

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

THE LAS VEGAS REVIEW-  
JOURNAL,

Appellant,

vs.

CITY OF HENDERSON,  
Respondent.

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Jan 14 2021 10:54 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO.: 81758

**JOINT APPENDIX – VOLUME IV**

**[JA0657 – JA0730]**

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

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing JOINT APPENDIX - VOLUME IV was filed electronically with the Nevada Supreme Court on the 14th day of January, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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DISTRICT COURT

CIVIL DIVISION

LAS VEGAS REVIEW-JOURNAL,

Plaintiff,

vs.

CITY OF HENDERSON,

Defendant.

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) CASE NO: A-16-747289-W

) DEPT NO: 18

)

) Motion for Attorneys Fees

) and Costs

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARK B. BAILUS

Thursday, August 3, 2017  
10:01 a.m.

Job No. 409053  
Reported by: Andrea Martin, CSR, RPR, NV CCR 887  
Certified Realtime Reporter (NCRA)

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DISTRICT COURT  
CIVIL DIVISION

LAS VEGAS REVIEW-JOURNAL,

Plaintiff,

vs.

CITY OF HENDERSON,

Defendant.

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)  
) CASE NO: A-16-747289-W  
) DEPT NO: 18  
)  
) Motion for Attorneys Fees  
) and Costs  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

HELD BEFORE THE HONORABLE MARK B. BAILUS, in the  
Civil Division of the District Court, Department 18,  
Phoenix Building, Courtroom 110, 330 South  
Third Street, Las Vegas, Nevada, beginning at  
10:01 a.m., and ending at 10:27 a.m., on Thursday,  
August 3, 2017, before Andrea N. Martin, Certified  
Realtime Reporter, Nevada Certified Shorthand  
Reporter No. 887.

Job No. 409053  
Reported by: Andrea Martin, CSR, RPR, NV CCR 887  
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1 Las Vegas, Nevada; Thursday, August 3, 2017

2 10:01 a.m.

3 -oOo-

4 THE COURT: Las Vegas Review-Journal vs.  
5 City of Henderson, Case No. A-16-747289-W.

6 Counsel, state your appearances for the  
7 record.

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

10 MR. KENNEDY: And for the City of  
11 Henderson, Dennis Kennedy, along with City Attorney  
12 Josh Reid and Assistant City Attorney Brian Reeve.

13 THE COURT: Thank you, Counsel.

14 I would advise counsel, since I was not  
15 the presiding judge over the hearing in this matter,  
16 nor did I render the order that is the subject of  
17 your motion, I did pull the original petition, the  
18 amended petition, and I reviewed the order. I,  
19 further, reviewed all the exhibits submitted to me  
20 in this case, and I've read the transcripts of the  
21 hearing.

22 I will tell you, reading a cold record,  
23 Judge Thompson must have mellowed in his old age,  
24 because it seemed so much like he was conducting a  
25 kumbaya session; can't we just all get along.

1 I will also advise counsel I reviewed  
2 NRS 18.010, and various cases cited the annotation.

3 Is counsel ready to proceed?

4 MS. SHELL: I am, Your Honor.

5 THE COURT: Explain to me, Counsel, why  
6 you are the prevailing party. I would note in your  
7 briefing, I believe, you cited to the Valley  
8 Electric Association case.

9 MS. SHELL: That's right.

10 THE COURT: And in that case, it does  
11 state the party can prevail under NRS 18.010, quote,  
12 if it succeeds on any significant issue in  
13 litigation which achieves some of the benefit as  
14 sought in bringing suit.

15 There is a later case, Golightly &  
16 Vannah v. TJ Allen, which somewhat says the same  
17 thing but slightly different. It says a prevailing  
18 party must -- let me read the first sentence.

19 It states, in dictum, "This decision turns  
20 on the definition of 'prevailing party' as used in  
21 NRS 18.020(3) and NRS 18.050. A prevailing party  
22 must win on at least one of its claims. In Close,  
23 this court held that a party prevailed when it won  
24 on the mechanic's lien claim but had its damages  
25 reduced significantly by the adverse party's

1 counterclaim. Although Isbell received net damages  
2 significantly less than the award on its successful  
3 claim, it nonetheless prevailed."

4 So there seems to be some terminology  
5 differences in the case when the case talks about  
6 prevailing on a claim, which obviously is usually  
7 interpreted as a cause of action. Where the earlier  
8 case, Valley Electric, does say "a significant  
9 issue," the operative word being "significant."

10 So, again, Counsel, I'll ask my question:  
11 Why are you the prevailing party? It does not  
12 appear that you prevailed on any claim, and what you  
13 did prevail on appears to be a result of some type  
14 of agreement brokered by Judge Thompson.

15 MS. SHELL: Your Honor, respectfully,  
16 while 18.011 is instructive, we're here under the  
17 Nevada Public Records Act, and I think that's really  
18 the starting point for this Court's analysis, is  
19 that, under NRS 239.011, a party is entitled to  
20 compensation for the costs of litigation brought to  
21 seek compliance with the NPRA, the Nevada Public  
22 Records Act. And that's exactly what happened here.

23 The R-J requested copies of documents.  
24 The City of Henderson refused to produce those  
25 copies absent a rather exorbitant fee just for

1 conducting a privilege review to determine if they'd  
2 even give us the documents without redaction or to  
3 the extent that redactions would exist.

4 The only reason we ever got copies of the  
5 records is because we had to bring suit.

6 I appreciate your analysis of the kumbaya  
7 moment we had in the last hearing back in March in  
8 this case, but what happened is we had requested  
9 copies of these documents again, and they said, "No,  
10 not without paying this fee."

11 After we had filed suit and after the City  
12 attorney, Mr. Reeve, actually said, "Well, we really  
13 welcome the Court to address these issues that  
14 you're raising," we brokered an agreement where we  
15 would be entitled to just inspect the records in the  
16 interim, while the Court was sorting out the issues  
17 about the propriety of the fee demand that Henderson  
18 had put forth; but even then the ultimate goal of  
19 the Review-Journal has always been, and always was,  
20 to get copies of the records that we had requested.

21 And when we finally -- so we did this --  
22 we made the initial records request in October, and  
23 we get all the way into March 30th, when finally  
24 Judge Thompson said, "Well, will you give them  
25 copies of the records," when they had previously

1 denied them to us and said, "Yeah, we can give them  
2 to them on a USB drive," and that's what happened.

3 THE COURT: He knew about the USB drive.  
4 He sat as an old judge for --

5 MS. SHELL: It required a little bit of  
6 explanation, but we got there eventually with Judge  
7 Thompson, an understanding of what that was.

8 THE COURT: I shouldn't say that. I  
9 presumed he would know.

10 MS. SHELL: That was a significant part of  
11 the transcript, was explaining that.

12 But the nub of the dispute was we wanted  
13 copies of these records, and as I point out in my  
14 briefing, what Judge Thompson said was, "Well, we'll  
15 get the copies, and I'm denying the rest of the  
16 petition."

17 And while that didn't get captured in the  
18 end order that was entered by the Court, the bottom  
19 line is the significant issue in this case, the nub  
20 of the dispute was we wanted copies, and we  
21 ultimately prevailed and got the copies that we had  
22 wanted since October.

