decision in *Nken*, which unambiguously held that stays pending appeal are not a matter of right under the Federal Rules of Civil Procedure. Because the Nevada Supreme Court's interpretation of the Nevada Rules of Civil Procedure is heavily premised on federal district and bankruptcy courts' interpretation of the analogous Federal Rules of Civil Procedure, a ruling that directly contradicts the mandate of the United States Supreme Court's interpretation of the Federal Rules of Civil Procedure is clearly erroneous. The Review-Journal will be submitting a petition to the Nevada Supreme Court asking it to reconsider this decision.

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1. Orders are Not Properly Before this Court as Legal Authority.

To support its argument that it is entitled to a stay as a matter of right, CCSD attaches as exhibits to its Motion two court orders that are each over a decade old. The first is a March 27, 2008 Nevada Supreme Court order which acknowledges "CCSD's bond-exempt status by citing NRCP 62(e) in support of its grant of the stay and without conditioning the sty [sic] on CCSD filing a bond or other security with the district court." (Motion, p. 5:10-14.) Despite acknowledging that "unpublished order[s] before 2016 are not citable under NRAP 36(c)(3)" CCSD nevertheless cites this order "to apprise this Court of the Supreme Court's practice with respect to this issue." (*Id*., p. 5, n.1.) It beggars belief that citing an unpublished decision to "apprise the Court of a practice" with respect to an issue is somehow different from citing an unpublished decision to persuade the Court to adopt that practice. CCSD's disingenuous attempt to evade the unambiguous mandate of NRAP 36(c)(3) should not be countenanced by this Court.

CCSD also includes a district court order, attached to its Motion as Exhibit B, in which another court in this district granted CCSD a stay without requiring it to file a supersedeas bond. Aside from having no precedential value[5], the order is superfluous in light of the fact the NRCP 62(e) specifically provides that a state agency is exempt from having to file a supersedeas bond pending appeal.

2. Even if the Orders Were Legal Authority, They Do Not Evince that CCSD is Entitled to a Stay as of Right.

Nowhere in either of the orders attached to the Motion does a court hold that CCSD is entitled to a stay as a matter of right. In Exhibit A, the Nevada Supreme Court explicitly stated that it "considered [CCSD's] motion and supporting documentation in light of [the NRAP 8(c)] factors." (Exhibit A to Motion, p. 1.) Indeed, the respondents in that case did not even oppose CCSD's request for a stay. (*Id*.) Although the Supreme Court cited to NRCP 62(e) in a footnote, that does not imply that its grant of a stay was automatic. Rather, it merely

[5] *See Oliver v. Bank of Am.*, 128 Nev. 923, 381 P.3d 647 (2012) (noting that "other district court orders do not constitute mandatory precedent and are not binding in subsequent cases unless issue or claim preclusion applies") (citation omitted).

implies that CCSD did not need to post a supersedeas bond as a condition precedent to the Court granting a stay.

Likewise, Exhibit B does not indicate that the district court granted CCSD a stay as of right. Rather, the district court did not offer any explicit reasoning for its decision to grant CCSD's motion—not even an enumeration of the NRAP 8(c) factors. The court did recognize that "CCSD is a political subdivision of the State of Nevada for which no supersedeas bond need be filed by CCSD for the stay of execution to take effect." (Exhibit B to Motion, p. 2.) However, as noted above, the Review-Journal does not contest that CCSD is a political subdivision exempt from having to file a supersedeas bond to stay proceedings pending appeal pursuant to NRCP 62(e). Rather, the Review-Journal argues that CCSD is not entitled to stay these proceedings on appeal no matter whether a supersedeas bond is required of it. Neither of these orders stand for the proposition that governmental entities are automatically entitled to a stay, and thus they add no persuasive value.

3. The Cases Underlying the Dicta in *Nelson v. Heer* Have Been Abrogated by the United States Supreme Court's Decision in *Nken*.

In *Nelson v. Heer*, the Nevada Supreme Court noted that Nev. R. Civ. P. 62(d) is "substantially based on its federal counterpart, FRCP 62(d)." *Nelson*, 121 Nev. at 835. The Court further explained that "[m]ost federal courts interpreting the rule generally recognize that FRCP62(d) allows an appellant to obtain a stay pending appeal as a matter of right upon the posting of a supersedeas bond" and that "federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines [the NRCP]." *Id.* (citations omitted).

Several federal courts may have interpreted Fed. R. Civ. P. 62(d) as granting a stay as a matter of right upon posting a supersedeas bond in 2005, when *Nelson v. Heer* was decided. In 2009, however, the United States Supreme Court the United States Supreme Court held that the "traditional test for stays," rather than a statutory provision restricting injunctive relief for aliens subject to a removal order, governs whether a court could stay a removal order pending appeal. *Nken v. Holder,* 556 U.S. 418 (2009). In articulating the

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"traditional test for stays," the Court emphasized judicial discretion, noting that "***[a] stay is not a matter of right***" but rather "***an exercise of judicial discretion***" for which "***the party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.***" *Nken*, 556 U.S. at 433-34. (emphasis added). Under this ruling, a stay pending appeal under Fed. R. Civ. P. 62(d) can ***never*** simply be obtained as a matter of right, whether it is via the posting of a supersedeas bond or a statutory waiver of the supersedeas bond requirement.

