

1 **NOAS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE LAW**

5 701 E. Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300; Fax: (702) 425-8220

8 Email: maggie@nvlitigation.com

9 *Attorneys for Petitioner Las Vegas Review-Journal*

Electronically Filed
Sep 09 2020 01:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

13 Petitioner,

Dept. No.: VIII

14 vs.

NOTICE OF APPEAL

15 CITY OF HENDERSON,

16 Respondent.

17 PLEASE TAKE NOTICE that Plaintiff/Petitioner, the Las Vegas Review-Journal
18 (“Review-Journal”), pursuant to Nevada Rule of Appellate Procedure 4(a)(2), hereby timely
19 cross-appeals to the Supreme Court of Nevada from the Decision and Order entered in this
20 case on August 5, 2020.

21 DATED this 3rd day of September, 2020.

22 /s/ Margaret A. McLatchie

23 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

24 ALINA M. SHELL, Nevada Bar No. 11711

25 **MCLEATCHIE LAW**

26 701 E. Bridger Avenue, Suite 520

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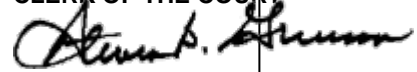
Email: maggie@nvlitigation.com

Attorneys for Petitioner Las Vegas Review-Journal

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 3rd day of September, 2020, I did cause a true copy of the foregoing NOTICE OF APPEAL in *Las Vegas Review-Journal v. City of Henderson*, Clark County District Court Case No. A-16-747289-W, to be served using the Odyssey E-File & Serve electronic court filing system, to all parties with an email address on record.

/s/ Pharan Burchfield
EMPLOYEE of McLetchie Law



1 **ASTA**
2 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLETCHIE LAW**
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8 Email: maggie@nvlitigation.com
9 *Attorneys for Petitioner Las Vegas Review-Journal*

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

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

10 Petitioner,

Dept. No.: VIII

11 vs.

CASE APPEAL STATEMENT

12 CITY OF HENDERSON,

13 Respondent.
14

- 15 1. *Name of appellant filing this case appeal statement:*
16 Petitioner Las Vegas Review-Journal.
17
18 2. *Identify the judge issuing the decision, judgment, or order appealed from:*
19 The Honorable Trevor L. Atkin, District Court Judge.
20
21 3. *Identify each appellant and the name and address of counsel for each appellant:*

21 Margaret A. McLetchie, Nevada Bar No. 10931
22 Alina M. Shell, Nevada Bar No. 11711
23 MCLETCHIE LAW
24 701 East Bridger Ave., Suite 520
25 Las Vegas, NV 89101
26 *Counsel for Petitioner Las Vegas Review-Journal*

27 ///

28 ///

///

///

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

Nicholas G. Vaskov, Nevada Bar No. 8298
Brian R. Reeve, Nevada Bar No. 10197
CITY OF HENDERSON'S ATTORNEY OFFICE
240 Water Street, MSC 144
Henderson, NV 89015

Dennis L. Kennedy, Nevada Bar No. 1462
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Counsel for City of Henderson

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

Not applicable. All attorneys are licensed in Nevada.

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

Appellant is represented by retained counsel.

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

Retained counsel.

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

No.

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

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

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

The underlying action involved the Nevada Public Records Act. That action was dismissed by an order dated May 15, 2017. On June 18, 2020, the district court held a hearing on the Review-Journal's Amended Motion for Attorneys Fees and Costs. On August 5, 2020, the district court entered a Decision and Order denying the Review-Journal's Amended Motion for Attorney's Fees and Costs.

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

This matter has been the subject of two prior appeals: *Las Vegas Review-Journal v. City of Henderson*, Case No. 73287, and *City of Henderson v. Las Vegas Review-Journal*, Case No. 75407.

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

This appeal does not involve child custody or visitation.

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

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

DATED this 3rd day of September, 2020.

/s/ Margaret A. McLetchie

MARGARET A. MCLETSCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETSCHIE LAW

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300; Fax (702) 728-5300

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Attorneys for Petitioner Las Vegas Review-Journal

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/s/ Pharan Burchfield
EMPLOYEE of McLetchie Law

CASE SUMMARY

CASE NO. A-16-747289-W

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

§
§
§
§
§
§
§

Location: **Department 8**
 Judicial Officer: **Atkin, Trevor**
 Filed on: **11/29/2016**
 Case Number History:
 Cross-Reference Case Number: **A747289**
 Supreme Court No.: **73287**
75407

CASE INFORMATION

Case Type: **Writ of Mandamus**

Case Status: **10/31/2019 Reopened**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-16-747289-W
 Court Department 8
 Date Assigned 09/30/2019
 Judicial Officer Atkin, Trevor

PARTY INFORMATION





		<i>Lead Attorneys</i>
Plaintiff	Las Vegas Review-Journal	Shell, Alina <i>Retained</i> 702-728-5300(W)
Defendant	Henderson City of	Kennedy, Dennis L. <i>Retained</i> 7025628820(W)

