

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

LAS VEGAS REVIEW-JOURNAL,  
Appellant,

vs.

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Respondent.

Electronically Filed  
Sep 14 2021 02:14 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
SUPREME COURT CASE NO:  
82908

**JOINT APPENDIX – VOLUME IV**

Appeal from Eighth Judicial District Court, Clark County  
The Honorable David M. Jones, District Judge  
District Court Case No. A-17-758501-W

Margaret A. McLetchie, Nevada Bar No. 10931

**MCLETCHIE LAW**

602 South Tenth Street

Las Vegas, Nevada 89101

Telephone: (702) 728-5300

Fax: (702) 425-8220

Email: [maggie@nvlitugation.com](mailto:maggie@nvlitugation.com)

*Counsel for Appellant, Las Vegas Review-Journal*

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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 September, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Craig R. Anderson and Jackie V. Nichols  
**MARQUIS AURBACH COFFING**  
10001 Park Run Drive  
Las Vegas, Nevada 89145

Steven B. Wolfson and Laura C. Rehfeldt  
**CLARK COUNTY DISTRICT ATTORNEY'S OFFICE**  
**CIVIL DIVISION**  
500 S. Grand Central Pkwy., 5<sup>th</sup> Floor  
Post Office Box 552215  
Las Vegas, NV 89155-2215

*Counsel for Respondent,*  
*Clark County Office of the Coroner/Medical Examiner*

/s/ Pharan Burchfield  
Employee of McLetchie Law



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-  
JOURNAL,

Plaintiff,

vs.

CLARK COUNTY OFFICE OF  
THE CORONER/MEDICAL  
EXAMINER,

Defendant.

CASE#: A-17-758501-W

DEPT. XXIV

BEFORE THE HONORABLE JIM CROCKETT, DISTRICT COURT JUDGE  
THURSDAY, DECEMBER 10, 2020

**RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE HEARING  
RESPONDENT CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER'S MOTION TO STAY ON AN ORDER  
SHORTENING TIME AND LAS VEGAS REVIEW-JOURNAL'S MOTION  
FOR AN ORDER TO SHOW CAUSE ON AN ORDER SHORTENING  
TIME**

APPEARANCES (VIA BLUEJEANS):

For the Plaintiff:

MARGARET A. MCLETCHE, ESQ.  
ALINA SHELL, ESQ.

For the Defendant:

JACQUELINE NICHOLS, ESQ.

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APPEARANCES (continued):

Also Appearing:

BENJAMIN WHITMAN, ESQ.  
GENERAL COUNSEL  
(LAS VEGAS REVIEW-JOURNAL)

RECORDED BY: NANCY MALDONADO, COURT RECORDER



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Las Vegas, Nevada, Thursday, December 10, 2020

[Case called at 10:43 a.m.]

THE COURT RECORDER: Page 7, A758501, Las Vegas Review-Journal versus Clark County Office of the Coroner/Medical Examiner.

MS. MCLEATCHIE: Good morning, Your Honor, Maggie McLetchie here for the Las Vegas Review-Journal. On the phone, I also have my co-counsel Alina Shell and Mr. Lipman, in-house general counsel for the Las Vegas Review-Journal.

THE COURT: Okay, thank you, good morning.

MS. MCLEATCHIE: Good morning.

MS. NICHOLS: Good morning, Jackie [phonetic] Nichols on behalf of the Coroner.

THE COURT: Good morning. Okay, I have some lengthy notes I want to review with counsel, so that you have the benefit of, or detriment as the case may be, of what my thoughts are.

We have two items on. One is the Clark County Coroner's Motion for Stay on an Order Shortening Time.

And the other is Petitioner Las Vegas Review-Journal's Motion for an Order to Show Cause on an Order Shortening Time.

On Clark County's Motion for Stay, I reviewed the motion that was filed November 20th, 2020; the Review-Journal's Opposition filed November 30th, 2020; and the Coroner's Reply filed December 2nd, 2020. And then, there was a -- yeah, so that took care of all that.

1           From page 4 of the Coroner's Motion for Stay, it says the  
2 Court remanded -- the Supreme Court remanded the matter back to the  
3 District Court for the Las Vegas Review-Journal to demonstrate that the  
4 information sought, i.e. the personal health and medical information  
5 unrelated to the cause and manner of death, advanced a significant  
6 public interest.

7           And I would take issue with the way that was phrased. It's the  
8 personal health and medical information which the Coroner's Office has  
9 claimed is unrelated to the cause and manner of death.

10           And I was instructed to balance the competing interests of the  
11 Coroner's claim that there was personal health and medical information  
12 that was unrelated to the cause and manner of death against the  
13 significant public interest being advanced by the Las Vegas Review-  
14 Journal.

15           In this case, I think that something that needs to be ruminated  
16 on is that significant public interest that the Review-Journal seeks to  
17 advance here.

18           What we're talking about is collection of data involving the  
19 death -- deaths of children and evidence of prior or longstanding  
20 physical abuse, serious injury, torture, and then of course, ultimately, the  
21 cause of death as ascertained by the Coroner's Office.

22           And in doing so, the goal here is all of us who work for the  
23 government, regardless of which branch or agency we're employed by,  
24 we're servants of the public.

25           It's something that we see is forgotten very often, but it

1 shouldn't be, because we do serve to meet the demands of the citizens  
2 who are governed and to meet the needs of the citizens. And the  
3 citizens of the State have untrusted us with the responsibility of doing  
4 what we were hired to do.

5           So one of the primary focuses that I see in terms of the  
6 significant public interest is if you have two parallel tracks of information,  
7 for example, a history of reports and complaints to an agency that is  
8 charged with the responsibility of enforcing laws that protect children  
9 from abuse and torture, and ultimately homicide, and on another parallel  
10 track, you have information being gathered by the Coroner's Office  
11 where children's autopsies are being performed and medical findings are  
12 being developed to find out the child's medical history and ultimately the  
13 immediate cause of death.

14           And if this information is correlated, it could be very beneficial  
15 in trying to understand whether or not the agencies that are charged with  
16 the responsibility of protecting children from abuse and neglect have in  
17 fact been acting reasonably in discharging their duties. Not flawlessly or  
18 infallibly, but reasonably.

19           And if autopsy records and investigations and examinations  
20 reveal that a child died with the immediate cause of death being trauma  
21 that resulted in death, but they find as they always document and record  
22 prior evidence of old traumatic injuries and scarring and broken bones  
23 and evidence of serious injury or torture, and that information is  
24 correlated with dates and times where enforcement agencies went out to  
25 investigate a complaint, if the enforcement agency took no action, that

1 information becomes very relevant because it is corroborative of the  
2 complaint that wasn't pursued or wasn't enforced.

3 And there are -- the county estimates that there are 600 to 700  
4 approximately autopsy reports that we're talking about. They only  
5 provided three sample reports when the case went up to the -- when the  
6 case was heard here when the case went up to the Nevada Supreme  
7 Court.

8 And in those three sample reports, the Coroner's Office said  
9 there's, you know, health related information that's not related to the  
10 cause of death and we claim that it's private.

11 The Supreme Court said that that category of information is a  
12 legitimate category to claim privacy about, but it wasn't a pass on  
13 producing the requested information.

14 It simply then shifted the burden to look at prong number 2.  
15 And that is to assess the significant public interest that's being argued by  
16 the Review-Journal.

17 So the Coroner in its brief acknowledged that it has withheld  
18 600 to 700 autopsy reports on the grounds that they contained  
19 confidential, medical, or personal information. It had never actually  
20 reviewed or claimed privilege for any of those reports, though.

21 So it sat on 6- to 700 or more autopsy reports since this matter  
22 first came in in the year 2017. And then and in 2018 and 2019 up to the  
23 current date, the Coroner's Office sat on their hands and did nothing to  
24 claim privilege or review of those reports, instead, standing behind the  
25 boilerplate assertion as to the three sample reports that were provided

1 earlier.

2 At the transcript on the hearing in this case, page 23, lines 4  
3 through 14, Ms. Nichols says, Your Honor, this is going to be an  
4 approximation in terms of the number of reports. I don't have the exact  
5 number, but I believe it's based off of their request and their time period.  
6 It's 6- to 700 juvenile autopsy reports.

7 And the Court said okay, okay. And have you previously  
8 made redactions on these 6- to 700 autopsy reports that were  
9 requested?

10 Ms. Nichols answered, no, Your Honor.

11 The Court said you haven't?

12 Ms. Nichols responded we have not. We did the sample that  
13 we initially provided them before the lawsuit.

14 So the Coroner's Office has never, even to this current date,  
15 ever addressed anything but the three sample reports because it made  
16 no redactions anywhere else and claimed no confidentiality or privilege,  
17 nor did they specifically identify any information they claimed to be  
18 protected from disclosure.

19 The unmistakable impression created by the Coroner's Office  
20 is that they are not about protecting nontrivial privacy interests. Instead,  
21 everything they've done, beginning with the original unsustainable  
22 objections to produce any information and continuing through to today  
23 demonstrates that the Coroner's Office is bound and determined to  
24 circumvent and avoid the clear letter and spirit of the Nevada Public  
25 Records Act by stonewalling, obfuscating, and frivolously offering up

1 entirely trivial, generic, and categorical claims of privacy without making  
2 even the slightest effort to particularize a nontrivial privacy interest.

3           The Coroner's Office insists upon unilaterally making its own  
4 determinations regarding relevancy, i.e. whether the requested  
5 information is relevant to cause of death.

6           For example, if there's evidence of prior physical abuse, prior  
7 life-threatening or otherwise serious injuries, that appear to have been  
8 intentionally inflicted upon the minor, that is relevant to the cause of  
9 death and the preventability of the death, demonstrating that the cause  
10 of death was likely wrongful cause of death. Also, evidence of  
11 criminality and unlawful homicide resulting from serial physical abuse  
12 and injury.

13           Evidence of scarring, heel fractures, and other evidence of  
14 trauma cannot be categorically excluded on the basis of a unilateral  
15 determination by the Coroner that it was not the immediate cause of  
16 death.

17           The primary purpose of seeking these records is to determine  
18 whether or not the child's body contained historical evidence of serial or  
19 prior abuse leading up to the child's ultimate demise, particularly when  
20 the immediate cause of death was said to be traumatic.

21           The Coroner's Office does not seem to want to acknowledge  
22 or follow the Nevada Public Records Act. Instead, it keeps repeating the  
23 phrase "the autopsy reports contain personal health and medical  
24 information that involve a nontrivial privacy interest".

25           That is boilerplate generic language. And the Coroner's Office

1 has failed to demonstrate in this balancing of the significant public  
2 interest being advanced by the Petitioner exactly what that means to  
3 counterbalance the Petitioner's request for this information.

4 And they only make this claim as to the three sample autopsy  
5 reports that they actually claimed to have reviewed. They have never  
6 made the claim, that claim, as to the remaining 6- to 700 approximately  
7 autopsy reports based upon the -- and while the Supreme Court  
8 accepted this statement as warranting further consideration by the  
9 District Court, at this juncture, having looked at this and balanced the  
10 interests involved, we know that the phrase actually has no meaning in  
11 the context of the very significant public interest being advanced by the  
12 Petitioner to ascertain whether or not autopsy reports document  
13 evidence of prior physical abuse that was unchecked by sister  
14 government agencies charged with the responsibility of investigating  
15 claims of child abuse.

16 When balancing the generalized assertion of the very  
17 significant interest being advanced by the Petitioner Las Vegas Review-  
18 Journal and the vague generic assertion that "the autopsy reports  
19 contain personal health and medical information that involved a  
20 nontrivial privacy interest", without more, the choice to require disclosure  
21 is not just highly persuasive. It is compelling.