23 THE COURT: Actually, Counsel, your  
24 argument, though -- it didn't seem like you were  
25 happy just getting copies of -- you know, earlier,

1 Judge Thompson said, "When you sent your reporter  
2 out there, did you ask for any copies?"

3           Apparently, you didn't ask for any copies.  
4 That's how the UBS issue came up, and that's how  
5 Judge Thompson was asking would you be satisfied if  
6 you just got the copies; and, quite frankly, the way  
7 the cold record reads is you weren't that happy  
8 about the judge not deciding the rest of the issues,  
9 and, you know, Judge Thompson's response was,  
10 "That's for another case."

11           MS. SHELL: Yes, your Honor.

12           THE COURT: So, again, you know, did you  
13 prevail on a significant issue? That's what I'm --  
14 you know, I'm looking at. I mean, I'm giving you  
15 the benefit of the doubt. Doesn't have to be a  
16 claim, even though the later case talks about a  
17 claim, but did you prevail on a significant issue.  
18 That's really what I'm focusing on, and then if you  
19 did prevail on a significant issue, then I have to  
20 do -- used to call them Beattie factors, but now I  
21 guess they're called Brunzell factors.

22           Again, I have to determine the  
23 reasonableness, and I think you referenced the  
24 Lonestar, things of that nature. But before I even  
25 get there, I have to make a determination if you're

1 the prevailing party.

2 MS. SHELL: Yes, your Honor.

3 And just as a minor correction to the  
4 record, and it is something I pointed out in my  
5 reply brief, once we had brokered this sort of  
6 interim agreement for inspection, while the Court  
7 was sorting out the fees request issue,  
8 Ms. McLetchie e-mailed -- and I don't recall off the  
9 top of my head, Your Honor. If you'll give me just  
10 a moment.

11 She e-mailed on December 21st of 2016 to  
12 one of the City -- one of the many City attorneys, I  
13 should say, who have been working on this case, to  
14 say, you know, "This laptop is slow. Can we just  
15 get the copies on a CD so we can review the copies  
16 back at Review-Journal offices?" And again  
17 Henderson said "No."

18 So I have to admit I was a little  
19 surprised and, I think, irked that their position in  
20 their opposition to our motion for attorneys' fees  
21 was, "Well, we never knew they wanted copies," when,  
22 indeed, the whole dispute was about copies of the  
23 records.

24 And, Your Honor, to address your other  
25 question, the issues pertaining to Henderson's



1 public records policy and also to the fee dispute  
2 are important issues, but they really all sprang --  
3 they are all spokes on a hub, and the hub is the  
4 NPRA in getting public records. And so in that  
5 sense, yes, we are -- we did prevail on a  
6 significant issue because we got what we wanted in  
7 the end.

8 THE COURT: How much, I wonder -- I  
9 remember it was around \$5,000 that they wanted to  
10 charge you for the -- I believe one of the parties  
11 referred to it as paralegals reviewing and  
12 redacting, making sure there wasn't any, I assume,  
13 privileged information in any of the documents.  
14 That's what they wanted to charge you for?

15 MS. SHELL: Yes, your Honor: It was just  
16 shy of \$6,000.

17 As I pointed out in my brief, in our  
18 motion for attorneys' fees, they amended -- demanded  
19 an initial deposit of just 20 -- just over -- I  
20 should say just under \$2,900, and then \$2,900 at the  
21 end; so you are look at about \$5,800, which was, in  
22 our view, in excess of what was permitted under the  
23 NPRA, and we also thought that their policy was at  
24 odds with the grander scheme of the NPRA and its  
25 purpose of getting easy, swift, and, you know,

1 inexpensive access to public records.

2 THE COURT: Anything further, Counsel?

3 MS. SHELL: Your Honor, I think that it's  
4 important because the City brought this up to  
5 address their claim that the Review-Journal has to  
6 prove bad faith on the part of the City of Henderson  
7 in order to obtain an award of attorneys' fees, and  
8 I won't belabor what I put -- already put forth in  
9 our briefing, but the bottom line is despite what  
10 Henderson may want you to believe, there is a  
11 distinction between attorneys' fees and compensation  
12 for the costs of litigation and damages as  
13 punitive -- you know, damages to say, "City, don't  
14 violate the NPRA anymore."

15 And what 239.011 contemplates is only that  
16 you get compensated for the costs of bringing the  
17 litigation. There's no requirement in this, the  
18 statute, that you have to demonstrate bad faith.  
19 The only time that you have to demonstrate bad faith  
20 is if you are bringing -- or you are seeking damages  
21 against a public officer or an employer of a public  
22 officer, and that's not what happened here.

23 I would have -- my firm and the  
24 Review-Journal wasn't suing Mr. Reeve. We weren't  
25 suing any of the other City attorneys that weren't

1 complying with the NPRA. We were suing a  
2 governmental entity. We brought suit under 239.011,  
3 and so we're entitled to the costs that we incurred  
4 in having to bring the litigation.

5 And that's my final point, Your Honor.

6 THE COURT: Thank you, Counsel.

7 MS. SHELL: Thank you.

8 THE COURT: Counsel, my question to you  
9 is: Why aren't they the prevailing party? They  
10 were able to prevail on a significant issue, and  
11 they didn't have to pay you \$5,800. I mean, they  
12 got it for free, and ultimately isn't that a  
13 significant issue that they prevailed on?

14 MR. KENNEDY: The answer to that is no.  
15 The issues that were decided by the Court -- the  
16 Court said, "Look, the costs and fee issue is moot,"  
17 because what happened is the demand for the public  
18 records was made. There were 69,900 pages, and the  
19 City said, "Do you really want to deal with almost  
20 70,000 pages here? Why don't you come to the City  
21 and look at the records, because we know that the  
22 vast majority of these you're not going to want to  
23 see, are going to be of no interest to you, because  
24 the search terms you gave us are way too broad."

25 Now, we said, "If you do want all of

1 those, there is a cost associated with it, and --  
2 but why don't you come look before we go any  
3 further.

4 And that's what the R-J did. Its reporter  
5 came out there and spent all or parts of three days  
6 looking through the documents, and then said, "We  
7 don't want any copies of them."

8 And we said, "Okay. That's fine. You  
9 don't have to pay us any money; you don't want any  
10 copies."

11 Then they pursue the petition for a writ  
12 of mandamus under the public records act, and so  
13 when we come to court in front of Judge Thompson,  
14 what we said was, you know, "They're here, saying,  
15 'We demand these records,' and we said, 'Well,  
16 you've already seen them. You looked through them  
17 at the City, and you didn't ask for any copies.'"

18 And Judge Thompson, as you know from the  
19 transcript, said to them, "You didn't ask for any  
20 copies."

21 "No, but we're here, by God, demanding  
22 that they produce these records under the public  
23 records act."

24 And I think what Judge Thompson did --  
25 it's fair to say that he said, "They already did,"

1 and he asked four times, "Do you want copies of  
2 these now? Because they've been produced, and you  
3 didn't ask for anything."