DATE












EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

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

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

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

CASE SUMMARY

CASE NO. A-16-747289-W

06/01/2017	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
06/05/2017	Administrative Reassignment - Judicial Officer Change <i>From Judge David Barker to Judge Mark B. Bailus</i>
06/09/2017	 Notice of Appeal Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Appeal</i>
06/09/2017	 Case Appeal Statement Filed By: Plaintiff Las Vegas Review-Journal <i>Case Appeal Statement</i>
06/22/2017	 Stipulation and Order <i>Stipulation and Order to Modify Briefing Schedule and Move the Hearing on Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
07/10/2017	 Response Filed by: Defendant Henderson City of <i>City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
07/27/2017	 Reply to Opposition Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
08/24/2017	 Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Extension of Time to Allows Las Vegas Review-Journal to Submit a Proposed Order Granting Las Vegas Review-Journal s Motion for Attorney s Fees and Costs</i>
08/25/2017	 Notice Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Submission of Proposed Order</i>
09/07/2017	 Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Extension of Time to Allow Las Vegas Review-Journal to Submit a Proposed Order Granting Las Vegas Review-Journal's Motion for Attorney's Fees and Costs (Second Request)</i>
11/08/2017	 Motion for Clarification Filed By: Plaintiff Las Vegas Review-Journal <i>Motion for Clarification</i>
11/29/2017	 Opposition to Motion Filed By: Defendant Henderson City of <i>City of Henderson's Opposition to Las Vegas Review-Journal's Motion for Clarification</i>
11/29/2017	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
12/05/2017	

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

	 Reply to Opposition Filed by: Plaintiff Las Vegas Review-Journal <i>Reply to City of Henderson's Opposition to Motion for Clarification</i>
01/03/2018	 Order Denying Motion Filed By: Defendant Henderson City of <i>Order</i>
01/04/2018	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
02/15/2018	 Order Filed By: Defendant Henderson City of <i>Order</i>
02/15/2018	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
03/16/2018	 Notice of Appeal Filed By: Defendant Henderson City of <i>Respondent City of Henderson's Notice of Appeal</i>
03/16/2018	 Case Appeal Statement Filed By: Defendant Henderson City of <i>Case Appeal Statement</i>
03/26/2018	 Notice of Appeal Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Cross-Appeal</i>
03/26/2018	 Case Appeal Statement Filed By: Plaintiff Las Vegas Review-Journal <i>Case Appeal Statement</i>
03/28/2018	 Notice Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Submission of Proposed Order</i>
04/05/2018	 Motion to Stay Filed By: Defendant Henderson City of <i>City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time</i>
04/06/2018	 Receipt of Copy Filed by: Defendant Henderson City of <i>Receipt of Copy of City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time</i>
04/10/2018	 Opposition to Motion Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner's Opposition to Respondent's Motion for Stay Pending Appeal and Countermotion for Order to Show Cause</i>

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


05/21/2018	 Order Filed By: Defendant Henderson City of <i>Order</i>
05/21/2018	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
08/28/2018	 Request <i>Request for Transcript of Proceedings</i>
08/28/2018	 Request <i>Request for Transcript of Proceedings</i>
08/29/2018	 Request Filed by: Plaintiff Las Vegas Review-Journal <i>Request for Transcript of Proceedings</i>
09/11/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing Re: Plaintiff's Motion for Clarification. Heard on 12/13/2017.</i>
10/16/2018	 Notice of Change of Firm Name Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Change of Firm Name</i>
01/07/2019	Case Reassigned to Department 9 <i>Judicial Reassignment - From Judge Bailus to Vacant, DC9</i>
04/29/2019	Case Reassigned to Department 8 <i>Judicial Reassignment to Department 8 - Vacant DC8 Judge</i>
06/24/2019	 NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed in Part, Reversed in Part and Remand</i>
09/30/2019	Administrative Reassignment - Judicial Officer Change <i>From Vacant DC8 to Judge Trevor L. Atkin</i>
11/08/2019	 Order <i>Order Setting Further Proceedings Re: Supreme Court Order</i>
11/15/2019	 NV Supreme Court Clerks Certificate/Judgment - Reversed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed</i>
01/10/2020	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order Regarding Briefing Schedule for Motion for Attorney Fees</i>
01/10/2020	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Stipulation and Order Regarding Briefing Schedule for Motion for Attorney Fees</i>


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


02/06/2020	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
02/27/2020	 Opposition to Motion Filed By: Defendant Henderson City of <i>City of Henderson's Opposition to Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
02/27/2020	 Appendix Filed By: Defendant Henderson City of <i>Appendix of Exhibits to City of Henderson's Opposition to Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs</i>
03/16/2020	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order to Extend the Deadline to File Reply to Opposition to Motion for Attorney Fees and Costs</i>
03/16/2020	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Stipulation and Order to Extend the Deadline to File Reply to Opposition to Motion for Attorney Fees and Costs</i>
03/29/2020	 Stipulation and Order <i>Stipulation and Order to Extend the Deadline to File the Reply to Opposition to Motion for Attorney Fees and Costs</i>
03/30/2020	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Stipulation and Order to Extend the Deadline to File Reply to Opposition to Motion for Attorney Fees and Costs</i>
04/27/2020	 Stipulation and Order Filed by: Defendant Henderson City of <i>Amended Stipulation and Order Regarding Briefing Schedule for Motion for Attorney's Fees</i>
04/27/2020	 Notice of Entry of Order Filed By: Defendant Henderson City of <i>Notice of Entry of Order</i>
05/11/2020	 Motion for Attorney Fees and Costs Filed By: Plaintiff Las Vegas Review-Journal <i>Petitioner Las Vegas Review-Journal's Amended Motion for Attorneys' Fees and Costs</i>
05/11/2020	 Exhibits Filed By: Plaintiff Las Vegas Review-Journal <i>Appendix of Exhibits in Support of Petitioner Las Vegas Review-Journal's Amended Motion for Attorneys' Fees and Costs</i>
06/01/2020	 Opposition to Motion <i>City of Henderson's Opposition to LVRJ's Amended Motion for Attorney's Fees and Costs</i>
06/01/2020	 Appendix Filed By: Defendant Henderson City of