22 This, coupled with the fact that in all the years this has been  
23 going on, the Coroner's Office has made no effort to particularize its  
24 objection as to the remaining 6- to 700 records that lie gathering dust,  
25 figuratively speaking, in the archives when the information contained in



1    them could have been and still needs to be put to use to help save the  
2    lives of children in the future.

3               Why the Coroner's Office does not link arms with the Review-  
4    Journal and provide the public records freely and voluntarily is truly  
5    unimaginable.

6               Put another way, even though the Coroner's Office is  
7    no -- under no obligation to prevent the death of children, it has the  
8    ability to assist in that goal.

9               Wouldn't it want to? Rather than proactively assisting or even  
10   just passively participating in the efforts to assemble information that  
11   could in the future be instrumental in protecting children and preventing  
12   them from being tortured, abused, and murdered in the future, the  
13   Coroner's Office has dragged its heels and been brought before the  
14   Court kicking and screaming over objections that are frivolous,  
15   featherweight, and fallacious.

16              Given the very significant interests being advanced and the  
17   complete absence of any actual particularized interest being articulated,  
18   the Coroner's actions with regard to the production of these records  
19   borders on the scandalous and impertinent.

20              It must be kept in mind that the Supreme Court said the Court  
21   should weigh and balance the Coroner's Office claim of particularized  
22   interest in privacy.

23              That's simply a category. The Court finds that the claim turns  
24   out to be devoid of any evidence that it actually exists. So the claim may  
25   be legally cognizable, but like any legally cognizable claim, it must be

1 established to be true by admissible evidence. And the Coroner's Office  
2 has consistently declined to do that.

3 If instead, the Court were left to weigh or balance the  
4 Coroner's claim of privacy without further articulation, specification, and  
5 proof, there is no metric or means to compare it with the clearly  
6 articulated and clearly understood significant interests being advanced  
7 by the Petitioner Journal -- Review-Journal.

8 The result would be that there would always be this  
9 multi-phased, multi-tiered, multi-step process in which the public agency  
10 just resists and puts the requesting citizen in the position of jumping  
11 through hoops, manufactured one after the other by the public agency.

12 Can anyone really imagine a more blatant and flagrant attempt  
13 to obstruct and frustrate the declared legislative purpose of the Nevada  
14 Public Records Act?

15 From the Supreme Court case of Reno Newspapers versus  
16 Jim Gibbons, 127 Nev. Adv. Opinion 79 of page 5, the Supreme Court  
17 said the legislature has declared that the purpose of the NPRA is to  
18 further the democratic ideal of an accountable government by ensuring  
19 that public records are broadly accessible.

20 How many more children will be tortured, abused, and  
21 murdered while the Coroner's Office conceals evidence which is sought  
22 to be analyzed by those whose mission is to investigate whether or not  
23 the government agencies charged with the responsibility of protecting  
24 children and reporting evidence of abuse are actually doing their jobs?

25 Is there anyone who wouldn't want to know the answer to that

1 question? Are our government agencies supported by taxpayer dollars  
2 and entrusted by the public to be accountable and responsible to  
3 perform certain specific tasks doing what they're supposed to do?

4 If not, why not? And what can be done to improve the actions  
5 of the public agencies who are not acting responsibility -- responsibly?  
6 These are entirely valid inquiries, because the citizens have an absolute  
7 right to demand and insist that public servants serve the public. They  
8 have no other purpose. And they are certainly not being paid to serve  
9 their own interests.

10 With regard to the Review-Journal's Motion for an Order to  
11 Show Cause, because the Motion for Stay was filed 10 days before the  
12 due date for the disclosure, this may militate against a finding of  
13 contempt predicated on nonperformance on November 30th.

14 But given the Court's analysis of the Coroner's Office conduct  
15 in this case, it may provide motivation for production of the records now.  
16 After all, the Coroner's Office has completely failed to provide any  
17 information to balance out, let alone outweigh, the significant interests  
18 that had been advanced by the Petitioner. So there is really no harm to  
19 the Coroner's Office.

20 And the delay of waiting for the Coroner's Office to take an  
21 appeal or pursue a writ just adds to the already inexplicable delay that  
22 has taken place. These records are easily digitally replicated in a matter  
23 of minutes.

24 So those are my thoughts with regard to Clark County's  
25 Coroner's Motion for Stay, which I'm inclined to deny for the reasons

1 expressed. And those are my thoughts regarding the Review-Journal's  
2 Motion for an Order to Show Cause.

3 I'm happy to hear from both counsel. And since I'm inclined to  
4 rule against the County on the Motion for Stay, let me hear, Ms. Nichols  
5 from you first?

6 MS. NICHOLS: Your Honor, I don't have anything additional  
7 to say, other than what was already in the briefing.

8 THE COURT: Okay. Ms. McLetchie, anything to say on the  
9 Motion for Stay?

10 MS. MCLETCHE: Only very briefly, Your Honor. I also think  
11 because the [indiscernible] did not actually consider this matter and at its  
12 last meeting and because the notice of the appeal has been issued, I  
13 also just think addition -- in addition to the reason that the Court gave,  
14 there's also no basis for a stay because NRCP 52(c) merely  
15 provides -- permits the Court to issue a stay of an injunction pending  
16 appeal, but there is no appeal pending. It says while an appeal is  
17 pending. Obviously notice of appeal has to be filed in order for  
18 [indiscernible] pending.

19 THE COURT: I agree. And in terms of analyzing those  
20 factors, even though the appeal hasn't been filed yet, looking at the  
21 factors whether the object of the appeal or re-petition will be defeated if  
22 the stay or injunction is denied for the reasons I expressed, I don't  
23 believe that that is a relevant consideration because I believe that the  
24 Coroner's Office -- their motivation and goal all along has been to delay  
25 and deny.

1                   And I don't see any significant harm at all to disclosure of the  
2 information. And I certainly don't think that the purpose of the appeal  
3 would be defeated.

4                   Second, the County would suffer no irreparable or serious  
5 injury if the stay is denied.

6                   Third, I do think that the Petitioner would suffer serious injury if  
7 the stay was granted, because it would further delay their acquisition of  
8 the information that forms the basis and gives them the impetus for their  
9 investigation.

10                  And fourth, whether or not the Petitioner is likely to prevail on  
11 the merits on the appeal, I don't think they are likely to prevail, otherwise  
12 I wouldn't have ruled the way that I did.

13                  So Ms. McLetchie, I'm going to ask you to prepare the order  
14 denying the Clark County Coroner's Motion for Stay.

15                  Now with regard to the Motion for Order to Show Cause, since  
16 I'm inclined to deny that at this time, based upon the fact that the Motion  
17 for Stay was filed 10 days before the due date for performance, is there  
18 anything you wish to address on that, Ms. McLetchie?

19                  MS. MCLETCHE: The only -- I understand the Court's  
20 position. The only points I would make, Your Honor, is that the mere  
21 filing of a motion to stay does not give license to disregard the order.

22                  I also think that they could have sought Clark County approval  
23 more quickly. But again, just filing a motion to stay does not  
24 automatically give a temporary stay.

25                  I also think their argument in their Opposition for Order to

1 Show Cause yesterday regarding NRCP 62(a)(1) is without any  
2 moment, because that the automatic stay provisions there govern when  
3 a judgment creditor can begin executing a money judgment.

4 And there's an entirely separate provision, 62(a)(2), that  
5 explicitly provides that there is no automatic stay of an injunction. So I  
6 would just briefly make those points, Your Honor.

7 THE COURT: I agree. It's not like a motion for protective  
8 order on a deposition or something. But nevertheless, rather than to find  
9 them in contempt for failure to produce documents on November 30th,  
10 when they clearly were launching their objections and concerns with the  
11 Court when they filed their Motion for Stay, I'm inclined to deny the  
12 Motion for an Order to Show Cause.

13 Hopefully, the denial of the Motion for Stay will result in these  
14 materials being produced forthwith. And so toward that end, originally,  
15 there was an order to produce the materials by November 30th.

16 So I will extend the deadline to December 30th, which I think  
17 is more than ample time for the Coroner to produce this information,  
18 particularly if they're doing so digitally by recording it on digital media  
19 and disclosing it in that fashion.

20 All right, anything else?

21 MS. MCLEITCHIE: Your Honor, I would just point out that  
22 since they are not required to make redactions, I would argue that they  
23 can produce these documents much more quickly than that since they're  
24 being produced without the extensive redactions that they had urged the  
25 Court permit them to make. And so, I would -- I'd ask that they'd

1 produce them earlier than that date.

2 THE COURT: Well, they are to be produced unredacted,  
3 absolutely. I'm just trying to give them time that enables them to obtain  
4 what they need to do. And I think December 30th is a reasonable  
5 deadline. That should be --

6 MS. MCLEATCHIE: May I ask --

7 THE COURT: Yes?

8 MS. MCLEATCHIE: I'm sorry, I'm sorry, Your Honor. I was just  
9 going to ask that they be required to produce them on a rolling basis.  
10 They often take the position that they can wait to make everything  
11 available until it's all ready. And I would just ask that they produce the  
12 records on a rolling basis.

13 THE COURT: Okay, I don't know why, but your sound is  
14 coming a little bit muddy. Tell me what kind of media you're asking them  
15 to be -- to produce it on?

16 MS. MCLEATCHIE: I apologize, Your Honor, I wasn't  
17 specifying a particular media. I was just asking that rather than wait to  
18 the last possible minute till December 30th, and until all the records are  
19 available, I would just ask that they be ordered to provide them as  
20 expeditiously as possible no later than December 30th and that they  
21 produce records on a rolling basis, rather than waiting till they're all  
22 ready to produce any records.

23 THE COURT: Well, I'm not going to do that. I do want them  
24 to produce them as expeditiously as possible, but not a rolling basis.

25 I don't think that's going to make any significant difference

1 when you're talking about copying even as many autopsy reports as  
2 we're talking about, 600 or 700 or more. Digitally copying just doesn't  
3 take that much time.

4 So the unredacted autopsy reports all of them, whatever their  
5 number, are to be produced no later than December 30th of 2020. That  
6 needs to be included in the order denying the Motion for Stay.

7 And Ms. Nichols, I'm going to ask you to prepare the order  
8 denying the Motion for an Order to Show Cause. I need both of those  
9 within two weeks in accordance with EDCR 7.21.

10 I prefer that you get them to me before December 17th, so  
11 that I can file them, sign them and file them before the Court goes dark  
12 on December 18th. Okay, thank you.

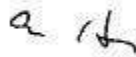
13 MS. NICHOLS: Yes.

14 MS. MCLETCHE: Thank you, very much, Your Honor.

15 [Proceedings concluded at 11:12 a.m.]

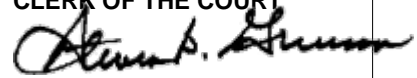
16 \* \* \* \* \*

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18  
19  
20 **ATTEST:** I do hereby certify that I have truly and correctly transcribed the  
21 audio/video proceedings in the above-entitled case to the best of my ability.