4 And finally the R-J said, "Yeah, we'd like  
5 copies."

6 And he said to me, "Will you give them  
7 copies on a thumb drive?"

8 We said, "Sure, we will."

9 And he said, "Well, then isn't that it for  
10 this case?"

11 They said, "Well, we want to deal with the  
12 issues of costs for reviewing everything."

13 And the City said, "Look, you didn't ask  
14 for anything in the first instance. Now you say,  
15 'Give us a thumb drive.' Here you go, and there are  
16 no costs and there are no fees associated with  
17 that."

18 And then there was an argument over the  
19 documents withheld for privilege, and Judge Thompson  
20 said, "Look, the privilege log is adequate and  
21 sufficient, and I'm not going to give you" -- "I'm  
22 not going to go behind that."

23 So when you look at the order that was  
24 entered by Judge Thompson, the Review-Journal lost  
25 on every issue that was decided. The judge said,

1 "There are a couple that I'm not going to decide  
2 because they're moot," and that's the fees-and-cost  
3 issue. They didn't prevail on that. In fact, the  
4 City never sent them a bill for that.

5 THE COURT: But isn't the standard,  
6 Counsel -- and this seems to be the Plaintiff's  
7 argument, is "We didn't have to win on all claims.  
8 All we have to show, at least under NRS 18.010,"  
9 even though I understand the issue is also making  
10 the argument on the other statute -- but "All we  
11 have to show is that we prevailed on a significant  
12 issue."

13 Wasn't this a significant issue, that she  
14 got these records with -- and there was -- I mean,  
15 her argument seems to be the fact that you wanted to  
16 charge the \$2,900 and an additional \$2,900 for -- I  
17 assume it's like paralegal work to go through and  
18 redact everything and this and that.

19 MR. KENNEDY: That's fair, yes.

20 THE COURT: And that was unacceptable to  
21 her, and the fact that you agreed to it -- and I  
22 haven't researched this in a long time, but I -- and  
23 the case doesn't really address it, but the fact --  
24 you're right. The order itself is -- would seem to  
25 indicate otherwise, but her argument is: "At the

1 end of the day, we prevailed on a significant issue;  
2 we got the records, and we didn't have to pay for  
3 them."

4 MR. KENNEDY: Well, that's the argument.  
5 But they got the records because, if you look at  
6 Judge Thompson's order, Judge Thompson says the City  
7 complied with its obligations under the statute, and  
8 that's how they got them. They asked for them, and  
9 we said, "Please come and inspect them and just tell  
10 us what you want."

11 THE COURT: They didn't ask for an  
12 inspection. They asked for the records. They said,  
13 "We want the records."

14 The way I read the statute, they could  
15 either ask for an inspection or they could ask for  
16 copies. They asked for copies. The City wanted to  
17 charge them some fees to do this because -- and  
18 rightfully so. The same concern about certain  
19 privileges, confidential information, things of that  
20 nature, and they wanted the fees to be paid by the  
21 Review-Journal. And counsel's argument is: "But  
22 for us filing this petition, we wouldn't have got  
23 them without having to pay the fees; if we hadn't  
24 have filed this petition, we still would have got  
25 them, but impermissibly in that we would have had to

1 pay the fees."

2 MR. KENNEDY: But that's not what  
3 happened. I know that's the argument. That's the  
4 argument they made, and they lost that argument when  
5 they made it the first time, because what happened  
6 is they filed -- they filed a petition, and what the  
7 City said -- first off, the City responded within  
8 five days and said, "We're putting together the  
9 records but," you know, "we have go through them.  
10 There's almost 70,000 pages."

11 The Review-Journal then files the petition  
12 and said, "You're wrongfully withholding them."

13 Well, that wasn't the case. The City had  
14 the right to respond and say, we have to review  
15 them, and that's the reason that Judge Thompson said  
16 there was compliance with the law, because what the  
17 City said after it assembled the records, was, "Why  
18 don't you come look at them?" Okay? They looked at  
19 them and said, "We don't want any copies."

20 Judge Thompson, looking at that, said,  
21 "Well, the City complied with the law. You didn't  
22 have to file the action to get access to the  
23 records." The City, within five days, said, "Let us  
24 put them together and review them for privilege, and  
25 then you can look at them."



1                   And what happened? The R-J comes out to  
2     the City, looks at the records, and says, "We don't  
3     want any of them."

4                   So did they have to file the action to do  
5     that? No, they didn't. And that's why they lost.  
6     That's just Judge Thompson's order says, "Based on  
7     the events that transpired, the City complied with  
8     the law," and the argument here is, "Well, we had to  
9     sue them to get access to the records."

10                  The answer to that is: No, you didn't.  
11     You got access to them, regardless of whether you  
12     filed the action or not, and the judge said the City  
13     acted properly, complied with the law, and produced  
14     the records, and what happened was the City didn't  
15     withhold them and say, "We" -- "you're not going to  
16     get them unless you make these payments." The City  
17     said, "Come out here and look, because we're quite  
18     sure you're not going to" -- "you're not going to  
19     want all of these." In fact, they asked for zero.

20                  And in the kumbaya moment, after the judge  
21     said to them four times, "Do you really want copies  
22     of these," they finally said, "Well, yeah. Give  
23     them to us on a thumb drive."

24                  And we said, "We're happy to do that," and  
25     that was that.

1           And the judge said, "Look, the City's  
2    complied with the law." And looking at the order,  
3    it is very clear the R-J prevailed on nothing. The  
4    petition for the writ of mandamus -- dismissed in  
5    its entirety. They're not the prevailing party.

6           THE COURT: I did have a question in the  
7    briefing. I thought the briefing was excellent. I  
8    mean, obviously, you both are excellent attorneys in  
9    making argument. You're making my decision tougher,  
10   I will tell you.

11           But it seems, in the briefing, the City  
12   seems to acknowledge that if I were to determine  
13   that the Review-Journal was the prevailing party, I  
14   have the discretion to -- as to the amount. In  
15   other words, they're asking for \$30,000. I think  
16   you went down from, like, around \$8,900, and then  
17   you went down to around \$1,200 or \$1,500.

18           MR. KENNEDY: \$1,500, I think.

19           THE COURT: Something like that. So it  
20   looked like there was a sliding scale; is that  
21   correct?

22           MR. KENNEDY: Yeah, that's what we  
23   assumed. We said, "If you find that they're the  
24   prevailing party, which they're not -- okay? -- but  
25   if you were to find that they were, you don't get

1 what you ask for. You get the reasonable fees. And  
2 in this case I think we said they were \$1,500 max,  
3 but we don't think they get anything.

4 THE COURT: Counsel, rebuttal?

5 MS. SHELL: Your Honor, just a couple of  
6 points, and obviously just to address Mr. Kennedy's  
7 last point, we don't believe that any reduction is  
8 appropriate.

9 I will note that in one of the footnotes  
10 to their opposition, Henderson took issue with the  
11 fact we had charged attorneys' fees for sending a  
12 public records request, trying to find out the  
13 amount of public moneys that were spent paying  
14 Bailey Kennedy to defend this case.

15 We're willing, in the spirit of  
16 compromise, to waive those fees, and although I  
17 think it's appropriate, particularly given, you  
18 know, that we knew this fees dispute was going to  
19 come up eventually, so we were entitled to know what  
20 Mr. Kennedy's firm was being paid in order to  
21 calculate our own reasonable attorney fee in this  
22 case.