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


Appendix of Exhibits to City of Henderson's Opposition to Petitioner Las Vegas Review-Journal's Amended Motion for Attorney's Fees and Costs

06/15/2020  **Reply in Support**
Filed By: Plaintiff Las Vegas Review-Journal
Reply in Support of Petition Las Vegas Review-Journal's Motion for Attorneys' Fees and Costs

08/04/2020  **Decision and Order**
Decision and Order

08/05/2020  **Notice of Entry**
Notice of Entry of Order

09/03/2020  **Notice of Appeal**
Filed By: Plaintiff Las Vegas Review-Journal
Notice of Appeal

09/03/2020  **Case Appeal Statement**
Filed By: Plaintiff Las Vegas Review-Journal
Case Appeal Statement


DISPOSITIONS


02/15/2018 **Order** (Judicial Officer: Bailus, Mark B)
Debtors: Henderson City of (Defendant)
Creditors: Las Vegas Review-Journal (Plaintiff)
Judgment: 02/15/2018, Docketed: 02/15/2018
Total Judgment: 9,912.84

06/24/2019 **Clerk's Certificate** (Judicial Officer: Vacant, DC 8)
Debtors: Las Vegas Review-Journal (Plaintiff)
Creditors: Henderson City of (Defendant)
Judgment: 06/24/2019, Docketed: 06/25/2019
Comment: Supreme Court No. " Affirmed in Part and Reversed in Part and Remand "

11/15/2019 **Clerk's Certificate** (Judicial Officer: Atkin, Trevor)
Debtors: Las Vegas Review-Journal (Plaintiff)
Creditors: Henderson City of (Defendant)
Judgment: 11/15/2019, Docketed: 11/15/2019
Comment: Supreme Court No.75407 " Appeal Reversed"

HEARINGS

03/30/2017  **Petition for Writ of Mandamus** (9:00 AM) (Judicial Officer: Thompson, Charles)
Granted in Part; Las Vegas Review-Journal's Petition for Writ of Mandamus
Journal Entry Details:
Arguments by counsel. COURT ORDERED, USB (Universal Serial Bus) flash drive containing approximately 69,000 pages shall be turned over as agreed within five (5) days of this date. Court Finds an adequate description is contained in the privilege log prepared (Defendant's Exhibit - H) to satisfy the requirement. COURT ORDERED, request to have Henderson rescind its document policy is DENIED at this time. Mr. Kennedy to prepare the order within 10 days and distribute a filed copy to all parties involved in this matter.;

08/03/2017  **Motion for Attorney Fees and Costs** (9:00 AM) (Judicial Officer: Bailus, Mark B)
Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs

MINUTES
Stip & Order to Modify Briefing Schedule filed 6/22/17

Decision Pending; Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and

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

Costs

Journal Entry Details:

*Arguments by counsel. Court continued matter for further consideration and decision.
08/10/17 9:00 a.m. Decision;*

SCHEDULED HEARINGS



Decision (08/10/2017 at 9:00 AM) (Judicial Officer: Bailus, Mark B)

Decision - Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs

08/10/2017



Decision (9:00 AM) (Judicial Officer: Bailus, Mark B)

Decision - Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs

Decision Made; Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs

Journal Entry Details:

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

12/13/2017



Motion for Clarification (9:00 AM) (Judicial Officer: Bailus, Mark B)

Plaintiff's Motion for Clarification

Denied; Plaintiff's Motion for Clarification

Journal Entry Details:

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

04/11/2018



Motion For Stay (9:00 AM) (Judicial Officer: Bailus, Mark B)

City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time

Granted; City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time

Journal Entry Details:

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

12/12/2019



Status Check (9:00 AM) (Judicial Officer: Atkin, Trevor)

Order Setting Further Proceedings RE: Supreme Court Order




Matter Heard; Order Setting Further Proceedings RE: Supreme Court Order

Journal Entry Details:

COURT NOTED, this matter has been remanded back to District Court. Ms. Shell stated the Supreme Court had sent this matter back to the District Court to reconsider the deliberative process issue with regard to some of the withheld documents. Since the Supreme Court issued the remittitur, the City of Henderson has provided us with the documents they had withheld pursuant to the deliberative process privilege. Ms. Shell stated she has spoken with Mr. Kennedy and they would like to have a scheduled set on Attorney's Fees. Ms. Shell further stated there were two Appeals going on which one was the substantive case and the one pertaining to the award of Fees. The Supreme Court reversed the Order granting Plaintiff Fees stating that Plaintiffs hadn't prevailed, now that Plaintiffs have received the process privilege documents Plaintiff are a prevailing party and entitled to do briefing on Attorney Fees. Mr. Kennedy stated Plaintiffs are not a prevailing party. Further, out of 70,000 pages the City of Henderson prevailed on almost all of them except for a small number of documents that had been withheld on deliberative privilege. Mr. Kennedy further stated Defendants will be filing a Motion for Summary Judgment because there are no issues left. COURT ORDERED, Parties are to put together Proposed Briefing Schedule and send over to Chambers, will sign it and will insert a date for hearing.;