Nowhere in the *Nken* decision does the United States Supreme Court limit its holding to stays pending appeals of removal proceedings. In light of *Nken*, Fed. R. Civ. P. 62(d) can no longer be read as automatically granting a stay on appeal as a matter of right, as that would deny the Court of its discretion to deny a stay to any governmental litigant or any party with funds sufficient to obtain a supersedeas bond. This reading is consistent with the plain language of Federal Rules of Civil Procedure, which states that an "appellant ***may*** obtain a stay by supersedeas bond." Fed. R. Civ. P. 62(d). That an appellant ***may***—rather than shall—obtain a stay by supersedeas bond implies that the Court retains its discretion to deny a stay even in the presence of a supersedeas bond. *See also* Nev. R. App. P. 8(a)(2)(E) ("The court may condition relief on a party's filing a bond or other appropriate security in the district court."). If Congress intended to strip the courts of their discretion to issue stays and make posting a supersedeas bond alone sufficient to obtain a stay on appeal, it would have used the word "shall" instead of "may."

As the *Nken* Court also noted, courts "are loath to conclude that Congress would, without clearly expressing such a purpose, deprive the Court of Appeals of its customary power to stay orders under review." *Nken*, 556 U.S. at 433 (citing Scripps–Howard Radio, Inc. v. FCC, 316 U.S. 4, 11 (1942) (internal marks omitted). Had Congress (or the Nevada legislature) wanted to grant governmental entities a *carte blanche* stay of judgments pending appeal as a matter of right, it could have done so in Rule 62. Instead, Rule 62(e) merely exempts governmental entities from posting a supersedeas bond as part of obtaining a stay pending appeal. Rule 62 does not relieve any party—governmental entity or otherwise—

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from having to carry the burden of demonstrating that the circumstances justify the issuance of a stay.

After *Nken*, some courts have interpreted Fed. R. Civ. P. 62(d) as the Nevada Supreme Court originally interpreted Nev. R. Civ. P. 62(d) in *Public Service Commission*—i.e., that the court considered whether a stay is warranted before considering the sufficiency of a supersedeas bond. In *In re Kenny G. Enterprises, LLC*, No. 8:14-CV-00246-ODW, 2014 WL 1806891 (C.D. Cal. May 7, 2014), the court cited *Nken* for the proposition that stays are not a matter of right, then denied a stay pursuant to Fed. R. Bankr. P. 8005 to an appellant which had agreed to post a $2,000,000 supersedeas bond. *Id.* at *3. This is because the *Kenny G* court first determined that the appellant did not establish that it would suffer irreparable injury, which "alone is … fatal to the [appellant's] Motion." *Id.*

Similarly, in *Moore v. Navillus Tile, Inc.*, No. 14 CIV. 8326, 2017 WL 4326537, at *1 (S.D.N.Y. Sept. 28, 2017), a New York federal court interpreted Fed. R. Civ. P. 62(d) not as giving appellants a stay as a matter of right upon posting a bond, but as a mere prerequisite: "a bond must be posted in order to stay execution of a judgment while that appeal is pending." Id. at *1. And in *Solis v. Blue Bird Corp.*, No. 5:06-CV-341 (CAR), 2009 WL 4730323 (M.D. Ga. Dec. 4, 2009), a federal court denied an appellant's motion to stay execution under the *Nken* factors even though the appellant had filed an "appeal bond in an amount stipulated between the parties as being satisfactory." *Id.* at *1.

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

CCSD's Motion goes to great lengths to argue the (undisputed) point that CCSD should not be required to post a supersedeas bond for this Court to issue a stay. However, CCSD fails to address the (very disputed) point that the circumstances of this case merit the exercise of this Court's discretion in issuing a stay at all. As a threshold matter, failure to argue that this Court should grant a stay pursuant to NRAP 8(c) should result in denial of CCSD's Motion—despite exhaustively articulating why they are not required to post a supersedeas bond, CCSD has not even attempted to "bear[] the burden of showing that the circumstances justify an exercise [the court's discretion in issuing a stay]." *Nken*, 556 U.S.

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at 434. Under the factors articulated in NRAP 8(c) and the United States Supreme Court in *Nken*, the circumstances of this case do not merit a stay of proceedings pending appeal.