23 I believe we're entitled to compensation  
24 for that, but I'm willing to give that up. I'm also  
25 willing to give up the 2.4 hours that our law clerk

1 spent conducting review of their privilege log and  
2 the case law relevant to the privileges that they  
3 asserted. It's a difference about five -- I did the  
4 math this morning. And forgive me; there's a reason  
5 I'm a lawyer. The -- they're disputing about \$530  
6 in fees relative to that, and I'd be willing to  
7 knock that off of my bill.

8 THE COURT: And just so you know, I did  
9 review your bill. I went through it and, again, I  
10 will note what you're waiving.

11 MS. SHELL: Thank you, Your Honor.

12 To address the more important issues,  
13 though, I feel as though opposing counsel may also  
14 be reading a cold record and coming at this from a  
15 view that -- I feel like perhaps we weren't in the  
16 same case.

17 I think that it's very important to keep  
18 in mind one of the principal canons of statutory  
19 construction, and that is that each word in the  
20 statute is to be given meaning, and if you don't  
21 give meaning to one word, you're undermining the  
22 structure of the statute itself. And as Your Honor  
23 pointed out, throughout the NPRA there's a  
24 distinction between inspection and copying the  
25 records.

1           We've always wanted copies of the records.  
2   That was the first request.

3           THE COURT: I think the point Mr. Kennedy  
4   was making, and it's actually well taken because  
5   it's reflected in the transcripts, is when your  
6   reporter did go out there and had the opportunity to  
7   request copies, none were requested, so you had an  
8   opportunity -- if I'm understanding his argument,  
9   you had your opportunity to get the copies without  
10   paying for it, and you didn't make your request, so  
11   his argument is you wouldn't have got them anyway.  
12   You would then have to proceed forward on the  
13   litigation.

14           MR. KENNEDY: That's right.

15           MS. SHELL: Thank you, Counsel.

16           Your Honor, quite frankly, that's not -- I  
17   just disagree with his interpretation of the record.  
18   The reason that we did not request copies is because  
19   of the existence of this ongoing dispute.

20           I really -- I don't think that Henderson  
21   should be allowed to do a bait-and-switch in  
22   negotiations. And, quite frankly, part of the  
23   reasons that the costs did run so high is because,  
24   in spite of the fact that the NPRA has no  
25   meet-and-confer requirement in it, Ms. McLetchie had

1 multiple phone calls with multiple attorneys from  
2 the City attorneys' office to try and resolve this  
3 dispute, and when that didn't work, that's when we  
4 filed the litigation.

5 But, again, the reason we didn't request  
6 for copies at the time of the inspection is because  
7 the inspection was an interim step. There was still  
8 this live issue that was going on.

9 And, Your Honor, I have no further points,  
10 unless you have further questions.

11 THE COURT: No, I don't.

12 Counsel, any surrebuttal?

13 MR. KENNEDY: Submit it, Your Honor.

14 THE COURT: You made my decision-making  
15 hard -- you both did an excellent job -- so I am  
16 going to take it under advisement. Is a week -- you  
17 don't all have to come back. I'm just going to make  
18 a decision, not doing further argument.

19 Can you come back in a week, or is two  
20 weeks more convenient?

21 MR. KENNEDY: Whatever the Court needs,  
22 we'll be here.

23 MS. SHELL: Your Honor, if I may just look  
24 at my calendar real briefly?

25 THE COURT: Sure.

1 MS. SHELL: I can't remember if I have a  
2 hearing in a week.

3 Your Honor, we can come back in a week,  
4 yes.

5 THE COURT: Counsel?

6 MR. KENNEDY: Fine.

7 THE COURT: I'll continue this matter one  
8 week. I'll take it under submission and render my  
9 decision at that time.

10 THE CLERK: August 10th, 9 a.m.

11 THE COURT: Thank you, Counsel.

12 (Proceedings concluded at 10:27 a.m.)

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1 STATE OF NEVADA )  
COUNTY OF CLARK )

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CERTIFICATE OF REPORTER

4

I, Andrea N. Martin, a Certified Shorthand

5

Reporter of the State of Nevada, do hereby certify:

6

That the foregoing proceedings were taken

7

before me at the time and place herein set forth;

8

that any witnesses, prior to testifying, were duly

9

administered an oath; that a record of the

10

proceedings was made by me using machine shorthand

11

which was thereafter transcribed under my direction;

12

that the foregoing transcript is a complete, true,

13

and accurate transcription of said shorthand notes;

14

I further certify that I am neither

15

financially interested in the action nor a relative

16

or employee of any attorney or party to this action.

17

IN WITNESS WHEREOF, I have hereunto set my hand

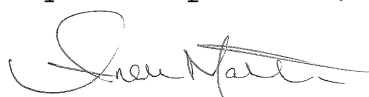
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in my office in the County of Clark, State of

19

Nevada, this 11th day of September, 2018.

20



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ANDREA N. MARTIN, CRR, CCR NO. 887

22

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25



**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)

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

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

<b>PRESENT:</b>	Shell, Alina	Attorney
	Reeve, Brian R.	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.

## CIVIL DIVISION

Defendant.

)  
)  
)  
) CASE NO: A-16-747289-W  
) DEPT NO: 18  
)  
) Decision  
) Attorneys Fees and Costs  
)  
)

Thursday, August 10, 2017  
11:13 a.m.

Job No. 410277  
Reported by: Andrea Martin, CSR, RPR, NV CCR 887  
Certified Realtime Reporter (NCRA)

1 DISTRICT COURT

2 CIVIL DIVISION

3

4

5 LAS VEGAS REVIEW-JOURNAL,

6

Plaintiff,

7

vs.

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CITY OF HENDERSON,

9

Defendant.

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12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 HELD BEFORE THE HONORABLE MARK B. BAILUS, in the

14 Civil Division of the District Court, Department 18,

15 Phoenix Building, Courtroom 110, 330 South

16 Third Street, Las Vegas, Nevada, beginning at

17 11:13 a.m., and ending at 11:19 a.m., on Thursday,

18 August 10, 2017, before Andrea N. Martin, Certified

19 Realtime Reporter, Nevada Certified Shorthand

20 Reporter No. 887.

21

22

23 Job No. 410277

24 Reported by: Andrea Martin, CSR, RPR, NV CCR 887

Certified Realtime Reporter (NCRA)

25

1 APPEARANCES:

2 For Plaintiff, Las Vegas Review-Journal:

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4 BY: ALINA M. SHELL, ESQ.  
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6 Las Vegas, Nevada 89101  
7 TEL: (702) 728-5300  
8 FAX: (702) 425-8220  
9 E-mail: Alina@nvlitigation.com

10 For Defendant, City of Henderson:

11 CITY OF HENDERSON  
12 CITY ATTORNEY'S OFFICE  
13 BY: BRIAN R. REEVE, ESQ.  
14 ASSISTANT CITY ATTORNEY  
15 240 Water Street  
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19 FAX: (702) 267-1201  
20 E-mail: Brian.Reeve@cityofhenderson.com:

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22

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24

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1 Las Vegas, Nevada; Thursday, August 10, 2017

2 11:13 a.m.