CASE SUMMARY

CASE NO. A-16-747289-W

01/22/2020	 Status Check: Compliance (3:00 AM) (Judicial Officer: Atkin, Trevor) <i>Status Check: Compliance - Filing SAO</i> Compliance - Off Calendar; Journal Entry Details: <i>Court finds Stipulation and Order submitted. MATTER OFF CALENDAR.;</i>
06/12/2020	 Minute Order (3:00 PM) (Judicial Officer: Atkin, Trevor) <i>BlueJeans Notice for JUNE 18, 2020 LAW & MOTION</i> Minute Order - No Hearing Held; BLUEJEANS NOTICE - Thursday, June 18, 2020, AT 9:00 AM MANDATORY RULE 16 CONFERENCES & CIVIL LAW AND MOTION CALENDAR Journal Entry Details: <i>Department 8 Request to Appear Telephonically Pursuant to Administrative Order 20-10, Department 8 will temporarily request all matters be heard via telephone conference ONLY. We will NOT be utilizing video conferencing. The court has set up an appearance through BlueJeans, which can accommodate multiple callers at no cost to participants. To use BlueJeans, please call in prior to the hearing at 1-888-748-9073. To connect to your hearing, simply input the assigned meeting ID number provided immediately below, followed by #. Your Meeting ID: 831 007 258 (NOTE: The meeting number will be different for each day's court session.) For your hearing, PLEASE observe the following protocol: Place your telephone on mute while waiting for your matter/case to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each time as a record is being made. Please be mindful of sounds of rustling of papers or coughing.;</i>
06/18/2020	 Motion for Attorney Fees and Costs (9:01 AM) (Judicial Officer: Atkin, Trevor) <i>Las Vegas Review Journal's Motion for Attorney's Fees and Costs</i> MINUTES Denied; Las Vegas Review Journal's Motion for Attorney's Fees and Costs Journal Entry Details: <i>Following arguments of counsel MATTER TAKEN UNDER ADVISEMENT. Parties to be notified of decision by way of Minute Order or written decision.;</i>

DATE

FINANCIAL INFORMATION

Defendant Henderson City of	
Total Charges	24.00
Total Payments and Credits	24.00
Balance Due as of 9/8/2020	0.00
Plaintiff Las Vegas Review-Journal	
Total Charges	353.50
Total Payments and Credits	353.50
Balance Due as of 9/8/2020	0.00
Plaintiff Las Vegas Review-Journal	
Appeal Bond Balance as of 9/8/2020	500.00
Plaintiff Las Vegas Review-Journal	
Appeal Bond Balance as of 9/8/2020	500.00

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

County, Nevada

I

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

The Las Vegas Review-Journal

c/o McLetchie Shell LLC

701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101

(702) 728-5300

Defendant(s) (name/address/phone):

City of Henderson

Attorney (name/address/phone):

Margaret A. McLetchie and Alina M. Shell

McLetchie Shell LLC

701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101

(702) 728-5300

Attorney (name/address/phone):

City of Henderson, City Attorney's Office

240 Water Street; P.O. Box 95050; MSC 144

Henderson, NV 89009-5050

(702) 267-1200

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

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

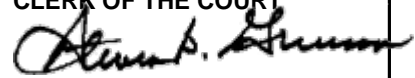
Business Court filings should be filed using the Business Court civil coversheet.

11/29/2016

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 DAO

2
3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6
7 LAS VEGAS REVIEW-JOURNAL

8 Petitioner,

9 vs.

10 CITY OF HENDERSON

11 Respondent.
12
13

DIST. CT. CASE NO.: A-16-747289-W

DEPT NO.: VIII

14 This matter having come on for hearing on June 18, 2020, upon Petitioner Las Vegas
15 Review-Journal's ("LVRJ") Amended Motion for Attorney's Fees and Costs before
16 District Court Judge Trevor Atkin, and all named parties appearing through their
17 identified counsel of record, and the Court having reviewed all papers and pleading on
18 file, including Respondent City of Henderson's ("HENDERSON") Opposition thereto, and
entertaining the argument of counsel and being fully advised in the premises, and good
cause appearing, this Court issues the following Decision and Order.

19 **DECISION AND ORDER**

20
21 I.
Factual Background & Procedural History

22 The origin of this matter, and relatedly the subject motion, is the "Public Records Act
23 Application Pursuant to NRS § 239.001/Petition for Writ of Mandamus" filed by the LVRJ
24 on November 29, 2016. Since that time, there have been two substantive orders issued
by two different district court judges¹, two appeals taken from those orders², and two

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3 has endured the past 3 ½ years prior to its consideration of the instant amended motion
4 for attorneys fees, as the Nevada Supreme Court has methodically summarized what it
5 considered to be the critical facts and events upon which its two orders were premised.
6 Importantly though, subsequent to the two Nevada Supreme Court orders,
7 HENDERSON voluntarily disclosed the final 11 files which it had originally withheld
8 under the claimed deliberative process privilege ("DPP") in July of 2019.⁴

9 The LVRJ acknowledges in the instant motion that HENDERSON ultimately produced
10 the additional 11 records or files it had initially withheld on the basis of the claimed
11 deliberative process privilege, but not without it [LVRJ] waiting nearly three years to
12 receive - incurring \$127,419.00 in attorneys' fess and costs in so doing.⁵ Having
13 ultimately achieved its goal of receiving all of the documents it had originally requested,
14 the LVRJ asserts that under Nevada's recently adopted "catalyst theory", it is the
15 "prevailing party", and thus under the Nevada Public Records Act, NRS Chapter 239,
16 entitled to recover its costs and reasonable attorney's fees.