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

CCSD does not even attempt to argue that denying a stay would defeat the object of its appeal. Of course, it cannot. By paying court-ordered attorney's fees and costs now—rather than whenever it feels like it—CCSD will not lose its right to continue its appeal. At worst, paying the Review-Journal now would delay, not defeat, a purpose of the appeal. Regardless of when CCSD pays the Review-Journal, the Supreme Court will be able to rule on the merits of CCSD's appeal and whether this Court's Fees and Costs Order will stand as written. As the Supreme Court has explained, "payment of a judgment only waives the right to appeal or renders the matter moot when the payment is intended to compromise or settle the matter." *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 265, 71 P.3d 1258, 1261 (2003); *accord Jones v. McDaniel*, 717 F.3d 1062, 1069 (9th Cir. 2013). Under this precedent, compliance with the Court's Order would not moot CCSD's appeal, as the Order makes no mention of settlement, compromise, or waiver of the right to appeal. Just as CCSD avers that "[i]f the judgment is affirmed, CCSD will be able to satisfy it," (Motion, p. 9:11-12) the Review-Journal avers that if the judgment is reversed, the Review-Journal will be willing and able to repay any award of fees and costs ordered by the Court. Thus, because denial of CCSD's motion to stay will not affect the ultimate outcome of this appeal one way or the other, this factor weighs in favor of denying a stay.

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

As a threshold matter, the mere possibility of irreparable injury is not sufficient to warrant a stay. *See Nken*, 556 U.S. at 435 (citing *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 22 (2008)); *accord In re R & S St. Rose Lenders, LLC*, No. 2:17-CV-01322-MMD, 2017 WL 2405368, at *3 (D. Nev. June 2, 2017). CCSD perfunctorily mentions that obtaining a supersedeas bond would cause "irreparable harm to the school district" because it would "tie up governmental resources and incur unreturnable expense at the same time." (Motion, p. 9:1-3.) The Review-Journal construes this as a putative argument that paying the

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Review-Journal its court-ordered attorney's fees would also cause "irreparable harm" for similar reasons.

This simply does not suffice to carry the heavy burden CCSD bears in justifying a stay. As money is fungible, paying money to satisfy a court order is eminently reparable harm. This is especially true of CCSD—an agency with a budget of over $4.76 billion[6]—which by its own admission "is capable of paying the judgment." (Motion, p. 8:19-20.) Basically, the only harm CCSD alleges is that they will have to pay fees and costs to the Review-Journal now, rather than later. "Simply put, the alleged harm is wholly monetary ... [i]n other words, the harm is not irreparable." *In re Capability Ranch, LLC*, No. 2:13-CV-1812 JCM, 2013 WL 6058198, at *3 (D. Nev. Nov. 15, 2013) (holding that forcing losing party to pay attorney's fees does not constitute irreparable harm); *see also Orquiza v. Walldesign, Inc.*, No. 2:11-CV-1374 JCM CWH, 2013 WL 4039409, at *2 (D. Nev. Aug. 6, 2013) ("Monetary damages alone do not amount to irreparable harm"); *Taddeo v. Am. Invsco Corp.*, No. 2:12-CV-01110 APG NJK, 2014 WL 12708859, at *1 (D. Nev. Sept. 19, 2014) ("simple monetary damages generally are not considered to be irreparable harm"). The Nevada Supreme Court has also held that "litigation costs, even if potentially substantial, are not irreparable harm." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39 (citing *Hansen*, 116 Nev. at 658, 6 P.3d at 986-7). Because paying attorney's fees earlier than a party prefers is the exact opposite of an "irreparable harm," this factor weighs in favor of denying a stay.

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

The most significant factor this Court must consider is whether CCSD is likely to prevail in its appeal of the Court's fee order. Because it does not specify in its Motion the issue it intends to present on appeal, its probable arguments can be extrapolated from its opposition to the Review-Journal's motion for fees: namely, that the provision of the NPRA which entitles a prevailing requester to recoup the fees and costs it expended in a public

[6] *See* Clark County School District Amended Final Budget for Fiscal Year Ending June 30, 2018, p. 2 (accessible at https://www.ccsd.net/resources/budget-finance-department/ccsd-amended-final-budget-fy-2018-all-funds-signed.pdf (last accessed April 11, 2018)).

records petition requires the requester to demonstrate that a governmental entity acted in bad faith in refusing to disclose records. It is highly unlikely, however, that CCSD will prevail on this claim.

The NPRA provides that "…[i]f the requester prevails, the requester is ***entitled*** to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." Nev. Rev. Stat. § 239.011(2). (emphasis added) As the Nevada Supreme Court has explained, "… by its ***plain meaning***, [NRS 239.011(2)] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs, without regard to whether the requester is to bear the costs of production." *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), *reh'g denied* (May 29, 2015), *reconsideration en banc* denied (July 6, 2015).