3 -oOo-

4 THE COURT: Las Vegas Review Journal  
5 versus City of Henderson, Case No. A-16-747289-W.

6 MS. SHELL: Good morning, Your Honor.

7 THE COURT: Morning, Counsel.

8 MR. REEVE: Morning, Your Honor.

9 MS. SHELL: Alina Shell on behalf of the  
10 Review-Journal.

11 MR. REEVE: Brian Reeve on behalf of the  
12 City of Henderson.

13 THE COURT: Okay. I took this under  
14 review, went back and reviewed everything, including  
15 some supplemental briefing on the case law. The  
16 reason I continued this -- I wanted to look at  
17 whether the abbreviations are NERP. Is that  
18 correct, Counsel?

19 MS. SHELL: I'm sorry, Your Honor?

20 THE COURT: Is that the abbreviations  
21 for -- is it NERP?

22 MS. SHELL: The NPRA, Your Honor?

23 THE COURT: Yeah. What is it?

24 MS. SHELL: The NPRA, Nevada Public  
25 Records Act.

1 THE COURT: I don't have the statute in  
2 front of me, but I remembered that one. I wanted to  
3 review that.

4 Under the statute -- I believe it's  
5 NRS 18.010 -- you cited to me the Valley Electric  
6 case which you correctly concluded that a party can  
7 prevail under NRS 18.010 if it succeeds on any  
8 significant issue in litigation which achieves some  
9 of the benefit sought in bringing suit. But it  
10 says, "Further, the judgment in this case" -- talked  
11 about a monetary judgment. I'm not sure that's  
12 still applicable.

13 When I looked at the -- the other  
14 statutes, the only case I could find that determined  
15 attorney's fees was the Blackjack case that you  
16 cited.

17 MS. SHELL: That's correct, Your Honor.

18 THE COURT: And, again, they cited to the  
19 Valley Electric case, which you -- and even quoted  
20 it, the portion I just read.

21 So if I apply the Blackjack case and the  
22 Valley Electric case, when I looked at your original  
23 petition and then the amended petition, it looks  
24 like you were the prevailing party as to obtaining  
25 the records. You were not the prevailing party

1 under your amended petition on the other aspects  
2 pursuant to the Court's order.

3 And that's the other thing. Initially, it  
4 looked like this was an agreed amount, an agreement  
5 between the parties, but when I went back and looked  
6 at it, before the numbered sections of it, you had  
7 actually put it as an order. So even though it was  
8 agreed to, it was actually an order. Okay? So that  
9 was one of the things I wanted to make sure of, that  
10 it wasn't just a settlement but implied that it was  
11 an order.

12 In your reply -- I'm sorry, in your  
13 opposition, you opposed the reasonableness of their  
14 attorneys' fees. One of the arguments that City of  
15 Henderson made was they shouldn't get -- if I  
16 recall, they were requesting \$30,000.

17 One of the arguments that City of  
18 Henderson made is their attorneys' fees --  
19 reasonable attorneys' fees should be limited to what  
20 they expended on their original petition, and you  
21 gave me the number of \$8,500.

22 In reviewing this -- the briefing and  
23 applying the Brunzell factors, I am going to award  
24 the Las Vegas Review-Journal, as reasonable  
25 attorneys' fees, \$9,010 in attorney's fees, \$902.84

1 in costs. I gave him little bit more because I  
2 allowed -- I gave them for having to come to court  
3 and argue and things of that nature.

4 Any questions on my ruling?

5 MS. SHELL: Your Honor, I just want to  
6 clarify this.

7 Your Honor's award of attorneys' fees was  
8 limited just to the work on the original petition?

9 THE COURT: I just looked at your entire  
10 bill --

11 MS. SHELL: Okay.

12 THE COURT: -- and I applied the Brunzell  
13 factors, and I determined that reasonable attorneys'  
14 fees were \$9,010.

15 MS. SHELL: So forgive me, Your Honor. I  
16 may have been sitting for a little bit too long  
17 today. I just want to clarify.

18 Looking, it's not limited to work as to  
19 one specific issue. It's just all the issues of --

20 THE COURT: Just applying the Brunzell  
21 factors, all of the factors under Brunzell.

22 MS. SHELL: Thank you, Your Honor.

23 THE COURT: I determined that was  
24 reasonable attorneys' fees.

25 MR. REEVE: Your Honor, I guess just from



1 my perspective, did you make a determination that  
2 the Golightly case did not apply?

3 THE COURT: I made my decision based on  
4 Valley Electric and Blackjack, most notably  
5 Blackjack because it was the only case under --  
6 Counsel, say it again.

7 MR. REEVE: NPRA.

8 THE COURT: -- NPRA that addressed the  
9 attorneys' fees.

10 MR. REEVE: Okay.

11 MS. SHELL: Does Your Honor want us to  
12 prepare an order?

13 THE COURT: I do.

14 MS. SHELL: Okay. I will --

15 THE COURT: Why don't you prepare the  
16 order as the prevailing party, submit it to opposing  
17 counsel for approval as to content and form. Please  
18 try and submit within ten days, pursuant to local  
19 rules.

20 MS. SHELL: I will do so, Your Honor.  
21 Thank you.

22 MR. REEVE: Thank you, Your Honor.

23 (Proceedings concluded at 11:19 a.m.)

24 -oOo-

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1 STATE OF NEVADA )  
COUNTY OF CLARK )

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CERTIFICATE OF REPORTER

4

I, Andrea N. Martin, a Certified Shorthand

5

Reporter of the State of Nevada, do hereby certify:

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That the foregoing proceedings were taken

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before me at the time and place herein set forth;

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that any witnesses, prior to testifying, were duly

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administered an oath; that a record of the

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proceedings was made by me using machine shorthand

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which was thereafter transcribed under my direction;

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that the foregoing transcript is a complete, true,

13

and accurate transcription of said shorthand notes;

14

I further certify that I am neither

15

financially interested in the action nor a relative

16

or employee of any attorney or party to this action.

17

IN WITNESS WHEREOF, I have hereunto set my hand

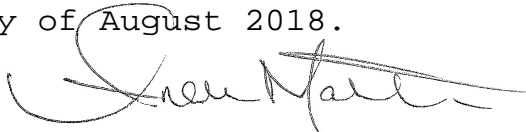
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in my office in the County of Clark, State of

19

Nevada, this 10th day of August 2018.

20



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ANDREA N. MARTIN, CRR, CCR NO. 887

22

23

24

25



**NEOJ**  
JOSH M. REID, City Attorney  
Nevada Bar No. 7497  
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*Attorneys for Respondent*  
CITY OF HENDERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,  
  
Petitioner,  
  
vs.  
  
CITY OF HENDERSON,  
  
Respondent.