13 ³ The Nevada Supreme Court in Case No. 73287 ("Petiton Appeal"), *Las Vegas Review-Journal v. City of Henderson*,
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23 *Henderson*, 2019 WL 5290874 *2.

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26 HENDERSON agreed to provide the LVRJ copies of the requested documents on a USB drive, save and except for 91
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28 attorney-client privilege; two (2) were withheld because they contained confidential health information; and 11
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"However, we agree with LVRJ's argument in relation to those documents withheld or redacted pursuant
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conclude that the district court abused its discretion in failing to consider the balancing test for these
documents, and we reverse and remand for the district court to do so." *Las Vegas Review-Journal*, 2019
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1 The thrust of HENDERSON's opposition filed on February 27, 2020 was two-fold: First,
2 the LVRJ cannot be considered the "prevailing party" because not only has this Court not
3 entered a final judgment in favor of LVRJ, but also, because the Nevada Supreme Court
4 has held that the LVRJ did not prevail on any other issue in the case. Secondly,
5 Nevada law, and the law of this case has rejected the LVRJ's "catalyst theory".

6 Subsequent to the parties filing their initial moving papers, yet prior to this Court
7 entertaining oral argument on the LVRJ's motion for attorney's fees and costs, the
8 Nevada Supreme Court in the case of *Las Vegas Metropolitan Police Department v.*
9 *Center for Investigative Reporting, Inc.*, 460 P.3d 952, 136 Nev. Adv. Op. 15 (April 02,
10 2020), ("*CIR*") adopted "catalyst theory" advanced by the LVRJ. LVRJ thereafter filed an
11 amended motion for fees and costs on May 11, 2020 which in turn caused
12 HENDERSON to file an opposition thereto on June 01, 2020.

13 The LVRJ in its amended motion argues that it is entitled to all of its incurred costs and
14 attorney's fees, as its has proven a causal nexus between its Amended Petition for Writ
15 of Mandamus and HENDERSON's voluntary disclosure of records – asserting that the
16 facts in the underlying litigation satisfy the five (5) factors laid out by Nevada Supreme
17 Court in *CIR*, *Id.*

18 HENDERSON in its opposition to LVRJ's amended motion argues that notwithstanding
19 the *CIR* decision, LVRJ's motion is improper because no judgment has ever been
20 entered. Additionally, *CIR* is not the law of this case. And finally, even if the catalyst
21 theory of *CIR* is considered to be the law of the State and this case, the facts of this case
22 are sufficiently unique from those present in *CIR* that the LVRJ cannot be considered the
23 "prevailing" party such that it should be awarded its attorneys' fees and costs pursuant to
24 NRS § 239.011(2).

25 II. 26 Discussion

27 The Nevada Public Records Act (NPRA) requires governmental entities to make
28 nonconfidential public records within their legal custody or control available to the public.
NRS § 239.010. If a governmental entity denies a public records request, the requester
may seek a court order compelling production. NRS § 239.011(1). If the requesting party
prevails, the requester is entitled to attorney fees and costs. NRS § 239.011(2). When
determining whether a requesting party "prevailed" and is therefore eligible for fees and
costs, the Nevada Supreme Court has outlined five factors for district courts to consider.
Las Vegas Metro. Police Dep't v. Ctr. for Investigative Reporting, Inc., 136 Nev. Adv. Op.
15, 460 P.3d 952, 957 (2020). (1) "[W]hen the documents were released," (2) what
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the documents at an earlier time", (4) "whether the litigation was frivolous, unreasonable,
or groundless", and (5) "whether the requester reasonably attempted to settle the matter
short of litigation by notifying the governmental agency of its grievances and giving the
agency an opportunity to supply the records within a reasonable time." *Id.*

1 The LVRJ argues in its moving papers that the facts of the subject case are akin to those
2 in *CIR* and thus when considering the five (5) *CIR* factors, it is the prevailing party for
3 purposes of NRS § 239.011(2). Conversely, HENDERSON in its opposing papers
4 contends its conduct and responses to the LVRJ's request for documents was entirely
5 distinguishable from those of the Las Vegas Metropolitan Police Department in *CIR*, and
6 thus even utilizing the catalyst theory, the LVRJ is not entitled to its prayed for fees and
7 costs.

8 Rather uniquely, and as prefaced above, this case has already had two district court
9 judges enter orders outlining the basis of their decisions relative to not only the LVRJ's
10 records request and HENDERSON's response thereto, but also, whether an award of
11 fees and costs was proper under NRS Chapter 239. Moreover, there are also two
12 Nevada Supreme Court orders regarding these district court rulings. Thus for the most
13 part, the law of this case has already been established as it pertains to the LVRJ's NPRA
14 records request and HENDERSON's response thereto. *Hsu v. County of Clark*, 123 Nev.
625, 173 P.3d 724 (2007). Specifically, that with exception of the 11 documents withheld
by HENDERSON on its asserted deliberative process privilege, the "...the LVRJ has not
succeeded on any of the issues that it raised in filing the underlying action." *City of
Henderson v. Las Vegas Review-Journal*, 450 P.3d 387, 2019 WL 5290874, *2 (Nev.
2019). And as to these 11 documents, "[w]e instructed the district court to conduct further
analysis and determine whether, and to what extent, those records were properly
withheld." *Id.* at *2. Accordingly, this Court limits its *CIR* analysis to the 11 documents
which ultimately were voluntarily produced.