22 

23  
24 \_\_\_\_\_  
Chris Hwang  
25 Transcriber



**Marquis Aurbach Coffing**

Craig R. Anderson, Esq.  
Nevada Bar No. 6882  
Jackie V. Nichols, Esq.  
Nevada Bar No. 14246  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
canderson@maclaw.com  
jnichols@maclaw.com

Steven B. Wolfson, Esq.  
District Attorney  
Laura C. Rehfeldt, Esq.  
Deputy District Attorney  
Nevada Bar No. 5101  
500 South Grand Central Pkwy, 5th Flr.  
P.O. Box 552215  
Las Vegas, Nevada 89155-2215  
Telephone: (702) 455-4761  
Facsimile: (702) 382-5178  
laura.rehfeldt@clarkcountynyda.com

Attorneys for Respondent, Clark County  
Office of the Coroner/Medical Examiner

**DISTRICT COURT****CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Respondent

Case No.: A-17-758501-W  
Dept. No.: 24

**NOTICE OF APPEAL**

**NOTICE OF APPEAL**

Respondent, Clark County Office of the Coroner/Medical Examiner, by and through its attorneys of record, Marquis Aurbach Coffing and the Clark County District Attorney, hereby appeals to the Supreme Court of Nevada from the Order on Remand, which was filed on November 20, 2020 and is attached as **Exhibit A**.

Dated this 15th day of December, 2020.

MARQUIS AURBACH COFFING

By /s/ Jackie V. Nichols  
Craig R. Anderson, Esq.  
Nevada Bar No. 6882  
Jackie V. Nichols, Esq.  
Nevada Bar No. 14246  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Respondent, Clark County Office  
of the Coroner/Medical Examiner

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of December, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

Margaret A. McLetchie, Esq.

Alina M. Shell, Esq.

McLetchie Law

701 E. Bridger Avenue, Suite 520

Las Vegas, Nevada 89101

[maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)

[alina@nvlitigation.com](mailto:alina@nvlitigation.com)

Attorneys for Petitioner Las Vegas Review-Journal

Laura C. Rehfeldt, Esq.

Deputy District Attorney

500 South Grand Central Pkwy, 5th Flr.

P.O. Box 552215

Las Vegas, Nevada 89155-2215

[laura.rehfeldt@clarkcountyda.com](mailto:laura.rehfeldt@clarkcountyda.com)

[shannon.fagin@clarkcountyda.com](mailto:shannon.fagin@clarkcountyda.com)

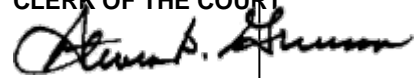
Attorney for Respondent Clark County Office of the Coroner/Medical Examiner

/s/ Leah Dell

Leah Dell, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

# Exhibit A



1 **NEOJ**

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

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-758501-W

13 Petitioner,

Dept. No.: XXIV

14 vs.

15 **NOTICE OF ENTRY OF ORDER**  
**ON REMAND**

16 CLARK COUNTY OFFICE OF THE  
17 CORONER/MEDICAL EXAMINER,

18 Respondent.

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

20 PLEASE TAKE NOTICE that on the 20<sup>th</sup> day of November, 2020, an Order on  
21 Remand was entered in the above-captioned action.

22 A copy of the Order on Remand is attached hereto as **Exhibit 1**.

23 DATED this 20<sup>th</sup> day of November, 2020.

24 /s/ Margaret A. McLetchie

25 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

26 ALINA M. SHELL, Nevada Bar No. 11711

27 **MCLEATCHIE LAW**

28 701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

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

Email: maggie@nvlitigation.com

Attorneys for Petitioner Las Vegas Review-Journal

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of November, 2020, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER ON REMAND in *Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner*, Eight Judicial District Court Case No. A-17-758501-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

/s/ Lacey Ambro

An Employee of McLetchie Law

INDEX OF EXHIBITS	
Exhibit	Description
1	November 20, 2020 Order on Remand

# EXHIBIT 1

*Heather S. Smith*  
CLERK OF THE COURT

**ORDER**

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

**MCLEATCHIE LAW**

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

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

Email: maggie@nvlitigation.com

*Counsel for Petitioner, Las Vegas Review-Journal*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

Case No.: A-17-758501-W

Dept. No.: XXIV

**ORDER ON REMAND**

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Respondent.

The Las Vegas Review-Journal's Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus ("Petition"), having come on for hearing on remand from the Nevada Supreme Court on October 29, 2020, the Honorable Jim Crockett presiding, Petitioner the Las Vegas Review-Journal (the "Review-Journal") appearing by and through its counsel, Margaret A. McLetchie and Alina M. Shell, and Respondent the Clark County Office of the Coroner/Medical Examiner (the "Coroner") appearing by and through its counsel, Jackie V. Nichols, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the Review-Journal sent the Coroner a request (the “Request”) pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking all autopsy reports of all autopsies conducted on anyone under the age of 18 from 2012 through the date of the Request.

2. The Coroner responded to the Request on April 13, 2017, refusing to produce any of the requested autopsy reports, stating nothing more than it was “not able to provide autopsy reports.”

3. On April 14, 2017, the Coroner, while continuing to withhold the requested records, provided the Review-Journal a spreadsheet created by undisclosed persons, broken down by year, containing some information but missing critical information, such as opinions of the medical examiner, physical observations, and the identity of the medical examiner performing the autopsies.

4. On May 26, 2017, the Coroner also provided a list of child deaths where autopsy reports were generated. As with the spreadsheet, while the list included the cause and manner of death, it omitted information regarding the identity of the examiner, the observations of the examiner, and the identity of the person(s) who compiled the list.

5. The Coroner did not provide the actual autopsy reports that were responsive to the request.

6. On July 11, 2017, the Coroner informed the Review-Journal that it had begun compiling and redacting autopsy reports in response to the records request, and provided sample files of three redacted autopsy reports from child deaths that were not handled by a child death review team as an example of the redactions the Coroner intended to make to all the requested reports. The Coroner also provided the Review-Journal with a spreadsheet identifying juvenile deaths that occurred in Clark County from January 2012 to the date of the request which included each decedent's name, age, race, and gender, as well as the cause, manner, and location of death.

1           7.     The sample files were heavily redacted, omitting pathological diagnoses  
2 and opinions regarding cause of death.

3           8.     The Review-Journal filed its Petition on July 17, 2017.

4           9.     After full briefing by the parties, this Court conducted a hearing on the  
5 Review-Journal's Petition on September 28, 2017, and granted the Review-Journal's Petition  
6 in its entirety.

7           10.    The Court entered a written order granting the Review-Journal's Petition  
8 and ordering the Coroner to produce the requested autopsy reports on November 19, 2017.

9           11.    The Coroner filed a notice of appeal challenging the Court's November 19,  
10 2017, order on November 28, 2017.

11          12.    On appeal, the Coroner argued that it may refuse to disclose a juvenile  
12 autopsy report once it has provided the report to a Child Death Review ("CDR") team under  
13 Nev. Rev. Stat. § 432B.407(6). The Coroner further argued that the Court erred in ordering  
14 the Coroner to produce the reports in unredacted form.

15          13.    The Supreme Court issued a decision on February 27, 2020. *See Clark Cty.*  
16 *Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. 44, 458 P.3d 1048  
17 (2020).

18          14.    In its opinion, the Supreme Court rejected the Coroner's broad  
19 interpretation of Nev. Rev. Stat. § 432B.407(6), holding that the statute "applies exclusively  
20 to a CDR 'team,' not to the broad categories of individual public agencies that may be part  
21 of a CDR team" such as the Coroner. *Coroner*, 136 Nev. at 51, 458 P.3d at 1055. Under a  
22 narrow construction of this statute as mandated by Nev. Rev. Stat. § 239.001(3), the Court  
23 found that "only a CDR team may invoke the confidentiality privilege to withhold  
24 information in response to a public records request, and NRS 432B.407(6) makes  
25 confidential only information or records 'acquired by' the CDR team." *Id.* at 50-51, 1055.

26          15.    The Supreme Court further found that the statutory scheme of NRS Chapter  
27 432B "reflects a clear legislative intent to make certain information concerning child  
28 fatalities publicly available." *Id.* at 52, 1055; *see also id.* at 52-53, 1055-56 (discussing

1 legislative history of Chapter 432B).

2 16. After considering the statutory scheme and legislative history of Chapter  
3 432B, the Supreme Court found that “the public policy interest in disseminating information  
4 pertaining to child abuse and fatalities is significant.” *Id.* at 57, 1059.

5 17. However, the Supreme Court found that the Coroner had articulated a  
6 nontrivial privacy interest that could be at stake for some information contained in the  
7 records, and remanded the matter to this Court to apply the two-part balancing test adopted  
8 in *Clark Cty. School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018)  
9 (“CCSD”) to determine what information in the autopsy reports must be disclosed under the  
10 NPRA and what information should be redacted. *Coroner*, 136 Nev. at 58, 458 P.3d at 1059.

11 18. The Review-Journal filed its Opening Brief on Remand on August 27,  
12 2020.

13 19. The Coroner filed its Answering Brief on October 7, 2020. In its Answering  
14 Brief, the Coroner asserted that, in addition to the three sample redacted autopsy reports it  
15 previously produced to the Review-Journal, there are approximately 680 autopsy reports and  
16 150 external examinations responsive to the Review-Journal’s request.

17 20. The Review-Journal filed its Reply in support of its Opening Brief on  
18 Remand on October 22, 2020.

19 21. This Court conducted a hearing on the parties’ briefs on remand on October  
20 29, 2020.

21 22. At the October 29, 2020, hearing on remand, the Coroner stated that it had  
22 only redacted the three sample autopsy reports it provided to the Review-Journal pre-  
23 litigation and had not reviewed or performed redactions to the balance of the approximately  
24 680 autopsy reports and 150 external examinations. (Recorder’s Transcript of October 29,  
25 2020, Hearing (“Transcript”), p. 23:8-14 (on file with this Court).)

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## II.

### CONCLUSIONS OF LAW

#### A. *The NPRA*

23. At its heart, this case is about the value of transparency in government and the value of public oversight. (Transcript, p. 13:15-16.) Governmental entities and their officers and employees exist to serve the public; thus, oversight of the actions and inactions of governmental entities is critical to ensuring that the public's interests are being served. (*Id.*, p. 13:16-23.)

24. Governmental entities have been entrusted with certain authorities under the color of law to conduct the public's business. (*Id.*, pp. 13:24 – 14:2.) The public entrusts governmental entities with that authority and has a right to expect and know that trust is not being abused. (*Id.*, p. 14:3-4.)

25. The NPRA recognizes that access to the records of governmental agencies is critical to fostering democracy. Nev. Rev. Stat. § 239.001(1) (2017) (“The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law”); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 876, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are designed to promote government transparency and accountability”).

26. Given the central role access to public records plays in fostering democracy, the Legislature built certain presumptions into the NPRA. The NPRA starts from the presumption that all records of government must be open to inspection and copying. Nev. Rev. Stat. § 239.010(1); *see also Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010) (“*Haley*”) (holding that the NPRA “considers all records to be public documents available for inspection and copying unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure”).

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27. The NPRA also starts from the presumption that its provisions must be construed liberally in favor of access, Nev. Rev. Stat. § 239.001(2), and that “any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.” Nev. Rev. Stat. § 239.001(3).

28. Because the NPRA starts from the presumption that all records of governmental entities are public records and that its provisions must be interpreted liberally to increase access, if a governmental entity seeks to keep all or some part of public record secret, the NPRA places the burden of governmental entities to prove, by a preponderance of the evidence, that any information it seeks to keep secret is confidential. Nev. Rev. Stat. § 239.0113(2).

29. Further, a governmental entity seeking to withhold public records on the grounds that they are confidential must prove by a preponderance of the evidence that the interests in nondisclosure outweigh the strong presumption in favor of public access. *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147-48 (1990).