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

**NOTICE OF ENTRY OF ORDER**

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

///

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///

1 A true and correct copy is attached.

2 DATED this 15<sup>th</sup> day of February, 2018.

3 BAILEY❖KENNEDY

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

7 and

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

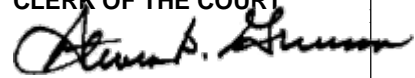
13 *Attorneys for Respondent*  
14 **CITY OF HENDERSON**  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15<sup>th</sup> day of February, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY



**ORDR**

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

**CITY OF HENDERSON**

240 Water Street, MSC 144  
Henderson, Nevada 89015  
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DENNIS L. KENNEDY  
Nevada Bar No. 1462

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DKennedy@BaileyKennedy.com

*Attorneys for Respondent*  
CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

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

**ORDER**

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

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

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

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

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

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

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

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

27 ///

28 ///

ORDER

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

IT IS SO ORDERED this 8 day of FEBRUARY, <sup>2018</sup>~~2017~~.

  
HONORABLE MARK B. BAILUS  
DISTRICT COURT JUDGE

Submitted by:

**BAILEY ♦ KENNEDY**

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

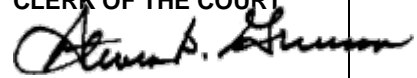
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

**CITY OF HENDERSON'S ATTORNEY OFFICE**

*Counsel for Respondent, City of Henderson*



**NOAS**

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

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

**CITY OF HENDERSON**

240 Water Street, MSC 144

Henderson, Nevada 89015

Telephone: 702.267.1200

Facsimile: 702.267.1201

Josh.Reid@cityofhenderson.com

Brian.Reeve@cityofhenderson.com

DENNIS L. KENNEDY

Nevada Bar No. 1462

SARAH E. HARMON

Nevada Bar No. 8106

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

SHarmon@BaileyKennedy.com

*Attorneys for Respondent*

**CITY OF HENDERSON**

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**LAS VEGAS REVIEW-JOURNAL,**

Petitioner,

vs.

**CITY OF HENDERSON,**

Respondent.

Case No. A-16-747289-W

Dept. No. XVIII

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

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

///

///

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

3  
4 DATED this 16<sup>th</sup> day of March, 2018.

5 BAILEY❖KENNEDY

6  
7 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

SARAH E. HARMON

8  
9 and

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

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

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

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

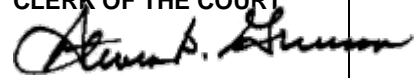
I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16<sup>th</sup> day of March, 2018, service of the foregoing **NOTICE OF APPEAL** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

# **EXHIBIT A**

# **EXHIBIT A**



**NEOJ**  
JOSH M. REID, City Attorney  
Nevada Bar No. 7497  
**CITY OF HENDERSON**  
240 Water Street, MSC 144  
Henderson, Nevada 89015  
Telephone: 702.267.1200  
Facsimile: 702.267.1201  
Josh.Reid@cityofhenderson.com

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

*Attorneys for Respondent*  
CITY OF HENDERSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,  
  
Petitioner,  
  
vs.  
  
CITY OF HENDERSON,  
  
Respondent.

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

**NOTICE OF ENTRY OF ORDER**

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

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1 A true and correct copy is attached.

2 DATED this 15<sup>th</sup> day of February, 2018.

3 BAILEY❖KENNEDY

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

7 and

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

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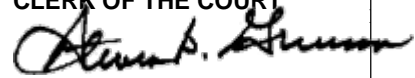
**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15<sup>th</sup> day of February, 2018, service of the foregoing **NOTICE OF ENTRY OF ORDER** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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

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

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY



**ORDR**

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

**CITY OF HENDERSON**

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

DENNIS L. KENNEDY  
Nevada Bar No. 1462

**BAILEY ♦ KENNEDY**

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

*Attorneys for Respondent*  
CITY OF HENDERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CITY OF HENDERSON,

Respondent.

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

**ORDER**

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

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

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

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

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

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

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

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

27 ///

28 ///

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED this 8 day of FEBRUARY, <sup>2018</sup>~~2017~~.

  
HONORABLE MARK B. BAILUS  
DISTRICT COURT JUDGE

Submitted by:

**BAILEY ♦ KENNEDY**

By 

Dennis L. Kennedy, Nevada Bar No. 1462

Sarah P. Harmon, Nevada Bar No. 8106

Kelly B. Stout, Nevada Bar No. 12105

and

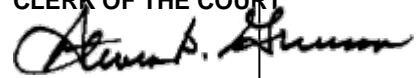
Josh M. Reid, Nevada Bar No. 7497

Brandon P. Kemble, Nevada Bar No. 11175

Brian R. Reeve, Nevada Bar No. 10197

**CITY OF HENDERSON'S ATTORNEY OFFICE**

*Counsel for Respondent, City of Henderson*



1 **NOAS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE SHELL LLC**

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702)-728-5300

8 Email: alina@nvlitigation.com

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

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

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-16-747289-W

13 Petitioner,

Dept. No.: XVIII

14 vs.

15 **NOTICE OF CROSS-APPEAL**

16 CITY OF HENDERSON,

17 Respondent.

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

24 DATED this 26<sup>th</sup> day of March, 2018.

25 /s/ Margaret A. McLetchie

26 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

27 ALINA M. SHELL, Nevada Bar No. 11711

28 **MCLEATCHIE SHELL LLC**

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

*Counsel for Petitioner/Cross-Appellant*

*Las Vegas Review-Journal*

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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 26<sup>th</sup> day of March, 2018, I did cause a true copy of the foregoing NOTICE OF CROSS-APPEAL in *Las Vegas Review-Journal v. City of Henderson.*, Eight Judicial District Court Case No. A-16-747289-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

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

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

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

/s/ Pharan Burchfield  
An Employee of MCLETCHE SHELL LLC



IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS REVIEW-JOURNAL,  
Appellant,  
vs.  
CITY OF HENDERSON,  
Respondent.

Supreme Court No. 73287  
District Court Case No. A747289

**FILED**

**JUN 24 2019**

*Elizabeth A. Brown*  
CLERK OF COURT

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

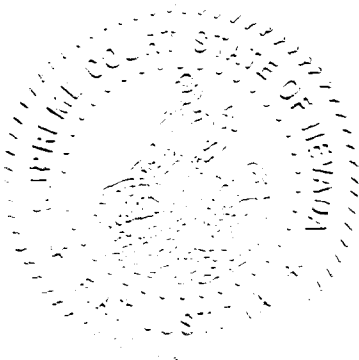
"ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 24th day of May, 2019.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this June 20, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Sandy Young  
Deputy Clerk



A-16-747289-W  
CCJAR  
NV Supreme Court Clerks Certificate/Judgn  
4844384



**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: 6-20-19

Supreme Court Clerk, State of Nevada

By S. Young Deputy

JA0716

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS REVIEW-JOURNAL,  
Appellant,  
vs.  
CITY OF HENDERSON,  
Respondent.

No. 73287

**FILED**

MAY 24 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

*ORDER AFFIRMING IN PART,  
REVERSING IN PART, AND REMANDING*

This is an appeal from a district court judgment denying a petition for a writ of mandamus and an application for injunctive and declaratory relief in a public records request matter. Eighth Judicial District Court, Clark County; Robert E. Estes, Judge.