15 1. *When the Documents were Released.*

16 HENDERSON did not release the DPP documents to the LVRJ until July 2019 – two-
17 and-a-half years after the LVRJ filed suit. Conversely, these documents were voluntarily
18 produced by HENDERSON after having prevailed at the district court and appellate
19 court levels – save and except for the remaining 11 DPP documents.

20 2. *What Triggered the Documents Release.*

21 HENDERSON argues that it was the desire to avoid any further costly litigation over 11
22 documents that triggered its voluntary production. LVRJ argues that this lawsuit already
23 forced HENDERSON to provide nearly 70,000 documents and it was litigation that forced
24 HENDERSON to provide the 11 DPP documents..

25 3. *Whether the Requester was Entitled to Documents at an Earlier Time.*

26 HENDERSON argues that LVRJ was never entitled to either disclosure of the public
27 records and any delay was a product of LVRJ's doing. Moreover, Judge Thompson
28 determined that as to the 11 DPP documents, HENDERSON's privilege log was timely,
sufficient and in compliance with the NRPA. The Nevada Supreme Court did not
necessarily disagree, but instructed that the district court needed to perform a balancing
test and thus remanded. It was before this balancing test could be performed that
HENDERSON produced the 11 documents. LVRJ argues that the NPRA is clear; LVRJ

1 was entitled to all the public and DPP records when they first made their request. LVRJ
2 could not have received the 11 DPP documents any sooner, but for its own actions. In
3 pursuing the records it ultimately was successful in securing.

4 *4. Whether the Litigation was Frivolous, Unreasonable, or Groundless*

5 NRS Chapter 239 makes clear that nonconfidential records must be made available to
6 the public. However, that does not mean the documents must be disclosed on the
7 requester's terms. The Nevada Supreme Court in this case had two opportunities to
8 declare whether either the LVRJ's request or HENDERSON's reason for non-disclosure
9 was frivolous, unreasonable, or groundless. It chose not to do so, declaring only that the
10 LVRJ has not succeeded on any of the issues it raised, but that there remained a
11 balancing test to be performed on the 11 DPP documents. Again, this test was never
12 performed; thus, never a determination relative to the 11 DPP documents.

13 *5. Whether the Requester Reasonably Attempted to Settle the Matter Short of*
14 *Litigation by Notifying the Government Agency of its Grievances and Giving the*
15 *Agency an Opportunity to Supply the Records within a Reasonable Time.*

16 This Court defers to the record created by the two prior district court and appellate court
17 rulings relative to the parties' attempts to settle or resolve. Moreover, there is an
18 incomplete record as to the 11 remaining DPP documents in this regard. Regardless, it
19 appears in this case that HENDERSON made more efforts to settle than the Las Vegas
20 Metropolitan Police Department did in *CIR*.

21 **III.**
22 **Order**

23 This Court having reviewed all the moving papers filed on behalf of the parties and
24 entertaining oral argument of the parties on June 18, 2020, hereby finds that
25 HENDERSON's response to the LVRJ's NPRA request was considerably different and
26 distinguishable from that of the Las Vegas Metropolitan Police Department in *CIR*. It is
27 the determination of this Court that Petitioner LVRJ is not the prevailing party for
28 purposes of being awarded its requested attorneys' fees and costs pursuant to NRS §
239.011(2) and thus DENIES Petitioner's motion for attorneys' fees and costs.

Dated: August 3, 2020.




Trevor L. Atkin
District Court Judge, Department 8

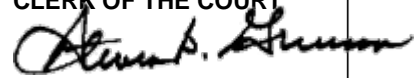
1 **Certificate of Service**

2 I hereby certify that on the date filed, a copy of this
3 Order was electronically served on all parties registered
4 through the Eighth Judicial District Court EFP system or mailed
5 to any party or attorney not registered with the EFT system.

6 
ALAN PAUL CASTLE, SR.

AUG - 3 2020

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Lynne Lerner
8 Judicial Executive Assistant
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**NEO
NICHOLAS G. VASKOV**

City Attorney
Nevada Bar No. 8298

BRIAN R. REEVE

Assistant City Attorney
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(702) 267-1231
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DENNIS L. KENNEDY
Nevada Bar No. 1462

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

Attorneys for Respondent
CITY OF HENDERSON

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

Case No. A-16-747289-W

Dept. No. VIII

NOTICE OF ENTRY OF ORDER

On August 4, 2020, an Order was entered in the above-captioned matter. A true and correct copy is attached.