If the legislature had intended to make an entitlement to attorney's fees and costs contingent on the governmental agency's bad faith, they could easily have made it explicit in Nev. Rev. Stat. § 239.011. The legislature chose not to. Instead, the legislature chose to specifically make immune from "liability ***for damages***"[7] "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." Nev. Rev. Stat. § 239.012 (emphasis added). Damages and attorney's fees, however, are not the same thing.

Furthermore, the NPRA was designed to revamp and strengthen access to public records—it simply does not make sense that such a bill would grant the prevailing party an ***entitlement*** to attorney's fees, then cryptically take it away in a section that does not even mention attorney's fees.

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[7] Notably, Nev. Rev. Stat. § 239.012 does not grant immunity from "liability for damages and attorney's fees and costs." Essentially, CCSD expects this Court to believe that the legislature meant to include attorney's fees and costs in this "good faith safe harbor," but accidentally forgot about their existence between drafting Nev. Rev. Stat. § 239.011 and Nev. Rev. Stat. § 239.012.

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CCSD's arguments are particularly hollow given the NPRA's explicit command 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." Nev. Rev. Stat. § 239.001(3). Asking this Court to read an invisible "bad faith" requirement into Nev. Rev. Stat. § 239.011 and an invisible "attorney's fees actually count as damages" provision into Nev. Rev. Stat. § 239.012 is asking this Court to do the exact opposite of "narrow construction." CCSD's appeal does not present a "serious legal question;" it simply asks the Supreme Court to pretend the NPRA says something it does not. Indeed, in a partial dissent from the recent Nevada Supreme Court order in *Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal*, Justice Michael Cherry opined that a similar claim raised on appeal by the Coroner's Office in that matter did not present a legal question sufficient to warrant a stay of the payment of an award of attorney fees and costs given "the public interest in implementing the [NPRA], and the fees and costs provision in particular, which is to encourage transparency within the government." *Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 24 (Cherry, J., concurring in part and dissenting in part). Thus, this factor weighs in favor of the Review-Journal.

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

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

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

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

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

Nevada law mandates that a judgment "draws interest from the time of service of the summons and complaint until satisfied … at a rate equal to the prime rate at the largest bank in Nevada … plus 2 percent." Nev. Rev. Stat. § 17.130(2). If this Court grants CCSD's Motion, and CCSD subsequently loses on appeal, the Review-Journal will move to seek interest pursuant to Nev. Rev. Stat. § 17.130(2). As CCSD itself noted, "[t]he school district can serve a higher policy purpose using these taxpayer dollars to educate children." (Motion, p. 8:8-9.) For the sake of those children, this Court should not issue a stay so that CCSD can pay the Review-Journal now and avoid paying the Review-Journal even more when their appeal fails.

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IV. CONCLUSION

For these reasons, this Court should deny CCSD's request for a stay of this Court's March 22, 2018 Order granting the Review-Journal $125,241.37 in fees and costs.

Respectfully submitted this the 16th day of April, 2018.

/s/ Alina M. Shell

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 16th day of April, 2018, I did cause a true copy of the foregoing PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO STAY EXECUTION AND ENFORCEMENT OF ORDER GRANTING ATTORNEY'S FEES AND COSTS PENDING APPEAL 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 16th day of April, 2018, I mailed a true and correct copy of the foregoing PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO STAY EXECUTION AND ENFORCEMENT OF ORDER GRANTING ATTORNEY'S FEES AND COSTS PENDING APPEAL 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

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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: 5/8/18 HEARING TIME: 9:00 a.m.

CCSD REPLY TO PETITIONER'S OPPOSITION TO MOTION TO STAY EXECUTION AND ENFORCEMENT OF ORDER GRANTING ATTORNEY'S FEES AND COSTS PENDING APPEAL

CLARK COUNTY SCHOOL DISTRICT, ("CCSD"), by and through its counsel of record, Adam D. Honey, and hereby submits this reply in support of its Motion to Stay Execution and Enforcement of Order Granting Attorney's Fees and Costs Pending Appeal. This reply is made and based upon the following

Points and Authorities and the other papers and pleadings on file with the Court in this matter.

DATED this 1st day of May, 2018.

CLARK COUNTY SCHOOL DISTRICT
Office of the General Counsel

By: /s/ Adam D. Honey
ADAM D. HONEY
Nevada Bar No. 9588
5100 W. Sahara Avenue
Las Vegas, NV 89146
Attorneys for CCSD

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The District Court ordered attorney's fees and costs to LVRJ effective March 22, 2018. CCSD filed its Motion to Stay Execution on April 2, 2018. On April 12, 2018, the Nevada Supreme Court filed its opinion in *Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal* in Case No. 75095, (hereinafter "*Coroner* case"). See Ex. 1, Opinion attached for court's convenience.

The *Coroner* case settles in Nevada that a local government entity that moves for stay under NRCP 62(d) and (e) is entitled to a stay of the money judgement without bond or other security as a matter of right. Id.