Appellant Las Vegas Review-Journal (LVRJ) made a public records request to respondent City of Henderson pursuant to the Nevada Public Records Act (NPRA). Henderson performed a search that returned over 9,000 electronic files consisting of almost 70,000 pages of documents. Within five business days of the request, Henderson provided an initial response to LVRJ that the search generated a large universe of documents and that a review for privilege and confidentiality would be required before Henderson would provide LVRJ with copies. Henderson requested \$5,787.89 in fees to conduct the privilege review and stated that a deposit of \$2,893.94 (50% of the fee) would be due before the privilege review would begin.

LVRJ filed a petition for a writ of mandamus and an application for declaratory and injunctive relief, asking that Henderson be ordered to provide LVRJ access to the records without paying the privilege review fee. After LVRJ filed its petition, Henderson conducted the privilege review and

permitted LVRJ to inspect the nonprivileged records on a Henderson computer free of charge while they litigated whether the NPRA permitted Henderson to charge LVRJ for the privilege review. Henderson also provided a privilege log to LVRJ. After the inspection and at the hearing on LVRJ's writ petition, Henderson agreed to provide copies of the records, except for the items listed in the privilege log, to LVRJ free of charge. The district court thereafter denied LVRJ's writ petition because Henderson provided the documents without charging for the privilege review. The district court also found the privilege log was timely provided and sufficient under the NPRA. This appeal by LVRJ followed. Reviewing the district court's decision to deny the writ petition for an abuse of discretion and questions of law de novo, *Reno Newspapers, Inc. v. Haley*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010), we affirm in part, reverse in part, and remand.

LVRJ argues that the district court erred in concluding that LVRJ's claims that Henderson's charging policy was impermissible are moot. We disagree. The issue of Henderson's fee became moot once Henderson provided the records to LVRJ free of charge because "a controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (internal citations omitted). "[I]n exceptional situations," this court will decline to treat as moot an issue that is "capable of repetition, yet will evade review." *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 161, 87 P.3d 521, 524 (2004) (internal quotation omitted). This exception requires that the issue "evade review because of the nature of its timing." *Id.* The exception's application turns on whether the issue cannot be litigated before it becomes moot. *See, e.g., Globe*

*Newspaper Co. v. Superior Court*, 457 U.S. 596, 602-03 (1982) (explaining that an order excluding the public from attending a criminal rape trial during a victim's testimony that expired at the conclusion of the trial is capable of repetition, yet evading review); *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 546-47 (1976) (describing how an order prohibiting the press from broadcasting prejudicial confessions before trial that expires once the jury is empaneled is capable of repetition, yet evading review); *In re Guardianship*, 120 Nev. at 161-62, 87 P.3d at 524 (discussing types of issues that are both likely to expire prior to full litigation and are thus capable of repetition, yet evading review).

This is a fundamental requirement of the exception that LVRJ ignores. Indeed, so long as the records in a public records request are not produced, the controversy remains ongoing and can be litigated. In response to future public records requests, should Henderson maintain that it is entitled to an "extraordinary use" fee in the context of a privilege review, NRS 239.055, then the matter will be ripe for this court's consideration. Further, because NRS 239.011 already provides for expedited review of public records request denials, LVRJ's claim need not rely on such a rarely used exception. See *Personhood Nev.*, 126 Nev. at 603, 245 P.3d at 575 (observing that a statute expediting challenges to ballot initiatives generally provides for judicial review before a case becomes moot). Accordingly, we conclude that the district court did not err in concluding that LVRJ's claims regarding the ability to charge such fees and costs are moot.<sup>1</sup>

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<sup>1</sup>Because LVRJ seeks declaratory and injunctive relief only as to issues rendered moot, we decline to consider whether LVRJ's request for

LVRJ also argues that Henderson failed to timely respond to its records request with a privilege log and thus waived its right to assert claims or privileges pursuant to NRS 239.0107(1)(d). Again, we disagree. "The ultimate goal of interpreting statutes is to effectuate the Legislature's intent." *In re CityCenter Constr. & Lien Master Litig.*, 129 Nev. 669, 673, 310 P.3d 574, 578 (2013). The starting point for determining legislative intent is the statute's plain language. *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). If the language is clear and unambiguous, this court does not look beyond it. *Id.*

Under NRS 239.0107(1), a governmental entity must do one of four things within five business days of receiving a public records request; as pertinent here, a governmental entity must provide notice that it will be unable to make the record available by the end of the fifth business day and provide "[a] date and time after which the public book or record will be available" to inspect or copy, NRS 239.0107(1)(c), or provide notice that it must deny the request because the record, or a part of the record, is confidential, and provide "[a] citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential," NRS 239.0107(1)(d).

We conclude that Henderson's initial response complied with the plain language of NRS 239.0107(1)(c) because it gave notice within five business days that it would be unable to produce the records by the fifth business day as it needed to conduct a privilege review, demanded the fee amount, and gave a date the request would be completed once a deposit was received. Henderson estimated that the records would be available three

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declaratory and injunctive relief exceeds the scope of permissible relief under NRS 239.011.

weeks after LVRJ paid the amount required to commence the review, which gave LVRJ a specific date upon which they could rely to follow up pursuant to NRS 239.0107(1)(c). Further, it would be implausible to provide a privilege log for such requests that capture a large number of documents within five business days. Moreover, NRS 239.0107(1)(d) is not relevant because Henderson did not deny LVRJ's request; rather, it stated that it needed more time to determine which portions of LVRJ's request it might need to deny in the future. Put simply, a governmental entity cannot tell a requestor what is privileged, and thus what records will be denied pursuant to NRS 239.0107(1)(d), until it has had time to conduct the review. NRS 239.0107(1)(c) provides the notice mechanism when the governmental entity needs more time to act in response to the request.<sup>2</sup> Accordingly, we conclude the district court did not err in finding that the privilege log was not untimely; Henderson did not waive its right to assert privileges in the records LVRJ requested by not providing a completed privilege log within five business days of LVRJ's request.

Finally, LVRJ argues that Henderson's privilege log was insufficient and noncompliant with the NPRA. More concretely, LVRJ argues that the factual descriptions and legal bases for redaction or withholding in the privilege log were too vague and boilerplate to determine if the attorney-client, work-product, and deliberative process privileges actually applied to the records in question. Additionally, LVRJ argues that some of the factual descriptions provided fall outside of the privilege asserted for that record.

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<sup>2</sup>Further, to the extent LVRJ asserts waiver is the appropriate remedy for noncompliance with the statute, we need not reach that issue because we conclude Henderson complied with NRS 239.0107(1)(c).