30. The Nevada Supreme Court has held that because of the mandates contained in the text of the NPRA and its overarching purpose of furthering access to public records, governmental entities cannot meet their burden under Nev. Rev. Stat. § 239.0113(2) by relying on conjecture, supposition, or “non-particularized hypothetical concerns.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 628, 6 P.3d 465, 472-73 (2000); *accord Haley*, 126 Nev. at 218, 234 P.3d at 927; *Reno Newspapers Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011).

31. In balancing those interests, “the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference.” *DR Partners*, 116 Nev. at 621, 6 P.3d at 468 (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421-22 (1961)).

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**B. The CCSD Test**

32. In *Clark County School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018) (“CCSD”), the Nevada Supreme Court adopted a two-part balancing test courts are to employ in cases in which the nontrivial personal privacy interest of a person named in an investigative report may warrant redaction.

33. Under the first prong of the CCSD test, the governmental entity seeking to withhold or redact public records must “establish a personal privacy interest stake to ensure that disclosure implicates a personal privacy interest that is nontrivial or ... more than [ ] de minimis.” CCSD, 134 Nev. at 707, 429 P.3d at 320 (internal quotations omitted).

34. If—and only if—the governmental entity succeeds in showing that the privacy interest at stake is nontrivial, the burden shifts to the requester to show that “the public interest sought to be advanced is a significant one and that the information [sought] is likely to advance that interest.” CCSD, 134 Nev. at 707-08, 429 P.3d at 320 (internal quotations omitted).

35. In adopting this two-part test, the Supreme Court was careful to note that its new test did not alter a governmental entity’s obligations under the NPRA or the Court’s interpreting case law:

This test coheres with both NRS 239.0113 and *Gibbons*, 127 Nev. at 877-78, 266 P.3d at 625-26. It is merely a balancing test—in the context of a government investigation—of individual nontrivial privacy rights against the public’s right to access public information. *Carlson v. U.S. Postal Serv.*, 2017 WL 3581136, at \*28 (N.D. Cal. Aug. 18, 2017). We explained in *Gibbons* that NRS 239.0113 requires that the state bear the burden of proving that records are confidential. *Gibbons*, 127 Nev. at 878, 266 P.3d at 626. The *Cameranesi* test does that, but also gives the district courts a framework to weigh the public’s interest in disclosure, by shifting the burden onto the public record petitioner, once the government has met its burden. This ensures that the district courts are adequately weighing the competing interests of privacy and government accountability.

CCSD, 134 Nev. at 708–09, 429 P.3d at 321.

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1                   ***C. Application of the CCSD Test to The Redacted Autopsy Reports***

2           36.     The Review-Journal has requested the Coroner produce, in unredacted  
3 form, autopsy reports for all decedents under the age of 18 who died between 2012 and the  
4 date of the Review-Journal's request.

5           37.     In remanding this matter back to this Court, the Nevada Supreme Court  
6 found the Coroner had established the autopsy reports at issue here implicate a nontrivial  
7 personal privacy interest. Relying on a declaration of Clark County Coroner John Fudenberg,  
8 the Supreme Court found that the autopsy reports may contain medical or health-related  
9 information that may be entitled to protection. *Coroner*, 136 Nev. at 56, 458 P.3d at 1058.

10           38.     The Supreme Court further noted that while “the public policy in  
11 disseminating information pertaining to child abuse and fatalities is significant,” the “nature  
12 of the information contained in the juvenile autopsy reports that LVRJ seeks and how that  
13 information will advance a significant public interest” was “unclear.” *Id.* at 57-58, 1059.  
14 Accordingly, the Supreme Court remanded this matter to this Court “to determine, under the  
15 [CCSD] test, what information should be redacted as private medical or health-related  
16 information.” *Id.* at 58, 1059.

17           39.     Having reviewed the post-remand briefings submitted by the parties, the  
18 Court finds that there are multiple significant public interests that would be served by release  
19 of the autopsy reports which outweigh the nontrivial privacy interests articulated by the  
20 Coroner. (Transcript, p. 28:2-6; *id.*, p. 28:18-22.)

21           40.     Access to public records is always presumed to be in the public interest. *See*  
22 Nev. Rev. Stat. § 239.001.

23           41.     In this case, access to autopsy reports generally furthers a number of  
24 significant policy interests which the Review-Journal has sufficiently established overcome  
25 the nontrivial privacy interests at stake.

26           42.     For example, access to autopsy reports can provide the public with vital  
27 health information and protect the public. Information gathered by coroners is often a vital  
28 tool in tracking trends in causes of death, thereby increasing the public's understanding of

1 how trends like opioid deaths or deaths from the ongoing COVID-19 pandemic affect their  
2 community.

3 43. Access to autopsy reports and reporting on autopsy reports can help the  
4 public assess prosecutors' theories and charging decisions—and can help exonerate the  
5 innocent.

6 44. Access to autopsy reports also promotes trust in law enforcement and  
7 promotes law enforcement accountability. This is so because access to and reporting on  
8 autopsy reports can both exonerate law enforcement officers accused of wrongdoing and  
9 shed light on police wrongdoing.

10 45. Access to autopsy reports serves the important public function of providing  
11 the public with information about crimes of significant public interest.

12 46. More fundamentally, access to autopsy reports, including the specific  
13 juvenile autopsy reports at issue in this case, provides the public with access to information  
14 about the Coroner's conduct. Given that the Coroner is a public servant and its work on  
15 behalf of the public investigating suspicious deaths is a matter of vital public concern, access  
16 to information about the Coroner's work furthers democracy. Nev. Rev. Stat. § 239.001(1).

17 47. Relatedly, access to autopsy reports ensures that coroners' offices do their  
18 taxpayer-funded jobs correctly and do not engage in malfeasance. Access to autopsy reports,  
19 including the juvenile autopsy reports at issue in this case, fosters public confidence in the  
20 work of county coroners and medical examiners—and allows errors or wrongful behavior to  
21 be revealed, assessed, and corrected.

22 48. Further, with respect to the juvenile autopsy reports at issue in this matter,  
23 access to the reports as requested by the Review-Journal will serve a significant public  
24 interest in assessing how well state and local child protective agencies are doing their job of  
25 protecting children who have been the victims of abuse and/or neglect. Thus, not only will  
26 access further the NPRA's central purposes of transparency and accountability regarding one  
27 government agency, but it will also further transparency and accountability regarding  
28 multiple government agencies which share information. (Transcript, p. 14:10-15.)



49. While the Coroner is not charged with the protection of vulnerable children, as the agency responsible for investigating suspicious deaths, the Coroner is necessarily the agency who receives and examines deceased juveniles, including juveniles who were (or had been) under the supervision of local child protective services. Thus, access to the information the Coroner gathers during the examination of a juvenile who died after having been under the supervision of child protective services can help the public understand and assess how well child protective service agencies are fulfilling their responsibilities to Clark County's vulnerable children. (*Id.*)

50. In its decision, the Supreme Court noted that in addition to the three heavily redacted reports, the Coroner had provided the Review-Journal a spreadsheet containing the names, genders, ages, race, and the cause and manner of death for juveniles, and also noted that the CDR Teams provide information that is used to compile a statewide annual report. *Coroner*, 136 Nev. at 58, 1059. The Court then expressed uncertainty as to what "additional information" the Review-Journal seeks to obtain from the autopsy reports that would advance the public's interest. *Id.*

51. In its Supplemental Opening Brief on Remand, the Review-Journal provided myriad examples of how and why access to autopsy reports would advance the public interest. With respect to the juvenile autopsy reports at issue here, the Review-Journal has demonstrated that access to information about the Coroner's observations—and not just the Coroner's conclusions regarding the cause and manner of death—is critical to assessing the efficacy of child protective services.

52. A coroner's ultimate conclusion about the cause and manner of death for a decedent does not occur in a vacuum. In reaching a conclusion regarding cause and manner of death, a coroner necessarily assesses a wide array of information about the decedent, including the decedent's personal history such as a history of past abuse, prior involvement with child protective services or law enforcement, external and internal observations of a decedent's body that may be indicative of prior abuse, toxicological information, and evidence of past injuries like broken bones or damaged organs.

53. This sort of information is critical to the important goals of providing the public with a greater understanding of how state and local agencies tasked with protecting vulnerable children operate, identifying any shortcomings in those agencies' operations, and identifying what changes those agencies can and should make to prevent future deaths of children whose lives have been marked by abuse or neglect.

54. The spreadsheet provided by the Coroner and the CDR annual statewide reports are not sufficient replacements for direct access to this information. First, the annual statewide reports do not contain the Coroner's external or internal observations. Access to all of this type of information that is included in an autopsy report—but was not included in the Coroner's spreadsheet and is not provided in CDR reports—would advance the public interest by ascertaining the efficacy of Clark County's abuse and neglect system, an issue of great public importance.

55. Second, even if the autopsy reports did not include additional categories of information from the Coroner's spreadsheets or the CDR reports, access to the source material would still provide additional information as it would allow the Review-Journal to assess the accuracy of the information contained in the Coroner's spreadsheets and the CDR reports.

56. The NPRA does not limit a requester's information to that information that the government chooses to filter, repackage, and provide. Instead, the NPRA is intended to provide the public with direct access to the government's records themselves. Limiting access to the direct source material would be antithetical to the central stated purpose of the NPRA: government accountability. Nev. Rev. Stat. § 239.001(1) provides that "[t]he purpose of [NPRA] is to foster democratic principles by providing members of the public with prompt access to inspect, copy or receive a copy of public books and records to the extent permitted by law." The NPRA further provides that all of its provisions "must be construed liberally to carry out this important purpose." Nev. Rev. Stat. § 239.001(2). In short, the NPRA reflects that the public is not required to trust the government. Instead, the public is entitled to public record so it can assess the conduct and effectiveness of government.

1           57.     Accordingly, the Court hereby finds and concludes that the Review-Journal  
2 has established that the public interests in access far outweigh the nontrivial personal privacy  
3 interests advanced by the Coroner. (Transcript, p. 22:6-9.)

4           ***D. The Coroner Must Disclose the Juvenile Autopsy Reports in Unredacted Form***

5           58.     As noted above, prior to litigation the Coroner provided the Review-Journal  
6 with three sample autopsy reports as an example of the redactions the Coroner intended to  
7 make to all the requested reports.

8           59.     In its Answering Brief, the Coroner represents that there are many more  
9 autopsy records responsive to the Review-Journal's request, including approximately 680  
10 autopsy reports and 150 external examination. (*See* Coroner's October 7, 2020, Answering  
11 Brief, p. 25:18-19.)

12           60.     At the October 29, 2020, hearing on remand, the Coroner stated that it had  
13 only redacted the three sample autopsy reports it provided to the Review-Journal pre-  
14 litigation and had not performed redactions to the balance of the approximately 680 autopsy  
15 reports and 150 external examinations. (Transcript, p. 23:8-14.)

16           61.     The Coroner has never made redactions to the approximately 680 autopsy  
17 reports and 150 external examinations or considered whether, record by record, there is  
18 specific information that merits protection.

19           62.     This is particularly troubling given that—as this matter was initiated in 2017  
20 when the Review-Journal made its records request—the Coroner has had years to meet that  
21 burden. (Transcript, pp. 27:23 - 28:1; *id.*, p. 28:12-17.)