The facts considered under the *Coroner* case could not be any more similar. Each case involves awards of attorney's fees and costs (money judgments) in cases between local government entities and LVRJ under NRS Ch. 239. Furthermore, the local government entities in both cases moved for a

stay of the money judgment pursuant to NRCP 62. Id. Additionally, LVRJ does not contend it will suffer irreparable or serious harm if the stay is granted. Id. and LVRJ Opp. Each of the preceding identical facts is addressed in the Nevada Supreme Court's opinion that LVRJ fails to address in any meaningful way in its opposition. Instead, LVRJ focuses on a litany of cases that are factually incongruent with this case and the opinion in the *Coroner* case.

II. Legal Analysis

A. LVRJ fails to counter the Nevada Supreme Court's opinion in the *Coroner* case establishing a stay as a matter of right under the circumstances of this case.

The Opposition fails to acknowledge the impact of the *Coroner* case on the analysis for a stay in a case such as this involving a monetary judgment against a local government sought by motion under NRCP 62.

The opinion on the motion to stay in the *Coroner* case states:

> Upon motion, as a secured party, the state or local government is generally entitled to a stay of a monetary judgement under NRCP 62(d) without posting a supersedeas bond or other security. Op. at 6.

In this case it is beyond dispute CCSD has requested a stay by motion under NRCP 62. That CCSD is a local government[1] and that the appealed issue is a monetary judgement.

Rather than apply or argue the precedent set under the *Coroner* case or address the cases cited by the Nevada Supreme Court, LVRJ cites to a litany of cases that do not involve monetary judgements or a local government seeking the stay. Instead the cases cited by LVRJ involve issues sought to be stayed

[1] See CCSD Motion to Stay at 4:10-5:4.

including deportation, staying a case until the end of a sitting president's term, railroad rates, compelling arbitration, release of an inmate, a contract to assume a lease and service of process. See Op.

LVRJ has not persuasively demonstrated the *Coroner* case should not be followed. Instead they mention they are going to file a motion for reconsideration.[2] This reason alone does not warrant this court failing to follow the Nevada Supreme Court's precedent that is exactly on point to the matter at hand and has not been overturned.

Instead, LVRJ asks this court to apply the factors under NRAP 8 when the instant motion is brought under NRCP 62 and the Nevada Supreme Court declined to consider NRAP 8 in the *Coroner* case. LVRJ Opp. at 12:20-117-11. See Op. at FN 2.

III. Conclusion

This Court should follow the precedent set by the Nevada Supreme Court in the *Coroner* case and grant CCSD's motion to stay.

DATED this 1st day of May, 2018.

Respectfully Submitted,

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
5100 W. Sahara Avenue
Las Vegas, NV 89146
Counsel for Respondent, Clark County School District

[2] LVRJ in fact filed a motion for rehearing in the Coroner case on May 1, 2018.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May, 2018, I served a true and correct copy of the foregoing **CCSD REPLY TO PETITIONER'S OPPOSITION TO 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/ Christina Reeves
AN EMPLOYEE OF THE OFFICE OF THE GENERAL COUNSEL-CCSD

EXHIBIT 1

134 Nev., Advance Opinion 24

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER,
Appellant,
vs.
LAS VEGAS REVIEW-JOURNAL,
Respondent.

No. 75095

Motion for stay pending appeal without supersedeas bond or other security.

Motion granted.

Steven B. Wolfson, District Attorney, and Laura C. Rehfeldt, Deputy District Attorney, Clark County; Marquis Aurbach Coffing and Micah S. Echols, Las Vegas,
for Appellant.

McLetchie Shell LLC and Margaret A. McLetchie and Alina M. Shell, Las Vegas,
for Respondent.

BEFORE THE COURT EN BANC.[1]

---

[1]The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

OPINION

By the Court, DOUGLAS, C.J.:

Appellants may obtain a stay of a money judgment pending appeal upon posting a supersedeas bond pursuant to NRCP 62(d). Under NRCP 62(e), when a state or local government appeals and the judgment is stayed, no bond is required. Nevertheless, here, the district court denied appellant Clark County Office of the Coroner/Medical Examiner's motion to stay enforcement of the attorney fees and costs judgment awarded to respondent Las Vegas Review-Journal (LVRJ) under NRS 239.011(2) after it prevailed on its public records request to obtain certain autopsy reports. The Coroner's Office then moved this court for a stay. We conclude that, as a local government entity that moved for a stay under these provisions below, the Coroner's Office was entitled to a stay of the money judgment without bond or other security as a matter of right.

DISCUSSION

The Coroner's Office asserts that a stay from the attorney fees and costs award should have been granted as a matter of right under NRCP 62(d), with no bond required per NRCP 62(e).[2] NRCP 62(d) provides as follows:

> When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing

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[2]LVRJ contends that NRCP 62 does not apply here because that rule applies in district court actions and the motion before this court is governed by NRAP 8. In considering the motion for stay, however, this court may review the district court order denying a stay without security below. *See Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), *as modified* (Jan. 25, 2006).

> the notice of appeal. The stay is effective when the supersedeas bond is filed.[3]

And NRCP 62(e) reads:

> When an appeal is taken by the State or by any county, city or town within the State, or an officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.[4]

We have addressed these rules in two pertinent cases. In *Public Service Commission v. First Judicial District Court*, we considered whether the appellant, a state entity, was entitled as of right to a stay of a district court order granting a petition for judicial review and directing it to grant the respondent Southwest Gas Corporation's application to impose a surcharge, merely upon filing a notice of appeal and without posting a supersedeas bond. 94 Nev. 42, 574 P.2d 272 (1978), *abrogated in part by Nelson*, 121 Nev. at 834 n.4, 122 P.3d at 1253 n.4. There, the court "interpret[ed] the 'may' in Rule 62(d) to be permissive and not mandatory and construe[d] the conjunctive 'and' contained in Rule 62(e) to require a separate and distinct application for a stay." *Id.* at 46, 122 P.3d at 275. As a result, we determined that a stay did not automatically arise merely

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[3]Subsection (a) excepts injunctions and orders in receivership actions from the automatic stay provisions.

[4]*See also* NRS 20.040 ("In any action or proceeding before any court or other tribunal in this State, wherein the State of Nevada or any county, city or town of this State, or any officer thereof in his or her official capacity, is a party plaintiff or defendant, no bond, undertaking or security shall be required . . . , but on complying with the other provisions of law the State, county, city or town, or officer thereof, acting as aforesaid, shall have the same rights, remedies and benefits as though such bond, undertaking or security were given and approved as required by law.")

because the state entity filed a notice of appeal. *Id.* at 45-46, 574 P.2d at 274.

Several years later, in *Nelson v. Heer*, this court again considered whether NRCP 62(d) entitled the appellant to a stay upon posting a supersedeas bond. 121 Nev. at 834, 122 P.3d at 1253. Recognizing that "[t]his rule is substantially based on its federal counterpart, FRCP 62(d)," and that "[m]ost federal courts interpreting the rule generally recognize that FRCP 62(d) allows an appellant to obtain a stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount," this court overruled *Public Service Commission* to the extent that it implied a stay is discretionary in such circumstances. *Id.* at 834 n.4, 122 P.3d at 1253 n.4. In so doing, the court expressly maintained the second holding in *Public Service Commission*: "*PSC*'s requirement that the State or a state agency file a motion for stay pending appeal is not in any way affected by this opinion, however." *Id.*

Notably, *Nelson v. Heer* involved an appeal from a money judgement, to which the automatic stay provisions of NRCP 62 apply, while *Public Service Commission* did not. Thus, neither case directly addresses the question here, whether the Coroner's Office is entitled to a stay from a money judgment for attorney fees and costs without bond under both NRCP 62(d) and NRCP 62(e) together. Most federal courts to have addressed the issue with respect to the analogous Federal Rules of Civil Procedure, however, conclude that the subsections should be read together to provide the government with a stay as of right without posting a bond.

For instance, in *Hoban v. Washington Metropolitan Area Transit Authority*, 841 F.2d 1157, 1159 (D.C. Cir. 1988), the court stated that the rules must be read "in tandem," such that the right to an automatic

stay upon posting a bond under subsection (d) and the exception to the bond requirement for the government under subsection (e) meant that the governmental agency "is entitled to a stay as a matter of right without posting a supersedeas bond." *Id.* (citing 7 J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 62.07, at 62–36 (2d ed. 1985) ("When an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States' and a stay is authorized under other subdivisions of Rule 62, the United States is entitled to a stay without the necessity of giving bond, obligation or security.")). *See also Lightfoot v. Walker*, 797 F.2d 505, 507 (7th Cir. 1986) ("Judgments against the United States, for example, are paid out of a general appropriation (the 'Judgments Fund,' as it is called) to the Treasury. This makes Rule 62(e), which entitles the federal government (and its departments, agencies, and officers) to a stay of execution pending appeal, without its having to post a bond or other security, appropriate." (citations omitted)); *Rhoads v. F.D.I.C.*, 286 F. Supp. 2d 532, 540 (D. Md. 2003) ("Pursuant to Rules 62(d) and (e) of the Federal Rules of Civil Procedure, the FDIC is entitled to a stay of enforcement of the money judgment, and no bond is required of the United States when it seeks a stay pending appeal."); *United States v. U.S. Fishing Vessel Maylin*, 130 F.R.D. 684, 686 (S.D. Fla. 1990) ("Stay as a matter of right lies where the judgment involved is monetary, because the bond serves to guarantee the judgment in kind with interest. In addition, when it seeks a stay, the Government need not actually post the bond, as the court can look to the fisc for a guarantee on the judgment."); *In re Rape*, 100 B.R. 288, 288 (W.D.N.C. 1989) ("This Court . . . is of the opinion that the Government is entitled as a matter of

right, without the necessity of posting a supersedeas bond, to a stay of the bankruptcy court's order.").

Only a few federal district courts have disagreed. *See, e.g., In re Westwood Plaza Apartments*, 150 B.R. 163, 165-68 (Bankr. E.D. Tex. 1993) (holding that FRCP 62(e) is separate and independent from FRCP 62(d) and, thus, the United States is not entitled to supersedeas as a matter of right); *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 750 F. Supp. 67, 72-76 (E.D.N.Y. 1990) (noting that the government was not entitled to supersedeas as a matter of right because the judgment was not stayed under any other subdivisions of FRCP 62, which is required under FRCP 62(e)). *Westwood Plaza Apartments*, however, involved staying a plan of reorganization pending appeal of the order confirming the reorganization plan, 150 B.R. at 164, and in *C.H. Sanders*, the court was addressing whether the government's notice of appeal gave rise to an automatic stay, without the need to separately seek one, 750 F. Supp. at 76. Both courts read the conjunctive "and" in FRCP 62(e) as requiring the government to obtain a stay under a different subsection or authority before the bond requirement is waived. 150 B.R. at 164; 750 F. Supp. at 73, 76.

We disagree with that interpretation. As noted above, we have already explained that the "and" means simply that the government is not entitled to a stay merely upon filing a notice of appeal, but rather must move for a stay in the district court. *Nelson*, 121 Nev. at 834 n.4, 122 P.3d at 1253 n.4; *Pub. Serv. Comm'n*, 94 Nev. at 45-46, 574 P.2d at 274. Upon motion, as a secured party, the state or local government is generally entitled to a stay of a money judgment under NRCP 62(d) without posting a supersedeas bond or other security.

CONCLUSION

We conclude that NRCP 62(d) must be read in conjunction with NRCP 62(e), such that, upon motion, state and local government appellants are generally entitled to a stay of a money judgment pending appeal, without needing to post a supersedeas bond or other security. Further, in this case, LVRJ concedes that no irreparable or serious harm will ensue if the stay is granted. Therefore, the Coroner's Office is entitled to a stay of the attorney fees and costs judgment pending appeal, and the stay motion is granted pending further order of this court.

Douglas, C.J.

We concur:

Pickering, J.

Hardesty, J.

Parraguirre, J.

Stiglich, J.

CHERRY, J., concurring in part and dissenting in part:

As the majority points out, NRCP 62(e) precludes requiring a state or local government to post a bond or other security in order to obtain a stay pending appeal. However, nothing in that provision also suggests that a stay must be granted as a matter of right. Indeed, the only right discussed in subsection (e) is the waiver of any bond requirement.

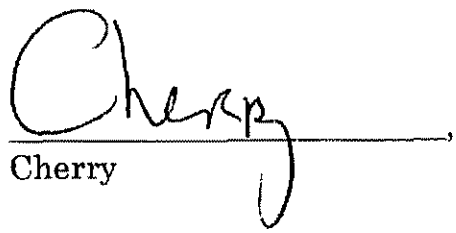
Other courts have also noted that subsection (e) sets forth two requirements that must be met before the bond is waived: (1) the appellant must be the state or local government, and (2) the judgment must be stayed. No provision for a stay is made. In *In re Westwood Plaza Apartments*, the bankruptcy court analyzed the analogous federal rule's plain language, explaining that "[s]ubdivision (e) is complete and not dependent on subdivision (d)," as "[t]he second condition of subdivision (e) is not worded as to provide an appeal as a matter of right as the first sentence of subdivision (d) does," and if read together, that second condition "becomes superfluous." 150 B.R. 163, 166 (Bankr. E.D. Tex. 1993) (holding that the United States was not entitled to supersedeas as a matter of right). And in *C.H. Sanders Co. v. BHAP Housing Development Fund Co.*, the federal district court analyzed "[a] careful reading of the statutes, their historical antecedents and [a] commentator" and concluded that "when the government files a notice of appeal it need not file a bond and that the notice in and of itself, does not operate as a stay." 750 F. Supp. 67, 76 (E.D.N.Y. 1990) (holding that the government was not automatically entitled to supersedeas without bond because the judgment had not been stayed under any other provisions of FRCP 62, as FRCP 62(e) requires).

I read NRCP 62 in the same manner as those courts read the equivalent federal rule. Subsection (d) stays a money judgment when a

supersedeas bond is posted as security, and subsection (e) independently waives any bond requirement when a state or local government has obtained a stay, which necessarily must have been obtained under separate authority. *See, e.g.*, NRCP 62(b), (c), (h) (authorizing stays in various situations and granting the court power to condition such stays upon providing appropriate bond or other security); NRAP 8(a)(2)(E) ("The [appellate] court may condition relief on a party's filing a bond or other appropriate security in the district court."). Accordingly, the district court had discretion to deny the stay motion, and the Coroner's Office's motion to this court must be reviewed under the authority now applicable, NRAP 8.

Under NRAP 8(c), this court considers (1) whether the object of the appeal will be defeated in the absence of a stay, (2) whether the appellant will suffer irreparable or substantial harm in the absence of a stay, (3) whether the respondent will suffer irreparable or substantial harm if a stay is granted, and (4) whether the appellant is likely to prevail on the merits of the appeal. With regard to the first factor, the Coroner's Office has not explained how the payment of the attorney fees and costs award will defeat the object of the appeal, which is merely to reverse the award. Further, it does not appear that the Coroner's Office will suffer irreparable or serious harm if it is required to pay the judgment before the appeal is decided, as it merely asserts that it will be put in the position of having to recover the payment from LVRJ if the appeal is successful, a position that does not in and of itself constitute serious harm. And as for the third factor, LVRJ concedes that it will not suffer severe harm if a stay is granted. Thus, of the four NRAP 8(c) factors, the likelihood of success is perhaps the most relevant here. As for that factor, the plain language of NRS 239.011(2) provides that attorney fees and costs are to be awarded to persons who

prevail on public record requests, and even given the existence of a divergent ruling in another case below, I do not believe that the Coroner's Office has presented a legal question sufficient, when considered with the other factors, to warrant staying payment of the judgment. As LVRJ points out, the public interest in implementing the purpose behind the Nevada Public Records Act, and the fees and costs provision in particular, which is to encourage transparency within the government, as well as in saving on interest imposed on the fees and costs award, weighs in favor of denying a stay.[1] Accordingly, I would deny the stay.



Cherry, J.

Cherry

[1]NRAP 8 does not preclude this court from considering the public interest when determining whether a stay is warranted. *See* NRAP 8(c) (appellant courts "will generally consider" the listed factors in considering stay motions); *see also Hilton v. Braunskill*, 481 U.S. 770, 776, (1987) (providing that federal district and appellate courts will consider, as one factor, "where the public interest lies" when deciding a stay motion).

ORD

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

The Clark County School District's Motion to Stay Execution and Enforcement of Order Granting Attorney's Fees and Costs Pending Appeal, having come on for hearing on May 8, 2018, the Honorable Timothy C. Williams presiding, Petitioner Las Vegas Review-Journal ("Review-Journal") appearing by and through its attorney, Alina M. Shell, and Respondent Clark County School District ("CCSD"), appearing by and through its attorney, Adam Honey, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby finds that pursuant to the Nevada Supreme Court's order in *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 24, 415 P.3d 16 (2018), it is required to grant CCSD a stay of the March 22, 2018 Order granting the Review-Journal its attorney's fees and costs in this matter. Should the Supreme Court reconsider its order in *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, the Review-Journal shall have

leave to seek appropriate relief from this Court.

IT IS SO ORDERED this 30th day of May, 2018.

HONORABLE JUDGE TIMOTHY C. WILLIAMS

Respectfully submitted,

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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 **NOTICE OF ENTRY OF ORDER**

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

PLEASE TAKE NOTICE that on the 1st day of June, 2018, an Order Granting CCSD's Motion to Stay Enforcement and Execution of Order Granting Attorney's Fees and Costs Pending Appeal was entered in the above-captioned action.

A copy of the Order Granting CCSD's Motion to Stay Enforcement and Execution of Order Granting Attorney's Fees and Costs Pending Appeal is attached hereto as Exhibit 1.

DATED this 1st day of June, 2018.

/s/ Margaret A. McLetchie
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ALINA M. SHELL, Nevada Bar No. 11711
MCLETCHIE SHELL LLC
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 1st day of June, 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 1st day of June, 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 MCLETCHIE SHELL LLC

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EXHIBIT 1

ORD

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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

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

The Clark County School District's Motion to Stay Execution and Enforcement of Order Granting Attorney's Fees and Costs Pending Appeal, having come on for hearing on May 8, 2018, the Honorable Timothy C. Williams presiding, Petitioner Las Vegas Review-Journal ("Review-Journal") appearing by and through its attorney, Alina M. Shell, and Respondent Clark County School District ("CCSD"), appearing by and through its attorney, Adam Honey, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby finds that pursuant to the Nevada Supreme Court's order in *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 24, 415 P.3d 16 (2018), it is required to grant CCSD a stay of the March 22, 2018 Order granting the Review-Journal its attorney's fees and costs in this matter. Should the Supreme Court reconsider its order in *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, the Review-Journal shall have

leave to seek appropriate relief from this Court.

IT IS SO ORDERED this 30th day of May, 2018.

HONORABLE JUDGE TIMOTHY C. WILLIAMS

Respectfully submitted,

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