The starting point for NPRA requests is that “all public books and public records of governmental entities must remain open to the public, unless otherwise declared by law to be confidential.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877, 880, 266 P.3d 623, 626, 628 (2011) (internal quotation marks omitted). Any limitations or restrictions on the public’s right of access must be construed narrowly. *Id.* at 878, 266 P.3d at 626. In light of this mandate, when a governmental entity withholds or redacts a requested record because it is confidential, the governmental entity “bears the burden of proving, by a preponderance of the evidence, that the records are confidential.” *Id.* (discussing NRS 239.0113). This court has opined that for the governmental entity to overcome its burden, “[t]he state entity may either show that a statutory provision declares the record confidential, or, in the absence of such a provision, ‘that its interest in nondisclosure clearly outweighs the public’s interest in access.’” *Pub. Emps.’ Ret. Sys. of Nev. v. Reno Newspapers, Inc. (PERS)*, 129 Nev. 833, 837, 313 P.3d 221, 224 (2013) (quoting *Gibbons*, 127 Nev. at 880, 266 P.3d at 628). In *Gibbons*, we held that a privilege log is usually how the governmental entity makes a showing that records should not be disclosed because they are confidential. 127 Nev. at 882-83, 266 P.3d at 629. While we declined to “spell out an exhaustive list of what such a log must contain or the precise form that this log must take,” “in most cases, in order to preserve a fair adversarial environment, this log should contain, at a minimum, a general factual description of each record withheld and a specific explanation for nondisclosure.” *Id.* at 883, 266 P.3d at 629. We additionally cautioned that “in this log, the state entity withholding the records need not specify its objections in such detail as to compromise the secrecy of the information.” *Id.* at 883 n.3, 266 P.3d at 629 n.3 (internal quotation omitted).



As the attorney-client privilege protects certain records by statute, see NRS 49.095, the district court was not obligated to conduct a balancing test for those records withheld or redacted pursuant that privilege.<sup>3</sup> See *PERS*, 129 Nev. at 837, 313 P.3d at 224; see also NRS 239.010(1). Instead, the district court was merely obligated to determine whether Henderson established that NRS 49.095 “declares the [withheld or redacted] record[s] confidential.” *PERS*, 129 Nev. at 837, 313 P.3d at 224. Below, the district court found that Henderson met this burden. The district court determined that the privilege log followed the guidelines articulated in *Gibbons*, and these guidelines are generally sufficient for the governmental entity to meet its burden in proving confidentiality. 127 Nev. at 883, 266 P.3d at 629. A review of the privilege log shows that Henderson considered individually each document withheld or redacted, described each in turn, and provided that the attorney-client privilege and the work-product privilege was its basis for withholding or redacting that document. As we cautioned in *Gibbons*, “in this log, the state entity withholding the records need not specify its objections in such detail as to compromise the secrecy of the information.” 127 Nev. at 883 n.3, 266 P.3d at 629 n.3 (internal quotation omitted). With this in mind, we disagree with LVRJ’s argument that Henderson’s proffered descriptions are overly conclusory. Accordingly, we conclude that the district court did not abuse its discretion in finding that these factual descriptions and explanations were sufficient

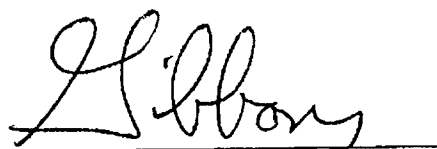
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<sup>3</sup>Henderson organized its privilege log by grouping the attorney-client privilege and work-product privilege as one classification. Because LVRJ does not argue that the work-product privilege should be considered separately from attorney-client privilege or contest the designation as to any specific instances, we do not separate the two.

under *Gibbons* with respect to those documents withheld or redacted pursuant to the attorney-client privilege and work-product privilege.

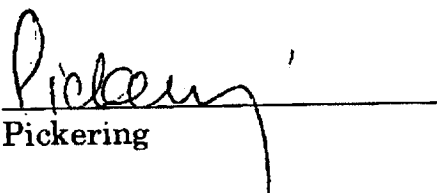
However, we agree with LVRJ's argument in relation to those documents withheld or redacted pursuant to the deliberative process privilege. In Nevada, the deliberative process privilege is not statute based; instead, it is a creature of common law. See *DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 622, 6 P.3d 465, 469 (2000). Therefore, the district court was required to consider whether Henderson proved by a preponderance of the evidence "that its interest in nondisclosure clearly outweighs the public's interest in access." *PERS*, 129 Nev. at 837, 313 P.3d at 224 (internal quotation omitted). Below, the district court did not make this consideration, or consider the difference between documents redacted or withheld pursuant to the statute-based attorney-client privilege and those redacted or withheld pursuant to the common-law-based deliberative process privilege. Accordingly, we 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. Therefore, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



Gibbons

C.J.



Pickering

J.

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

Cadish, J.  
Cadish

Silver, J.  
Silver

cc: Chief Judge, The Eighth Judicial District Court  
Hon. Robert E. Estes, Senior Judge  
Jay Young, Settlement Judge  
McLetchie Shell LLC  
Henderson City Attorney  
Bailey Kennedy  
Eighth District Court Clerk



**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE 6/20/19

Supreme Court Clerk, State of Nevada

By S. Young Deputy

JA0726

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

LAS VEGAS REVIEW-JOURNAL,  
Appellant,  
vs.  
CITY OF HENDERSON,  
Respondent.

**Supreme Court No. 73287**  
District Court Case No. A747289

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: June 20, 2019

Elizabeth A. Brown, Clerk of Court

By: Sandy Young  
Deputy Clerk

cc (without enclosures):

Hon. Robert E. Estes, Senior Judge  
McLetchie Law \ Margaret A. McLetchie  
McLetchie Law \ Alina M. Shell  
Henderson City Attorney \ Brandon P. Kemble  
Henderson City Attorney \ Brian R Reeve  
Bailey Kennedy \ Dennis L. Kennedy  
Bailey Kennedy \ Sarah E. Harmon  
Bailey Kennedy \ Kelly B. Stout

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on JUN 24 2019.

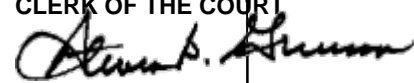
HEATHER UNGERMANN 

**Deputy** District Court Clerk

**RECEIVED  
APPEALS**

**JUN 24 2019**

**CLERK OF THE COURT**



1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4  
5 LAS VEGAS REVIEW-JOURNAL,

6 Plaintiff (s),

CASE NO. A-16-747289-W

7 DEPT NO. VIII

8 v.

9 HENDERSON CITY OF,

10 Defendant(s).

11  
12 **ORDER SETTING FURTHER**  
13 **PROCEEDINGS RE: SUPREME COURT ORDER**

14 The Court having received The Supreme Court of the State of Nevada Order of  
15 Reversal dated October 17, 2019, returning jurisdiction of this matter to the district court  
16 for proceedings consistent with said order, and good cause appearing,

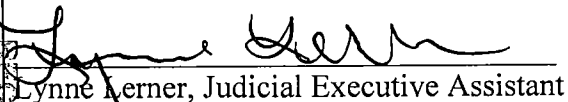
17  
18 IT IS HEREBY ORDERED that this matter is set on the Court's calendar for  
19 status check on **Thursday, December 12, 2019** at 9:00 a.m. before the Honorable  
20 Trevor Atkin in District Court 8 located in the Phoenix Building, 330 South Third Street,  
21 11<sup>th</sup> Floor, Courtroom 110 for further proceedings regarding this matter.

22 DATED: October 30, 2019



Trevor Atkin, District Judge

26 I hereby certify that on or about the date signed, a copy of this Order was  
27 electronically served, pursuant to NEFCR 9, to all registered parties, via eFileNV, and/or  
28 served via US Mail, at any address listed below.



Lynne Lerner, Judicial Executive Assistant

**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 for the Defendant  
    Shell, Alina      Attorney for the Plaintiff

**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.