22           63.     While the Court is satisfied that the Review-Journal has met its burden of  
23 establishing that there is a significant interest in access, it offered the opportunity to the  
24 Coroner to conduct an *in camera* review of proposed redactions. However, at the hearing,  
25 the Coroner remained steadfast that it would simply redact all information that the Coroner  
26 deems is not related to the cause of death. Such an approach is not consistent with the need  
27 for the information that the Review-Journal has demonstrated. First, one of the significant  
28 interests access will advance is ensuring the proper functioning of the Coroner's Office. It is

1 not possible to ensure that the Coroner reached the correct conclusion regarding cause of  
2 death if it refuses to produce any information it deems unrelated to the cause of death.  
3 Second, another significant interest in access advanced by access is ensuring oversight and  
4 accountability of the abuse and neglect system. There may be information that the Coroner  
5 deems unrelated to the cause of death that is nonetheless relevant to that inquiry, such as  
6 signs of historical abuse.

7         64. Moreover, the Court notes that the significant interests established by the  
8 Review-Journal can only be met by direct access to the records sought; the reports and  
9 spreadsheets otherwise available not only do not contain the information that is needed to  
10 advance the significant interests in access, it would undermine accountability to limit the  
11 Review-Journal to information filtered by the Coroner or other government employees and  
12 officials.

13         65. For these reasons, the Court finds and concludes that the Coroner's planned  
14 redactions would not satisfy the very significant public interests the Review-Journal has  
15 demonstrated that overcome the nontrivial but generalized privacy interests articulated by  
16 the Coroner.

17         66. Further, in light of the fact that the balancing test weighs heavily in favor of  
18 disclosure and the Coroner has made no effort to meet its burden of establishing a specific  
19 nontrivial privacy interest with respect to any of the specific information contained in those  
20 approximately 680 autopsy reports and 150 external examinations, the Court finds and  
21 concludes that the Coroner has waived its ability to redact any information contained within  
22 those reports. *Thompson v. City of North Las Vegas*, 108 Nev. 435, 439, 833 P.2d 1132, 1134  
23 (1992) ("A waiver is an intentional relinquishment of a known right.")

24         67. Thus, the Coroner must provide directly to the Review-Journal the  
25 requested records in unredacted form and must do so within 30 days of the Court's October  
26 29, 2020, hearing in this matter.

27 ///

28 ///

1           ***E. Reproduction Costs***

2           68.     When the Review-Journal filed its Petition in 2017, the NPRA permitted  
3 governmental entities to charge requesters a fee—not to exceed 50 cents per page—for the  
4 “extraordinary use” of personnel and technological resources. Nev. Rev. Stat. § 239.055  
5 (2017 version).

6           69.     In its opinion, the Nevada Supreme Court rejected the Coroner’s argument  
7 that it was entitled under Nev. Rev. Stat. § 239.055 to charge the Review-Journal a \$45.00  
8 hourly fee for staff to review the requested autopsy reports, and held that the plain language  
9 of the statute capped such fees at 50 cents per page. *Coroner*, 136 Nev. at 59, 458 P.3d at  
10 1060.

11           70.     Thus, to the extent the Coroner produces hard copies of the requested  
12 juvenile autopsy reports in this matter, it may charge not more than the lesser of its actual  
13 costs or the 50-cent cap set by Nev. Rev. Stat. § 239.055 (2017 version).

14           71.     The Review-Journal has requested the Coroner produce the juvenile  
15 autopsy reports in electronic format.

16           72.     Unless it is technologically infeasible, the Coroner must produce the  
17 juvenile autopsy reports if the format and medium requested by the Review-Journal. If the  
18 Review-Journal’s chosen format and medium are infeasible, the Coroner must work with the  
19 Review-Journal to produce the records in another format and medium of the Review-  
20 Journal’s choice unless no such choice is feasible.

21           73.     Pursuant to Nev. Rev. Stat. § 239.052(1), the Coroner may only charge a  
22 requester for the actual costs it incurs in reproducing public records.

23           74.     Thus, if the records are produced in an electronic format, the Coroner may  
24 charge the Review-Journal for only the actual cost of the medium it uses to produce the  
25 records.

26     ///

27     ///

28     ///

III.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Court hereby ORDERS as follows:

IT IS HEREBY ORDERED that the Coroner shall produce directly to the Review-Journal the requested juvenile autopsy reports in unredacted form by November 30, 2020. The Coroner should produce records on a rolling basis.

IT IS HEREBY FURTHER ORDERED that unless technologically infeasible, the Coroner is to produce the requested juvenile autopsy reports in the electronic format and medium requested by the Review-Journal or such alternate format and medium as requested by the Review-Journal.

IT IS HEREBY FURTHER ORDERED that the Coroner may charge the Review-Journal a fee for the cost of producing the requested juvenile autopsy reports in electronic format not to exceed the actual cost of the medium on which the juvenile autopsy reports are produced.

IT IS HEREBY FURTHER ORDERED that, to the extent the Coroner produces any of the requested records to the Review-Journal in a hard copy format, it may not charge more than the lesser of the actual costs of production or 50 cents per page for the reproduction of those records.

Dated this 20th day of November, 2020

Date

DISTRICT COURT JUDGE

Respectfully submitted,

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

**MCLEATCHIE LAW**

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

Counsel for Petitioner, Las Vegas Review-Journal, Inc.

70B 2FA DB77 008D

Jim Crockett

District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Las Vegas Review-Journal,  
7 Plaintiff(s)

CASE NO: A-17-758501-W

8 vs.

DEPT. NO. Department 24

9 Clark County Office of the  
10 Coroner/ Medical Examiner,  
11 Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order was served via the court's electronic eFile system to all  
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 11/20/2020

17 Krista Busch	kbusch@maclaw.com
18 Alina Shell	alina@nvlitigation.com
19 Margaret McLetchie	maggie@nvlitigation.com
20 Jackie Nichols	jnichols@maclaw.com
21 Leah Dell	ldell@maclaw.com
22 Sherri Mong	smong@maclaw.com
23 Craig Anderson	canderson@maclaw.com
24 LAURA Rehfeldt	laura.rehfeldt@clarkcountyda.com
25 Shannon Fagin	shannon.fagin@clarkcountyda.com

26  
27  
28

*Heather S. Smith*  
CLERK OF THE COURT

**ORDER**

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

**MCLEATCHIE LAW**

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

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

Email: maggie@nvlitigation.com

*Counsel for Petitioner, Las Vegas Review-Journal*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Respondent.

Case No.: A-17-758501-W

Dept. No.: XXIV

**ORDER DENYING RESPONDENT  
CLARK COUNTY OFFICE OF  
THE CORONER/MEDICAL  
EXAMINER'S MOTION TO STAY  
ON ORDER SHORTENING TIME**

The Clark County Office of the Coroner/Medical Examiner's Motion to Stay on Order Shortening Time having come on for hearing on December 10, 2020, the Honorable Jim Crockett presiding, Respondent the Clark County Office of the Coroner/Medical Examiner (the "Coroner") appearing by and through its counsel, Jackie V. Nichols, and Petitioner the Las Vegas Review-Journal (the "Review-Journal") appearing by and through its counsel, Margaret A. McLetchie and Alina M. Shell, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

///

///



I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the Review-Journal sent the Coroner a request (the “Request”) pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking all autopsy reports of all autopsies conducted on anyone under the age of 18 from 2012 through the date of the Request.

2. The Coroner responded to the Request on April 13, 2017, refusing to produce any of the requested autopsy reports, stating nothing more than it was “not able to provide autopsy reports.”

3. On July 11, 2017, the Coroner informed the Review-Journal that it had begun compiling and redacting autopsy reports in response to the records request, and provided sample files of three redacted autopsy reports from child deaths that were not handled by a child death review team as an example of the redactions the Coroner intended to make to all the requested reports. The Coroner also provided the Review-Journal with a spreadsheet identifying juvenile deaths that occurred in Clark County from January 2012 to the date of the request which included each decedent's name, age, race, and gender, as well as the cause, manner, and location of death.

4. The sample files were heavily redacted.

5. The Review-Journal filed its Petition on July 17, 2017.

6. After full briefing by the parties, this Court conducted a hearing on the Review-Journal’s Petition on September 28, 2017, and granted the Review-Journal’s Petition in its entirety.

7. The Court entered a written order granting the Review-Journal’s Petition and ordering the Coroner to produce the requested autopsy reports on November 19, 2017.

8. The Coroner filed a notice of appeal on November 28, 2017.

9. The Supreme Court issued a decision on February 27, 2020. *See Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 136 Nev. 44, 458 P.3d 1048 (2020).

10. In its opinion, the Supreme Court rejected the Coroner's broad interpretation of Nev. Rev. Stat. § 432B.407(6), holding that the statute "applies exclusively to a CDR 'team,' not to the broad categories of individual public agencies that may be part of a CDR team" such as the Coroner. *Coroner*, 136 Nev. at 51, 458 P.3d at 1055. Under a narrow construction of this statute as mandated by Nev. Rev. Stat. § 239.001(3), the Court found that "only a CDR team may invoke the confidentiality privilege to withhold information in response to a public records request, and NRS 432B.407(6) makes confidential only information or records 'acquired by' the CDR team." *Id.* at 50-51, 1055.

11. The Supreme Court further found that the statutory scheme of NRS Chapter 432B "reflects a clear legislative intent to make certain information concerning child fatalities publicly available." *Id.* at 52, 1055; *see also id.* at 52-53, 1055-56 (discussing legislative history of Chapter 432B).

12. After considering the statutory scheme and legislative history of Chapter 432B, the Supreme Court found that "the public policy interest in disseminating information pertaining to child abuse and fatalities is significant." *Id.* at 57, 1059.

13. However, the Supreme Court found that the Coroner had articulated a nontrivial privacy interest that could be at stake for some information contained in the records, and remanded the matter to this Court to apply the two-part balancing test adopted in *Clark Cty. School Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018) ("CCSD") to determine what information in the autopsy reports must be disclosed under the NPRA and what information should be redacted. *Coroner*, 136 Nev. at 58, 458 P.3d at 1059.

14. This Court conducted a hearing on the parties' briefs on remand on October 29, 2020.

15. At the October 29, 2020, hearing on remand, the Coroner stated that it had only redacted the three sample autopsy reports it provided to the Review-Journal pre-litigation and had not reviewed or performed redactions to the balance of the approximately 680 autopsy reports and 150 external examinations. (Recorder's Transcript of October 29, 2020, Hearing ("Transcript"), p. 23:8-14 (on file with this Court).)

18. The Review-Journal filed an Opposition to the Coroner's Motion on November 30, 2020.

20. This Court conducted a hearing on the Coroner's Motion on December 10,

21. As of December 10, 2020, the Coroner had not filed a notice of appeal.

## CONCLUSIONS OF LAW

### A. The Legal Standard for a Motion to Stay

22. The Court must consider four factors in deciding whether to issue a stay pending appeal: (1) “whether the object of the appeal will be defeated if the stay is denied;” (2) “whether appellant will suffer irreparable or serious injury if the stay is denied;” (3) “whether respondent will suffer irreparable or serious injury if the stay is granted;” and (4) “whether appellant is likely to prevail on the merits in the appeal.” Nev. R. App. P. 8(c); accord *Hansen v. Eighth Judicial Dist. Court ex rel. Cty. Of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). In addition, the Court must consider “where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations omitted).

23. The Nevada Supreme Court has “not indicated that any one factor carries more weight than the others,” instead recognizing “that if one or two more factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v.*

1 *McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citation omitted).

2       24. Here, no stay is appropriate because, even as of the hearing on the Motion  
3 to Stay, the Coroner had not filed a notice of appeal. Without an appeal pending, no stay can  
4 be issued.

5       25. Further, after considering the four factors set forth in NRAP 8(c) and the  
6 public interest, the Court the Coroner has not established that a stay is warranted.

7       ***B. The Irreparable Harm a Stay Would Inflict on the Public Weighs Against a Stay.***

8       26. In deciding whether to issue a stay in this matter, this Court must consider  
9 “whether respondent will suffer irreparable or serious injury if the stay is granted.” NRAP  
10 8(c).

11       27. Additionally, the Court should consider in deciding whether a stay is  
12 warranted is where the public interest in access lies. *Hilton v. Braunskill*, 481 U.S. 770, 776  
13 (1987).

14       28. In considering the public interest in access to this information, it must be  
15 first be recognized that public servants like the Coroner serve to meet the needs and demands  
16 of the citizens of Nevada, and that the citizens of Nevada have entrusted public servants with  
17 the responsibility of promoting and defending the interests of the citizenry.

18       29. At issue here is the collection of data involving the deaths of children and  
19 evidence of prior or longstanding physical abuse, serious injury, torture, and ultimately, the  
20 cause of death as ascertained by the Coroner.

21       30. One of the primary significant public interests likely to be advanced by  
22 access to the records here is the importance of being able to correlate information generated  
23 by different governmental agencies vested with the responsibility of ensuring the safety of  
24 children.

25       31. With regard to juvenile autopsy reports, there may be a history of reports  
26 and complaints to an agency that is charged with the responsibility of enforcing laws that  
27 protect children from abuse and torture, and ultimately homicide. Meanwhile, on another  
28 parallel track, there may be information being gathered by the Coroner’s Office where

1 children's autopsies are being performed and medical findings are being developed to find  
2 out the child's medical history and ultimately the immediate cause of death.

3 32. If this information is correlated, it could be very beneficial in trying to  
4 understand whether the agencies charged with the responsibility of protecting children from  
5 abuse and neglect have in fact been acting reasonably in discharging their duties.

6 33. Further, if the Coroner's examination and investigation reveal that a child  
7 died with the immediate cause of death being trauma that resulted in death and that there was  
8 evidence of old traumatic injuries or abuse and that information is correlated with the dates  
9 and times where law enforcement agencies went out to investigate a complaint but ultimately  
10 took no action, that information is relevant because it is corroborative of the complaint that  
11 was not pursued.

12 34. This Court, having reviewed this matter extensively and having balanced  
13 the interests involved, finds that the Coroner's generalized assertion of the "personal health  
14 and medical information that involve a nontrivial personal privacy interest" is vastly  
15 outweighed by the very significant public interest being advanced by the Review-Journal to  
16 ascertain whether the autopsy reports document evidence of prior physical abuse that was  
17 unchecked by sister government agencies charged with the responsibility of investigating  
18 claims of child abuse and that the information sought is likely to advance that interest. Indeed,  
19 the Review-Journal has made a very compelling case on remand that also establish that  
20 significant harms to the public and the Review-Journal would occur if a stay were issued.

21 35. Keeping these records confidential hinders efforts to prevent the deaths of  
22 children. Even though the Corner has no obligation to prevent the death of children, it has  
23 the ability to assist in that goal. Thus, the fact that the Coroner is unwilling to provide the  
24 records is truly unimaginable. Rather than assisting—either actively or passively—in the  
25 efforts to assemble information that could in the future be instrumental in protecting children  
26 and protecting them from being tortured, abused, and murdered in the future, the Coroner  
27 has dragged its heels and been brought before the Court kicking and screaming over  
28 objections that are frivolous, featherweight, and fallacious.

1           36.     Given the very significant interests being advanced and the absence of any  
2 particularized interest being articulated, the Coroner’s actions with regard to the production  
3 of these records borders on the scandalous and impertinent and delay would hinder the public  
4 interest.

5           37.     The Coroner’s assertion that the autopsy reports contain information which  
6 implicates a nontrivial privacy interest is a legally cognizable claim—indeed, the Supreme  
7 Court has held precisely that. *Coroner*, 136 Nev. at 55, 458 P.3d at 1057. But like any legally  
8 cognizable claim, it must be established to be true by admissible evidence. *See, e.g.*, Nev.  
9 Rev. Stat. § 239.0113(2) (placing the burden on a withholding entity to establish “by a  
10 preponderance ***of the evidence***” that a public record or part thereof is confidential) (emphasis  
11 added); *see also Reno Newspapers, Inc. v. Sheriff*, 126 Nev. 211, 219, 234 P.3d 922, 927  
12 (2010) (rejecting a sheriff’s claims of confidentiality where he “provided no evidence to  
13 support his argument” that access to records related to concealed firearms permits would  
14 increase crime or risk of harm to the permit holder or the public). The Coroner has  
15 consistently declined to do that.

16           38.     Additional delay in producing the records would further frustrate the  
17 declared legislative purpose of the NPRA: to foster democratic principles by providing  
18 members of the public with access to public records to the extent permitted by law, Nev.  
19 Rev. Stat. § 239.001(1); *accord Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 877–78,  
20 266 P.3d 623, 626 (2011) (“The Legislature has declared that the purpose of the NPRA is to  
21 further the democratic ideal of an accountable government by ensuring that public records  
22 are broadly accessible.”).

23           39.     The Court is hard-pressed to imagine a more blatant and flagrant attempt to  
24 obstruct and frustrate the legislative purpose of the NPRA than evidenced by the Coroner in  
25 this case.

26           40.     The public has an undeniably significant interest in preventing the abuse,  
27 torture, or murder of children. The public also has an undeniably significant interest in  
28 understanding whether the government agencies charged with the responsibility of protecting

1 children and reporting evidence of abuse are actually doing their jobs or, if they are not, why  
2 not and what can be done to improve those agencies. Thus, in addition to the fact that the  
3 Review-Journal would face irreparable harm from delay, the public interest would be  
4 thwarted by a stay.

5 41. In short, the harm the Review-Journal faces and the public interest in access  
6 to the juvenile autopsy reports the Coroner has withheld for over three years weighs against  
7 entering a stay in this matter.

8 ***C. The Coroner's Speculations Regarding Harm Do Not Merit a Stay.***

9 42. Another factor this Court must consider in determining whether a stay is  
10 warranted is “whether appellant will suffer irreparable or serious injury if the stay is denied.”  
11 NRAP 8(c).

12 43. In its request for a stay, the only “irreparable harm” the Coroner articulates  
13 is that information it has unilaterally deemed “unrelated” to the cause or manner of death  
14 could be open to public inspection.

15 44. As the United States Supreme Court has cautioned, the mere possibility of  
16 irreparable injury is insufficient to warrant a stay. *Nken v. Holder*, 556 U.S. 418, 435 (2009)  
17 (citing *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 22 (2008)).

18 45. Similarly, in the context of the NPRA, the Nevada Supreme Court has held  
19 that a state entity cannot overcome the presumption of access “with a nonparticularized  
20 showing . . . or by expressing hypothetical concerns.” *Gibbons*, 127 Nev. at 880, 266 P.3d at  
21 628 (citations omitted).

22 46. The Coroner has failed to present evidence of the alleged harm that would  
23 be caused by dissemination of the information contained in the juvenile autopsy report. The  
24 Coroner has rested its argument on its broad and generalized assertion that the records  
25 contain “personal health and medical information that involve a nontrivial personal privacy  
26 interest” that should be withheld from public scrutiny, but made no effort to identify a  
27 concrete, identifiable harm that outweighs the specific need for access the Review-Journal  
28 has articulated.

47. Moreover, by the Coroner's own admission, it has not even reviewed the withheld 600 to 700 juvenile autopsy reports to determine what information contained within each of those reports constitutes "personal health and medical information that involve a nontrivial personal privacy interest" which merits protect.

48. Thus, the Coroner has failed to establish that it or the public will suffer irreparable harm in the absence of a stay.

49. As discussed above, in contrast, the public interest not only weighs in favor of immediate disclosure, but the Review-Journal and the public will suffer irreparable harm if disclosure is further delayed.

***D. The Coroner Has Failed to Demonstrate A Likelihood of Success on the Merits.***

50. NRAP 8(c) also requires the Court to assess "whether appellant is likely to prevail on the merits in the appeal."

51. Although a movant does not always have to show a probability of success on the merits, a movant must "present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981)).

52. While the Coroner contends that the legal issue at hand "is whether autopsy reports are confidential or subject to disclosure under Nevada Public Records Law" (Motion, p. 8:15-26), the Nevada Supreme Court has already resolved the overarching legal questions at hand in the *Coroner* decision and remanded for the application of the balancing test. Thus, there is no substantial legal question presented by the appeal.

53. Further, this Court applied the balancing test and the Coroner is unlikely to prevail on appeal. On remand, consistent with the Supreme Court's direction, this Court has carefully conducted the second prong of the analysis required by *CCSD*, 134 Nev. 700, 429 P.3d 313, to allow the parties to address whether the Review-Journal's interests in access outweigh the Coroner's nontrivial privacy concerns and found that the Review-Journal met its burden.



54. While the Supreme Court did ultimately agree that autopsy reports implicated nontrivial personal privacy interests that may warrant redaction, it did not give the Coroner a pass on producing the autopsy reports or hold that the Coroner could categorically withhold the reports or any portion thereof. Instead, the Supreme Court found that, because the Coroner had established that the information implicated personal privacy interests, the burden had shifted to the Review-Journal to establish that the public interest it seeks to advance is a significant one and that the information sought is likely to advance that interest. *Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal*, 136 Nev. 44, 58, 458 P.3d 1048, 1059 (2020) (“Coroner”).

55. The Review-Journal established that there are multiple significant public interests which militate in favor of disclosure and that would be specifically advanced by access to the information sought.

56. The Coroner, on the other hand, failed for years to assert anything other than the generalized nontrivial privacy interest that this Court, following the Supreme Court’s instructions on remand, found were drastically outweighed by the Review-Journal’s significant interests in the specific information sought in this case. The Coroner estimates that there are approximately 600 to 700 reports that are responsive to the Review-Journal’s request. In responding to the Review-Journal’s request, the Coroner produced three sample autopsy reports; these were the only reports the Coroner has produced to date. In those three sample reports, the Coroner asserted that it had redacted health and personal information not related to the cause of death, asserting that the information was entitled to blanket, categorical protection. In its Motion for Stay, the Coroner acknowledged that it has withheld the aforementioned 600 to 700 juvenile autopsy reports on the grounds that they contained confidential, medical, or personal information, but had never actually reviewed any of those reports for the privileged information the Coroner alleges they contain. The Coroner sat on these hundreds of reports when this matter first came before the Court in 2017. And then in 2018, 2019, and all the way through the current date, the Coroner sat on its hands and did nothing to review or claim privilege as to any of those reports, instead standing behind the

1 boilerplate assertions as to the three sample reports that were provided to the Review-Journal  
2 prior to the initiation of this matter.

3         57. Thus, even to this current date, the Coroner has never addressed anything  
4 but the three sample autopsy reports because it made no redactions to the withheld autopsy  
5 reports, it has made no specific claims of privilege with respect to those reports, and it has  
6 not specifically identified any information contained within those reports it believes should  
7 be protected from disclosure.

8         58. Moreover, even after the Review-Journal met its burden on remand, the  
9 Coroner effectively refused the Court’s offer of a further opportunity to establish *in camera*  
10 why the balancing test might still favor secrecy by continuing to assert a right to categorically  
11 withhold information it determined was unrelated to the cause of death, ignoring that the  
12 Court had held that the Review-Journal had already met its burden of establishing that the  
13 interests it sought to advance are significant and that the information sought—including the  
14 information deemed unrelated to the cause of death by the Coroner— such as observations  
15 and medical history that is likely to advance those interests.