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///



1 DATED this August 5, 2020.

2 CITY OF HENDERSON

3 By: /s/ Brian R. Reeve

4 Brian R. Reeve
5 Assistant City Attorney
6 City of Henderson
7 Nevada Bar No. 10197
8 240 Water Street, MSC 144
9 Henderson, NV 89015

10 BAILEY ❖ KENNEDY

11 Dennis L. Kennedy
12 Nevada Bar No. 1462
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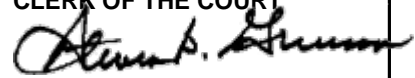
18 **CERTIFICATE OF SERVICE**

19 I certify that I am an employee of the City of Henderson and that on August 5, 2020,
20 the foregoing Notice of Entry of Order was made by electronic service through the Eighth
21 Judicial District Court's electronic filing system (Odyssey) as follows:

22 Margaret A. McLetchie (maggie@nvlitigation.com)
23 Alina M. Shell (alina@nvlitigation.com)
24 **MCLECHIE LAW**
25 701 East Bridger Avenue, Suite 520
26 Las Vegas, Nevada 89101

27 *Attorneys for Petitioner*
28 LAS VEGAS REVIEW-JOURNAL

/s/ Cheryl Boyd
An Employee of the
Henderson City Attorney's Office



1 **DAO**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
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2 in *CIR* and thus when considering the five (5) *CIR* factors, it is the prevailing party for
3 purposes of NRS § 239.011(2). Conversely, HENDERSON in its opposing papers
4 contends its conduct and responses to the LVRJ's request for documents was entirely
5 distinguishable from those of the Las Vegas Metropolitan Police Department in *CIR*, and
6 thus even utilizing the catalyst theory, the LVRJ is not entitled to its prayed for fees and
7 costs.

8 Rather uniquely, and as prefaced above, this case has already had two district court
9 judges enter orders outlining the basis of their decisions relative to not only the LVRJ's
10 records request and HENDERSON's response thereto, but also, whether an award of
11 fees and costs was proper under NRS Chapter 239. Moreover, there are also two
12 Nevada Supreme Court orders regarding these district court rulings. Thus for the most
13 part, the law of this case has already been established as it pertains to the LVRJ's NPRA
14 records request and HENDERSON's response thereto. *Hsu v. County of Clark*, 123 Nev.
625, 173 P.3d 724 (2007). Specifically, that with exception of the 11 documents withheld
by HENDERSON on its asserted deliberative process privilege, the "...the LVRJ has not
succeeded on any of the issues that it raised in filing the underlying action." *City of
Henderson v. Las Vegas Review-Journal*, 450 P.3d 387, 2019 WL 5290874, *2 (Nev.
2019). And as to these 11 documents, "[w]e instructed the district court to conduct further
analysis and determine whether, and to what extent, those records were properly
withheld." *Id.* at *2. Accordingly, this Court limits its *CIR* analysis to the 11 documents
which ultimately were voluntarily produced.

15 1. *When the Documents were Released.*

16 HENDERSON did not release the DPP documents to the LVRJ until July 2019 – two-
17 and-a-half years after the LVRJ filed suit. Conversely, these documents were voluntarily
18 produced by HENDERSON after having prevailed at the district court and appellate
19 court levels – save and except for the remaining 11 DPP documents.

20 2. *What Triggered the Documents Release.*

21 HENDERSON argues that it was the desire to avoid any further costly litigation over 11
22 documents that triggered its voluntary production. LVRJ argues that this lawsuit already
23 forced HENDERSON to provide nearly 70,000 documents and it was litigation that forced
24 HENDERSON to provide the 11 DPP documents..

25 3. *Whether the Requester was Entitled to Documents at an Earlier Time.*

26 HENDERSON argues that LVRJ was never entitled to either disclosure of the public
27 records and any delay was a product of LVRJ's doing. Moreover, Judge Thompson
28 determined that as to the 11 DPP documents, HENDERSON's privilege log was timely,
sufficient and in compliance with the NRPA. The Nevada Supreme Court did not
necessarily disagree, but instructed that the district court needed to perform a balancing
test and thus remanded. It was before this balancing test could be performed that
HENDERSON produced the 11 documents. LVRJ argues that the NPRA is clear; LVRJ

1 was entitled to all the public and DPP records when they first made their request. LVRJ
2 could not have received the 11 DPP documents any sooner, but for its own actions. In
3 pursuing the records it ultimately was successful in securing.

4 *4. Whether the Litigation was Frivolous, Unreasonable, or Groundless*

5 NRS Chapter 239 makes clear that nonconfidential records must be made available to
6 the public. However, that does not mean the documents must be disclosed on the
7 requester's terms. The Nevada Supreme Court in this case had two opportunities to
8 declare whether either the LVRJ's request or HENDERSON's reason for non-disclosure
9 was frivolous, unreasonable, or groundless. It chose not to do so, declaring only that the
10 LVRJ has not succeeded on any of the issues it raised, but that there remained a
11 balancing test to be performed on the 11 DPP documents. Again, this test was never
12 performed; thus, never a determination relative to the 11 DPP documents.

13 *5. Whether the Requester Reasonably Attempted to Settle the Matter Short of*
14 *Litigation by Notifying the Government Agency of its Grievances and Giving the*
15 *Agency an Opportunity to Supply the Records within a Reasonable Time.*

16 This Court defers to the record created by the two prior district court and appellate court
17 rulings relative to the parties' attempts to settle or resolve. Moreover, there is an
18 incomplete record as to the 11 remaining DPP documents in this regard. Regardless, it
19 appears in this case that HENDERSON made more efforts to settle than the Las Vegas
20 Metropolitan Police Department did in *CIR*.

21 **III.**
22 **Order**

23 This Court having reviewed all the moving papers filed on behalf of the parties and
24 entertaining oral argument of the parties on June 18, 2020, hereby finds that
25 HENDERSON's response to the LVRJ's NPRA request was considerably different and
26 distinguishable from that of the Las Vegas Metropolitan Police Department in *CIR*. It is
27 the determination of this Court that Petitioner LVRJ is not the prevailing party for
28 purposes of being awarded its requested attorneys' fees and costs pursuant to NRS §
239.011(2) and thus DENIES Petitioner's motion for attorneys' fees and costs.