16         59. In light of this procedural posture, the Coroner cannot establish a likelihood  
17 of success on its claims or even the more forgiving standard of a substantial legal question  
18 where the relative harms favor a stay.

19         60. The unmistakable impression created by the Coroner is that it is not truly  
20 acting to protect nontrivial privacy interests. Instead, everything the Coroner has done—  
21 beginning with the original unsustainable, categorical objections to produce any information  
22 and continuing through to today—demonstrates that the Coroner is bound and determined to  
23 circumvent and avoid the clear letter and spirit of the Nevada Public Records Act by  
24 stonewalling, obfuscating, and frivolously offering up entirely trivial, generic, and  
25 categorical claims of privacy without making even the slightest effort to particularize a  
26 nontrivial personal privacy interest.

27         61. The Coroner does not seem to want to acknowledge or follow the NPRA.  
28 Instead, it keeps repeating the phrase “the autopsy reports contain personal health and

1 medical information that involve a nontrivial personal privacy interest.” This is boilerplate  
2 language, and the Coroner has failed to demonstrate on remand what exactly that boilerplate  
3 language means, or how it counterbalances the significant public interests the Review-  
4 Journal seeks to advance through access. Instead, the Coroner insists upon unilaterally  
5 making its own determinations regarding relevancy, *i.e.*, whether the requested information  
6 is relevant to the cause or manner of death, ignoring that the Court specifically determined  
7 that the Review-Journal met its burden on remand.

8           62. Under the Coroner’s broad and nonparticularized approach, it would be able  
9 to withhold information that is clearly relevant to whether a deceased child was a victim of  
10 longstanding abuse or neglect. For example, if there is evidence of prior physical abuse or  
11 evidence of prior life-threatening or otherwise serious injuries that appear to have been  
12 intentionally inflicted upon the minor, that is relevant to the cause of death and the  
13 preventability of that death that the Coroner would be able to withhold. But this sort of  
14 information cannot be categorically excluded from disclosure on the basis of a unilateral  
15 determination by the Coroner that it was not related to the cause or manner of death.

16           63. If the Court were left to weigh the Coroner’s claims of privacy without  
17 further articulation, specification, and proof, there is no metric or means to balance those  
18 claims with the clearly articulated and clearly understood significant interests being  
19 advanced by the Review-Journal. The result would be that there would always be this multi-  
20 phased, multi-tiered, multi-step process in which the public agency just resists and puts the  
21 requesting citizen in the position of jumping through hoops, manufactured one after the other  
22 by the public agency.

23           64. When balancing the significant interests being advanced by the Review-  
24 Journal against the vague generic assertion that “the autopsy reports contain personal health  
25 and medical information that involved a nontrivial privacy interest” without more, the choice  
26 to require disclosure is not just highly persuasive, it is compelling.

27           65. Thus, the Coroner has not established either a likelihood of success on the  
28 merits or a substantial legal question.

***E. The Object of the Appeal***

66. The final factor this Court must consider is “whether the object of the appeal will be defeated if the stay is denied.” NRAP 8(c).

67. Even if it would defeat the purpose of an appeal, a stay is not automatic. Instead, “[a] decision to grant a stay of an order pending appeal always involves an exercise of judicial discretion and is dependent upon the circumstances of the particular case.” *See* 5 Am. Jur. 2d Appellate Review § 397 (applying the federal analogue to NRAP 8 (footnotes omitted)).

68. In addressing this prong of NRAP 8(c), the Coroner asserts that disclosure of the reports as ordered by the Court prior to any appeal would “undermine the Coroner’s argument and render the appeal moot.” (Motion, p. 7:20-21.)

69. The Coroner’s goal in seeking a stay—as has been its goal throughout this case—is to delay and deny access to the requested juvenile autopsy reports. Thus, the factor that applies to stays regarding defeating the purpose of the appeal does not weigh in favor of an appeal.

70. Further, even setting aside that issue, the purpose on appeal would not be defeated. The Coroner did not meet its burden of establishing that the appeal would not be moot because the claims at issue in this matter fall within the “capable-of-repetition-yet-evading-review” exception to the mootness doctrine, which applies when the duration of a challenged action is “relatively short” and there is a “likelihood that a similar issue will arise in the future.” *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (quotation omitted); *see also Binegar v. Eighth Judicial Dist. Court In & For Cty. of Clark*, 112 Nev. 544, 548, 915 P.2d 889, 892 (1996) (providing that the matter must “present[] a situation whereby an important question of law could not be decided because of its timing”). For example, while the Review-Journal’s original records request sought juvenile autopsy reports from 2012 through April 13, 2017, the Review-Journal would likely seek similar reports for subsequent years.

71. The issues the Coroner intends to present on appeal are extremely likely to

arise in the future. The Review-Journal, as the largest media entity in Nevada, routinely requests records from governmental entities, including records pertaining to unnatural deaths. For example, shortly after the initiation of the instant action, the Review-Journal petitioned the district court for relief when the Coroner refused to disclose autopsy reports for the victims and suspect in the October 1, 2017 mass shooting at the Route 91 Harvest music festival on some of the same rejected grounds it relied on in this matter.

72. Moreover, as evidenced at the October 29, 2020, hearing before this Court, the Coroner is deeply entrenched in its position regarding what information it believes it can redact from the requested records, *i.e.*, its categorical approach to withholding information in autopsy reports.

73. It is therefore highly likely that the Review-Journal or another requester will request autopsy records in the future and be required to seek judicial intervention when the Coroner once again refuses to disclose them or asserts that it can redact large swathes of information it has unilaterally deemed as “unrelated” to the cause and manner of death.

74. Thus, this matter falls within the capable-of-repetition-yet-evading-review exception to the mootness doctrine. Accordingly, this factor does not weigh in favor of a stay.

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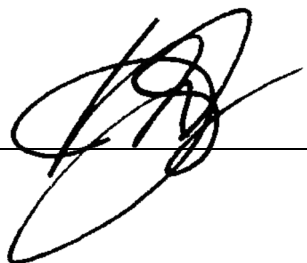
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**ORDER**

Based on the foregoing findings of fact and conclusions of law, the Court hereby  
ORDERS as follows:

IT IS HEREBY ORDERED that the Coroner's Motion for Stay on Order  
Dated this 23rd day of December, 2020  
Shortening Time is DENIED.



Respectfully submitted,

CC9 016 2DD4 6CB9  
Jim Crockett  
District Court Judge

/s/ Margaret A. McLetchie  
MARGARET A. MCLEATCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
**MCLEATCHIE LAW**  
701 E. Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
*Counsel for Petitioner, Las Vegas Review-Journal, Inc.*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Las Vegas Review-Journal,  
7 Plaintiff(s)

CASE NO: A-17-758501-W

8 vs.

DEPT. NO. Department 24

9 Clark County Office of the  
10 Coroner/ Medical Examiner,  
11 Defendant(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

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17 Krista Busch

kbusch@maclaw.com

18 Alina Shell

alina@nvlitigation.com

19 Margaret McLetchie

maggie@nvlitigation.com

20 Jackie Nichols

jnichols@maclaw.com

21 Leah Dell

ldell@maclaw.com

22 Sherri Mong

smong@maclaw.com

23 Craig Anderson

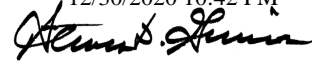
canderson@maclaw.com

24 LAURA Rehfeldt

laura.rehfeldt@clarkcountyda.com

25 Shannon Fagin

shannon.fagin@clarkcountyda.com



CLERK OF THE COURT

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**Marquis Aurbach Coffing**

Craig R. Anderson, Esq.  
Nevada Bar No. 6882  
Jackie V. Nichols, Esq.  
Nevada Bar No. 14246  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
canderson@maclaw.com  
[jnichols@maclaw.com](mailto:jnichols@maclaw.com)

Steven B. Wolfson, Esq.  
District Attorney  
Laura C. Rehfeldt, Esq.  
Deputy District Attorney  
Nevada Bar No. 5101  
500 South Grand Central Pkwy, 5th Flr.  
P.O. Box 552215  
Las Vegas, Nevada 89155-2215  
Telephone: (702) 455-4761  
Facsimile: (702) 382-5178  
[laura.rehfeldt@clarkcountynyda.com](mailto:laura.rehfeldt@clarkcountynyda.com)

Attorneys for Respondent, Clark County  
Office of the Coroner/Medical Examiner

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY OFFICE OF THE  
CORONER/MEDICAL EXAMINER,

Respondent.

Case No.: A-17-758501-W  
Dept. No.: 24

**Date of Hearing:** December 10, 2020  
**Time of Hearing:** 9:00 A.M.



FOR

**ORDER DENYING PETITIONER LAS VEGAS REVIEW JOURNAL'S MOTION TO  
ORDER TO SHOW CAUSE ON ORDER SHORTENING TIME**

This matter came before the above-referenced Court on December 10, 2020 regarding Petitioner Las Vegas Review Journal's Motion to Order to Show Cause on Order Shortening Time; Margaret A. McLetchie, Esq. and Alina M. Shell, Esq., with the law firm of McLetchie Law, appearing on behalf of Petitioner Las Vegas Review Journal, and Jackie V. Nichols, Esq., with the law firm of Marquis Aurbach Coffing, appearing on behalf of Respondent Clark County



Office of the Coroner/Medical Examiner. The Court having considered the points and authorities, and for good cause appearing, the Court hereby finds and orders as follows:

**I. PROCEDURAL HISTORY AND FINDINGS OF FACT**

1. On April 13, 2017, the Review-Journal sent the Coroner a request (the “Request”) pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”) seeking all autopsy reports of all autopsies conducted on anyone under the age of 18 from 2012 through the date of the Request.

2. The Coroner responded to the Request on April 13, 2017, refusing to produce any of the requested autopsy reports, stating nothing more than it was “not able to provide autopsy reports.” The Coroner, however, provided the Review-Journal with a spreadsheet identifying juvenile deaths that occurred in Clark County from January 2012 to the date of the request which included each decedent's name, age, race, and gender, as well as the cause, manner, and location of death.

3. On July 11, 2017, the Coroner informed the Review-Journal that it had begun compiling and redacting autopsy reports in response to the records request, and provided sample files of three redacted autopsy reports from child deaths that were not handled by a child death review team as an example of the redactions the Coroner intended to make to all the requested reports.

4. The sample files contained redactions of the decedents’ personal health and medical information that was unrelated to the cause and manner of death.

5. The Review-Journal filed its Petition on July 17, 2017.

6. After full briefing by the parties, this Court conducted a hearing on the Review-Journal’s Petition on September 28, 2017, and granted the Review-Journal’s Petition in its entirety.

7. The Court entered a written order granting the Review-Journal’s Petition and ordering the Coroner to produce the requested autopsy reports on November 19, 2017.

8. The Coroner filed a notice of appeal on November 28, 2017.

9. The Supreme Court issued a decision on February 27, 2020. *See Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 136 Nev. 44, 458 P.3d 1048 (2020).

10. In its opinion, the Supreme Court found that that the Coroner had articulated a

1 nontrivial privacy interest that could be at stake for some information contained in the records, and  
2 remanded the matter to this Court to apply the two-part balancing test adopted in *Clark Cty. School*  
3 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018) (“CCSD”) to determine  
4 what information in the autopsy reports must be disclosed under the NPRA and what information  
5 should be redacted. *Coroner*, 136 Nev. at 58, 458 P.3d at 1059.

6 11. This Court conducted a hearing on the parties’ briefs on remand on October 29,  
7 2020.

8 12. On November 20, 2020, this Court entered a written Order directing the Coroner  
9 to produce unredacted copies of the requested juvenile autopsy reports by not later than November  
10 30, 2020.

11 13. On November 20, 2020, the Coroner filed a Motion to Stay on an Order  
12 Shortening Time.

13 14. The Review-Journal filed an Opposition to the Coroner’s Motion on November  
14 30, 2020.

15 15. The Coroner filed a Reply on December 7, 2020.

16 16. On December 8, 2020, the Review-Journal filed a Motion for Order to Show  
17 Cause on Order Shortening Time.

18 17. On December 9, 2020, the Coroner filed an Opposition to the Review-Journal’s  
19 Motion.

20 18. The Court held a hearing on the Review-Journal’s Motion on December 10, 2020.

21 19. At the hearing on December 10, 2020, the Court denied the Coroner’s request for  
22 a stay. Nevertheless, the Court concluded that because the Coroner filed a Motion for Stay 10 days  
23 before the disclosure deadline, the Coroner’s acts militate against a finding of contempt predicated  
24 on nonperformance of the November 30, 2020 disclosure deadline.

## 25 **II. CONCLUSIONS OF LAW**

26 1. “[P]arties are not at liberty to disobey notice, orders or any other directives”  
27 issued by district courts. *Weddell v. Stewart*, 127 Nev. 645, 652, 261 P.3d 1080, 1085 (2011).  
28 Nevada law defines contempt as, *inter alia*, “[d]isobedience or resistance to any lawful writ,  
order, rule or process issued by the court.” Nev. Rev. Stat. § 22.010(3).

1           2.       Courts have inherent power to enforce their decrees through civil contempt  
2 proceedings....” *In re Determination of Relative Rights of Claimants & Appropriators of Waters*  
3 *of Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002)  
4 (citing *Noble v. Noble*, 86 Nev. 459, 463, 470 P.2d 430, 432 (1970)). District courts maintain  
5 discretion in finding contempt and issuing sanctions. *Id.*

6           3.       A litigant is afforded 30 days from notice of entry of final judgment to file a  
7 notice appeal. NRAP 4(a)(1). Under Nevada law, the Coroner must seek approval from the  
8 Board of County Commissioners in order to file an appeal. *See The Comm’n on Ethics of the*  
9 *State of Nevada v. Hansen*, 134 Nev. 304, 307, 419 P.3d 140, 142 (2018).

10          4.       Here, although the Coroner had not yet filed an appeal, and the Motion for Stay,  
11 in of itself, did not stay the Court’s order, the Coroner clearly launched its objections and  
12 concerns with the Court by filing its Motion for Stay 10 days prior to the disclosure deadline.

13          5.       Thus, the Review-Journal’s motion is DENIED.

14          6.       In light of the Court’s denial of the Review-Journal’s motion, the deadline to  
15 disclose the unredacted juvenile autopsy reports is December 30, 2020.

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**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Petitioner Las Vegas Review Journal's Motion to Order to Show Cause on Order Shortening Time is DENIED.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Coroner shall disclose the unredacted juvenile autopsy reports by no later than December 30, 2020. ~~Dated this 30th day of December, 2020.~~

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2020.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

Respectfully submitted by:

MARQUIS AURBACH COFFING

By: /s/ Jackie V. Nichols  
Craig R. Anderson, Esq.  
Nevada Bar No. 6882  
Jackie V. Nichols, Esq.  
Nevada Bar No. 14246  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Respondent, Clark County  
Office of the Coroner/Medical Examiner

64B 579 603C D4C5  
Jim Crockett  
District Court Judge

**Approved as to form and content:**

MCLEATCHIE LAW

By: /s/ Margaret A. McLetchie  
Margaret A. McLetchie, Esq.  
Nevada Bar No. 10931  
Alina M. Shell, Esq.  
Nevada Bar No. 11711  
701 E. Bridger Avenue, Suite 520  
Las Vegas, Nevada 89101  
Attorneys for Petitioner Las Vegas Review Journal

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Las Vegas Review-Journal,  
Plaintiff(s)

CASE NO: A-17-758501-W

7 vs.

DEPT. NO. Department 24

8  
9 Clark County Office of the  
Coroner/ Medical Examiner,  
10 Defendant(s)

11  
12 **AUTOMATED CERTIFICATE OF SERVICE**

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14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
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17 Krista Busch

kbusch@maclaw.com

18 Alina Shell

alina@nvlitigation.com

19 Margaret McLetchie

maggie@nvlitigation.com

20 Jackie Nichols

jnichols@maclaw.com

21 Leah Dell

ldell@maclaw.com

22 Sherri Mong

smong@maclaw.com

23 Craig Anderson

canderson@maclaw.com

24 LAURA Rehfeldt

laura.rehfeldt@clarkcountyda.com

25 Shannon Fagin

shannon.fagin@clarkcountyda.com

1 **SAO**

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*

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

13 LAS VEGAS REVIEW-JOURNAL,  
14 Petitioner,

15 vs.

16 CLARK COUNTY OFFICE OF THE  
17 CORONER/MEDICAL EXAMINER,  
18 Respondent.

Case No.: A-17-758501-W

Dept. No.: XXIX

19 **STIPULATION AND ORDER TO**  
20 **SUPPLEMENT MOTION FOR**  
21 **ATTORNEY'S FEES AND COSTS**  
22 **AND SETTING A BRIEFING**  
23 **SCHEDULE**

24 Petitioner Las Vegas Review-Journal ("Review-Journal") and Respondent Clark  
25 County Office of the Coroner/Medical Examiner ("Coroner") (collectively, the "Parties") by  
26 and through their unsigned attorneys, hereby stipulate and agree as follows:

27 1. The sole purpose of this Stipulation and Order is to preserve resources and  
28 promote judicial efficiency in relation to the Review-Journal's request for attorney fees and  
costs and to provide the Coroner with the opportunity to brief any issues regarding further  
fees and costs sought in this matter.

2. By entering into this Stipulation and Order, the Coroner does not waive, but  
retains the right to assert, all arguments or defenses, whatsoever, pertaining to the Review-  
Journal's request for attorney fees and costs, other than with regard to the procedural process  
set forth herein or the timeliness of the briefing provided for herein.

3. If the Court finds that this Stipulation and Order constitutes a waiver by the  
Coroner from asserting any other arguments or defenses other than those expressly set forth  
herein, then this Stipulation and Order shall be void.

1           4.       Furthermore, the Coroner does not agree, admit, or concede that  
2 supplemental attorney fees and costs are appropriate or proper under the instant  
3 circumstances.

4           5.       The Review-Journal filed its Motion for Attorney's Fees and Costs on  
5 December 11, 2020. The Coroner filed its Opposition to Motion for Attorney's Fees and  
6 Costs on December 28, 2020. The Review-Journal's Reply is currently due on January 19,  
7 2021. The Parties have stipulated and agreed that rather than filing a Reply and a separate  
8 supplemental motion, the Review-Journal may file a consolidated Amended Motion.

9           6.       The Review-Journal's Amended Motion for Attorney's Fees and Costs shall  
10 be due on February 2, 2021.

11          7.       The Coroner shall then have up to and until February 16, 2021, to file its  
12 Opposition to the Amended Motion for Attorney's Fees and Costs.

13          8.       The Review-Journal shall have up to and until February 23, 2021, to file a  
14 reply to any response filed by the Coroner.

15          9.       The Parties respectfully request that the Court vacate the January 26, 2021  
16 hearing and reschedule the hearing on Petitioner's Motion for Attorney's Fees and Costs to  
17 a date convenient for the Court.

18          10.      This request for extension is made in good faith and not for the purposes of  
19 delay.

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DATED this 15<sup>th</sup> day of January, 2021.

DATED this 15<sup>th</sup> day of January, 2021.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, NBN 10931

Alina M. Shell, NBN 11711

**McLetchie Law**

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

*Counsel for Petitioner*

/s/ Jackie V. Nichols

Craig R. Anderson, NBN 6882

Jackie V. Nichols, NBN 14246

**Marquis Aurbach Coffing**

10001 Park Run Drive

Las Vegas, NV 89145

*Counsel for Respondent*

**ORDER**

IT IS SO ORDERED that the Petitioner Las Vegas Review-Journal shall file its Supplement to Motion for Attorney's Fees and Costs on February 2, 2021; Respondent Clark County Office of the Coroner/Medical Examiner's Opposition to Supplement to Motion for Attorney's Fees and Costs shall be due February 16, 2021; and any Reply shall be due on February 23, 2021.

IT IS FURTHER ORDERED that a hearing January 26, 2021 hearing is VACATED and shall be RESCHEDULED for \_\_\_\_\_ a.m./p.m., on the \_\_\_\_ day of \_\_\_\_\_, 2021 (a date after February 23, 2021) in the above-captioned courtroom.

Dated this 27<sup>th</sup> day of January, 2021



FEB D15 858A 2E12  
David M Jones  
District Court Judge



From: Jackie V. Nichols  
To: Pharan; Maggie  
Cc: Alina; Krista Busch  
Subject: RE: [External] CORONER - 2021.01.14 SAO Stip Briefing Schedule Fees\_DRAFT [IWOViManage.FID1037193]  
Date: Friday, January 15, 2021 11:26:50 AM  
Attachments: [image003.png](#)

Hi Pharan,

You may /s for me.

Thanks!



**Jacqueline V. Nichols, Esq.**

10001 Park Run Drive  
Las Vegas, NV 89145  
t | 702.207.6091  
f | 702.382.5816

[jnichols@maclaw.com](mailto:jnichols@maclaw.com)

[maclaw.com](http://maclaw.com)

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**From:** Pharan <[pharan@nvlitigation.com](mailto:pharan@nvlitigation.com)>

**Sent:** Friday, January 15, 2021 11:22 AM

**To:** Maggie <[maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)>; Jackie V. Nichols <[jnichols@maclaw.com](mailto:jnichols@maclaw.com)>

**Cc:** Alina <[Alina@nvlitigation.com](mailto:Alina@nvlitigation.com)>; Krista Busch <[kbusch@maclaw.com](mailto:kbusch@maclaw.com)>

**Subject:** [External] RE: [External] CORONER - 2021.01.14 SAO Stip Briefing Schedule Fees\_DRAFT [IWOV-iManage.FID1037193]

Good morning, Ms. Nichols.

I am writing on behalf of Ms. McLetchie. Attached please find the revised draft (accepting your edits) of the Stipulation and Order to Supplement Motion for Attorney's Fees and Costs and Setting a Briefing Schedule in *LVRJ v. Coroner*, Case No. A-17-758501-W. Please review and confirm that we may affix your e-signature of this draft and submit to Court. Thank you for your professional courtesies.

Thank you,

Pharan Burchfield

Paralegal



701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

(702) 728-5300 (T) / (702) 425-8220 (F)

[www.nvlitigation.com](http://www.nvlitigation.com)

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Las Vegas Review-Journal,  
7 Plaintiff(s)

CASE NO: A-17-758501-W

8 vs.

DEPT. NO. Department 29

9 Clark County Office of the  
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17 Krista Busch	kbusch@maclaw.com
18 Alina Shell	alina@nvlitigation.com
19 Margaret McLetchie	maggie@nvlitigation.com
20 Jackie Nichols	jnichols@maclaw.com
21 Leah Dell	ldell@maclaw.com
22 Sherri Mong	smong@maclaw.com
23 Craig Anderson	canderson@maclaw.com
24 LAURA Rehfeldt	laura.rehfeldt@clarkcountyda.com
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