Dated: August 3, 2020.




Trevor L. Atkin
District Court Judge, Department 8

1 **Certificate of Service**

2 I hereby certify that on the date filed, a copy of this
3 Order was electronically served on all parties registered
4 through the Eighth Judicial District Court EFP system or mailed
5 to any party or attorney not registered with the EFT system.

6 
ALAN PAUL CASTLE, SR.

AUG - 3 2020

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Lynne Lerner
8 Judicial Executive Assistant
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

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

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

August 03, 2017

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

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

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Alan Castle

RECORDER:

REPORTER: Andrea Martin

PARTIES

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

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

August 10, 2017	9:00 AM	Decision	Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees and Costs
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HEARD BY: Bailus, Mark B**COURTROOM:** Phoenix Building Courtroom -
11th Floor**COURT CLERK:** Alan Castle**RECORDER:** Robin Page**REPORTER:** Andrea Martin**PARTIES**

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

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

December 13, 2017

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

RECORDER: Robin Page

REPORTER:

PARTIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

April 11, 2018

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

April 11, 2018	9:00 AM	Motion For Stay	City of Henderson's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal, on Application for Order Shortening Time
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HEARD BY: Bailus, Mark B

COURTROOM: Phoenix Building 11th Floor
110

COURT CLERK: Alan Castle

RECORDER: Robin Page

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****December 12, 2019**

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

**December 12, 2019 9:00 AM Status Check Order Setting Furher
Proceedings RE:
Superme Court Order**

HEARD BY: Atkin, Trevor **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Phyllis Irby

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT: Kennedy, Dennis L. Attorney
Shell, Alina Attorney

JOURNAL ENTRIES

- COURT NOTED, this matter has been remanded back to District Court.

Ms. Shell stated the Supreme Court had sent this matter back to the District Court to reconsider the deliberative process issue with regard to some of the withheld documents. Since the Supreme Court issued the remittitur, the City of Henderson has provided us with the documents they had withheld pursuant to the deliberative process privilege. Ms. Shell stated she has spoken with Mr. Kennedy and they would like to have a scheduled set on Attorney s Fees. Ms. Shell further stated there were two Appeals going on which one was the substantive case and the one pertaining to the award of Fees. The Supreme Court reversed the Order granting Plaintiff Fees stating that Plaintiffs hadn't prevailed, now that Plaintiffs have received the process privilege documents Plaintiff are a prevailing party and entitled to do briefing on Attorney Fees.

Mr. Kennedy stated Plaintiffs are not a prevailing party. Further, out of 70,000 pages the City of Henderson prevailed on almost all of them except for a small number of documents that had been withheld on deliberative privilege. Mr. Kennedy further stated Defendants will be filing a Motion for

Summary Judgment because there are no issues left.

COURT ORDERED, Parties are to put together Proposed Briefing Schedule and send over to Chambers, will sign it and will insert a date for hearing.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

January 22, 2020

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

January 22, 2020 3:00 AM Status Check: Compliance

HEARD BY: Atkin, Trevor **COURTROOM:** Chambers

COURT CLERK: Alan Castle

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court finds Stipulation and Order submitted. MATTER OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

June 12, 2020

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

June 12, 2020

3:00 PM

Minute Order

**BLUEJEANS
NOTICE - Thursday,
June 18, 2020, AT 9:00
AM MANDATORY
RULE 16
CONFERENCES &
CIVIL LAW AND
MOTION
CALENDAR**

HEARD BY: Atkin, Trevor

COURTROOM: Chambers

COURT CLERK: Alan Castle

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Department 8 Request to Appear Telephonically

Pursuant to Administrative Order 20-10, Department 8 will temporarily request all matters be heard via telephone conference ONLY. We will NOT be utilizing video conferencing. The court has set up an appearance through BlueJeans, which can accommodate multiple callers at no cost to participants.

To use BlueJeans, please call in prior to the hearing at 1-888-748-9073.

To connect to your hearing, simply input the assigned meeting ID number provided immediately below, followed by #.

Your Meeting ID: 831 007 258 (NOTE: The meeting number will be different for each day's court session.)

For your hearing, PLEASE observe the following protocol:

Place your telephone on mute while waiting for your matter/case to be called.

Do not place the conference on hold as it may play wait/hold music to others.

Identify yourself before speaking each time as a record is being made.

Please be mindful of sounds of rustling of papers or coughing.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

June 18, 2020

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

June 18, 2020	9:01 AM	Motion for Attorney Fees and Costs	Las Vegas Review Journal's Motion for Attorney's Fees and Costs
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HEARD BY: Atkin, Trevor

COURTROOM: Phoenix Building 11th Floor
110

COURT CLERK: Alan Castle

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- Following arguments of counsel MATTER TAKEN UNDER ADVISEMENT. Parties to be notified of decision by way of Minute Order or written decision.



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

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

DATE: September 8, 2020
CASE: A-16-747289-W

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

NOTICE OF APPEAL FILED: September 3, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

LAS VEGAS REVIEW-JOURNAL,

Plaintiff(s),

vs.

CITY OF HENDERSON,

Defendant(s),

Case No: A-16-747289-W

Dept No: VIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 8 day of September 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk