IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAS VEGAS REVIEW JOURNAL, Appellant, vs. CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER, Respondent.	CASE NO.: 82908

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APPELLANT'S OPENING BRIEF

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
Alina M. Shell, Nevada Bar No. 11711
MCLETCHIE LAW
602 South Tenth Street
Las Vegas, Nevada 89101
Telephone: (702) 728-5300; Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Counsel for The Las Vegas Review-Journal

Docket 82908 Document 2021-26632

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

Appellant Las Vegas Review-Journal, Inc. is a Delaware corporation registered in the State of Nevada as a foreign corporation. Las Vegas Review-Journal, Inc. is a wholly owned subsidiary of News + Media Capital Group, LLC, a Delaware limited liability company. No publicly held corporation owns ten percent or more of the stock of Las Vegas Review-Journal, Inc. or News + Media Capital Group, LLC.

The law firm whose partners or associates have or are expected to appear for the Las Vegas Review-Journal, Inc. is MCLETCHIE LAW.

DATED this 14th day of September, 2021.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
MCLETCHIE LAW
602 South Tenth Street
Las Vegas, Nevada 89101
Telephone: (702) 728-5300; Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Counsel for The Las Vegas Review-Journal

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JURISDICTIONAL STATEMENT

The district court's April 8, 2021, order granting in part the Las Vegas Review-Journal, Inc.'s ("Review-Journal") motion for attorney's fees and costs is a final order in the underlying action (7 JA1268-1282[1]), as defined by Nevada Rule of Appellate Procedure 3A(b)(1). The Review-Journal filed a timely notice of appeal on May 7, 2021. *See* NRAP 4(a)(1) (providing that a notice of appeal in a civil case must be filed no later than 30 days after entry of a written judgment or order). Accordingly, this Court has jurisdiction over this matter.

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court because it is not a matter which would be presumptively assigned to the Court of Appeals under NRAP 17(b). Moreover, this Court should retain jurisdiction over this appeal pursuant to NRAP 17(a)(12) because it raises a question of statewide importance about a prevailing requester's entitlement to reasonable attorney's fees and costs under the Nevada Public Records Act.

ISSUE PRESENTED FOR REVIEW

Whether the district court erred in awarding the Review-Journal only a portion of its attorney's fees and costs, an award in the amount of $167,200.00, instead of

[1] For the Court's ease of reference, citations to the Joint Appendix ("JA") cite to both volume and page number. Hence, "7" refers to Volume 7 of the Joint Appendix at pages 1268 through 1282.

fully compensating the Review-Journal all the reasonable attorney's fees and costs it expended in successfully litigating a significant public records matter.

I. STATEMENT OF THE CASE

After almost four years of extensive and costly litigation at the district court and before this Court, including three appeals[2], the Review-Journal finally and fully prevailed in its efforts to obtain unredacted copies of juvenile autopsy reports (4 JA0731-0746) as well as a decision cementing that a prevailing requester in litigation brought pursuant to the Nevada Public Records Act[3] is entitled to recover the reasonable fees and costs from the governmental entity that has custody or control of the records. *See Clark County Office of the Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 458 P.3d 1048 (Nev. 2020).

Because it was a prevailing party in this litigation, the Review-Journal was entitled to a full award of its reasonable attorney's costs and fees from the Clark County Office of the Coroner/Medical Examiner (the "Coroner"). *See* Nev. Rev. Stat. § 239.011(2)[4]. At the time the Review-Journal moved the district court for fees

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[2] *See* Nevada Supreme Court Case Nos. 74604 (the Coroner's appeal of the district court order granting access to juvenile autopsy reports); 75095 (the Coroner's appeal of the district court's order awarding the Review-Journal its fees and costs); and 82229 (the Coroner's voluntarily dismissed appeal of the district court's order on remand from this Court).

[3] Nev. Rev. Stat. §239.001 *et seq.* (the "NPRA").

[4] "If the requester prevails, the requester is entitled to recover from the governmental entity that has legal custody or control of the record his or her costs and reasonable attorney's fees in the proceeding."

and costs on February 2, 2021 (5 JA0774-1000; 6 JA1001-1132), the Review-Journal had incurred $275,640.00 in attorney's fees and $3,581.48 in costs[5]; fees and costs that were incurred in no small part because, as the district court observed, the Coroner had "dragged its heels and been brought before the [district court] kicking and screaming over objections that are frivolous, featherweight, and fallacious" time and again to prevent the disclosure of public records. (4 JA0716; *see generally* 4 JA0706-0723.)

In moving for an award of all the attorney's fees and costs it had incurred over the course of nearly four years of litigation[6], the Review-Journal provided substantial documentation demonstrating how the fees and costs were reasonable and necessarily incurred. (5 JA0774-1000; 7 JA1222-1267 (declaration of counsel and documenting fees by date and biller); 6 JA1001-1132.)

Shortly after the December 10, 2020, hearing, the district court judge who had presided over this matter since its inception retired, and the matter was reassigned to a new district court. (7 JA1305.) The newly-assigned district court conducted a

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[5] (5 JA0774.)

[6] As discussed in further detail below, the fees sought by Review-Journal in its February 2, 2021, motion, totaling $275,640.00, included $32,377.50 the district court awarded to the Review-Journal prior to the Coroner's first two appeals in this matter (when a different judge was assigned to the matter). The district court never indicated whether a portion of the fees it denied the Review-Journal included all or part of the $32,377.50 previously awarded.

hearing on the Review-Journal's motion on March 2, 2021. (6 JA1205.) At the hearing, the district court agreed that the Review-Journal was the prevailing party (6 JA1220), but nevertheless reduced the Review-Journal's award of fees from $275,640.00 to $167,200.00 and reduced the award of costs from $3,581.48 to $2,472.99. (*Id*.) While the district court described its reductions as "reasonable" (*id.*), when pressed by counsel for specific information about how it determined which fees and costs to reduce, the district court—who had not presided over any of the prior hearings in this matter—stated only the following:

> It was just a matter of, counsel, basically, and, you know, you can call it the vast years of auditing bills for insurance companies. I went through and looked and did it. I spent about three and a half hours going through the bills, counsel. I don't have a problem with the blended rate. I just looked at certain issues and said, okay, is this an amount that I believe should have been. And then I pulled up the court record and said How long was the hearing? And I just verified every one of those opinions and that's how I came up with my reasonable amount, counsel.

(6 JA1220-1221.) Nowhere has the district court indicated which hearings it reviewed and reduced, which time entries it refused to allow, which time entries it reduced, or what amount "should have been" billed by counsel for their work.

The district court's reduction of the Review-Journal's fee award by over one third runs contrary to the plain language of the fees provisions in the NPRA, and all the more so because those provisions must be construed liberally to maximize access to public records and disincentivize governmental resistance to transparency. Nev. Rev. Stat. § 239.001(1) and (2); *see also Reno Newspapers, Inc. v. Gibbons*, 127

Nev. 873, 878, 266 P.3d 623, 626 (2011) (holding that the provisions of the NPRA "must be liberally construed to maximize the public's right of access"). As the district court acknowledged, there "has to be . . . a cost of appealing matters" in NPRA cases. (6 JA1219-1220.) The cost to be paid by a governmental entity is clearly defined in the NPRA; if a requester prevails in an action for access to public records, the only limitation on an award to the prevailing requester is that its fees and costs must be "reasonable." Nev. Rev. Stat. § 239.011(2). As demonstrated below, all of the fees and costs expended by the Review-Journal were reasonable and necessary to its success in overcoming the Coroner's resistance to transparency. Thus, the district court should have awarded the Review-Journal all its attorney's fees and costs.

In addition, the district court's failure to demonstrate how it applied the *Brunzell* factors or identify the information it relied on to reduce the Review-Journal's fee award by over one third, reflects that the district court abused its discretion. Pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) and its progeny, a district court must "demonstrate that it considered the required factors, and the award must be supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (citation omitted); *see also Argentena Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 540 n.2, 216 P.3d 779, 788 n.2 (2009) (reiterating that the district

court's award of attorney fees must include findings as to the reasonableness of the fees under *Brunzell*)[7] ; *see also Songer v. Delucchi*, 132 Nev. 1031 (2016) (vacating a fee award where the record on appeal "does not clearly demonstrate that the district court considered the factors or include evidence that clearly supports the amount of fees awarded") (citation omitted). The district court's pronouncements both at the hearing and in the order on fees do not comport with these requirements.

Here, given the Court's familiarity with the extensive procedural and factual history of this litigation and the district court's relative newness to this matter, the Court is well-positioned to determine the appropriate award of fees and costs due to the Review-Journal for the work performed in this important public records matter. Thus, this Court should vacate the district court's order and direct the Coroner to compensate the Review-Journal for all its reasonable attorney's fees and costs.

II. STATEMENT OF FACTS

This Court is well-versed in the factual history of this matter. Nonetheless, a review of the complex factual and procedural history of this matter—as well as a review of the extensive efforts of the Review-Journal's counsel to achieve multiple victories in this matter—is necessary to illustrate why the district court's reduction of the Review-Journal's award of fees and costs was reversible error. For almost four

[7] *Superseded by statute on other grounds as stated in Fredianelli v. Price*, 133 Nev. 586, 588, 402 P.3d 1254, 1255-56 (2017).

years, the Coroner "dragged its heels" at every turn in the litigation and had to be "brought before the Court kicking and screaming over objections that are frivolous, featherweight, and fallacious." (4 JA0716.) That heel-dragging came with a cost. Because of the Coroner's unrelenting resistance to—and defiance of—the NPRA, the Review-Journal was forced to go to court over and over again to obtain the autopsy records and repeatedly had to fight against the Coroner's efforts to reduce (or eliminate) the Review-Journal's statutorily-guaranteed award of fees and costs. As a result, the Review-Journal's attorney's fees and costs have steadily increased over the years. The NPRA mandates that the Review-Journal should now be fully compensated for all the expenses it incurred as a result of the Coroner's resistance to disclosure.

A. The Records Request and the Initial Litigation

On April 13, 2017, the Review-Journal sent the Coroner a records request pursuant to the NPRA seeking all reports of autopsies conducted on anyone under the age of 18 from 2012 through the date of the request. (1 JA0013-0027.) In response to this request, the Coroner responded that it would not produce the requested juvenile autopsy reports because they contained confidential medical information. *Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 458 P.3d 1048, 1051 (Nev. 2020) ("*Coroner*").

Before seeking relief from the district court, the Review-Journal made several

efforts—including meeting with representatives from the Coroner's office—to persuade the Coroner to comply with its obligation to disclose the records pursuant to the NPRA. *See generally Coroner*, 458 P.3d at 1051. When the Coroner still refused to disclose the records, the Review-Journal filed a petition for a writ of mandamus with the district court. (1 JA0001-0011.)

After extensive briefing, the district court heard argument on the Review-Journal's petition on September 28, 2017, and subsequently issued a written order granting the Review-Journal's petition on November 9, 2017. (2 JA0401-0412.)

The Review-Journal then filed a Motion for Attorney's Fees and Costs. (2 JA0415-0453.) In that motion, the Review-Journal sought $31,552.50 for attorney's fees and $825.00 for costs incurred through November 9, 2017. (2 JA0417.) On February 1, 2018, the district court granted the full relief that the Review-Journal's Motion for Attorney's Fees and Costs requested and directed the Coroner to compensate the Review-Journal for all the attorney's fees and costs it had incurred through November 9, 2017. (2 JA0457-0469.)

B. The Coroner's Appeals of the District Court's Orders Granting the Review-Journal's Petition and its Motion for Fees and Costs.

The Coroner did not take its district court losses on either the Review-Journal's petition or its motion for fees and costs lying down. Instead, the Coroner went to great lengths to undo the district court's orders and prevent both access to the juvenile autopsy records and payment of the Review-Journal's fees and costs.

The Coroner filed two appeals—one (Case No. 74604) challenging the district court's order granting the Review-Journal's petition, and the other (Case No. 75095) challenging the district court order awarding the Review-Journal fees and costs. *See also Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 458 P.3d 1048 ("*Coroner*"). On appeal, as it had before the district court, the Coroner asserted many categorical claims against access. Like the district court, this Court rejected the Coroner's categorical arguments. *Id.* at 45-46, 1050-51.

The Coroner argued the autopsy records the Review-Journal requested were categorically confidential pursuant to Nev. Rev. Stat. § 432B.407(6), which renders confidential any records or information acquired by a Child Death Review team. *Id.*, 458 P.3d at 1051. On appeal, this Court rejected the Coroner's argument and held that Nev. Rev. Stat. § 432B.407(6) did not render the requested autopsy reports categorically confidential. This Court concluded, "based on the plain language of NRS 432B.407(6) and the expressed purposes behind NRS Chapter 432B, that the CDR team confidentiality provision is not intended to categorically exempt records held by an individual CDR agency, such as the Coroner's Office, from the NPRA's disclosure requirements." *Id.* at 1056.

The Coroner also asserted "that it may withhold juvenile autopsy reports in their entirety in order to protect sensitive personal medical information of child decedents." *Id.* This Court rejected the Coroner's legal arguments, including its

claims that the autopsy reports were categorically confidential pursuant to the federal Health Insurance Portability and Accountability Act ("HIPAA"), the autopsy reports were categorically confidential pursuant to Nev. Rev. Stat. § 629.021, the autopsy reports were categorically confidential pursuant to a 2017 Assembly Bill that modified a statute pertaining to next-of-kin notifications, and the autopsy reports were confidential pursuant to Attorney General Opinion 82-12. *Id.* ("We disagree that these authorities justify withholding juvenile autopsy reports in their entirety.")

After rejecting the Coroner's myriad assertions that the autopsy reports were categorically exempt from disclosure, the Court found that the Coroner had established that the disclosure implicated a nontrivial personal privacy interest that could justify limited redactions to the records. *Id.* at 1057. Accordingly, the Court remanded the matter for the district court to determine, under the test articulated in *Clark County School District v. Las Vegas Review-Journal*,[8] what autopsy report information must be disclosed under the NPRA and whether any information could be redacted as private medical or health-related information. *Id.* at 58, 1059. Finally, the Coroner argued that Nev. Rev. Stat. § 239.012—a provision of the NPRA which immunizes individual public officers or employees who "act[] in good faith in disclosing or refusing to disclose information"—also prevented an award of attorneys' fees against governmental entities that act in good faith in refusing to

[8] 134 Nev. 700, 707-08, 429 P.3d 313, 320-21 (2018) ("*CCSD*").

disclose public records. *Coroner*, 458 P.3d at 1051. This Court rejected that argument as well. Relying on the plain language of Nev. Rev. Stat. § 239.011(2), the Court found the provision's use of the word "entitled" guaranteed the Review-Journal's absolute right to recover its reasonable attorney's fees and costs. This Court noted that, as defined by *Black's Law Dictionary*,

> the term "entitle" means "[to] grant a legal right to or qualify for," *Entitle*, *Black's Law Dictionary* (11th ed. 2019), and an "entitlement" is defined as "[a]n absolute right to a (usually monetary) benefit . . . granted immediately upon meeting a legal requirement," *Entitlement, Black's Law Dictionary* (11th ed. 2019). This Court further held the statute's language plainly provides that if LVRJ is the prevailing requester, it has met the sole legal requirement which qualifies it for, or makes it "entitled to," reasonable attorney fees and costs. *See also Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 82, 343 P.3d 608, 610 (2015) (holding a records requester "was a prevailing party and thus entitled to recover attorney fees and costs pursuant to NRS 239.011").

Id. at 1060-61. In sum, this Court soundly rejected every argument the Coroner made in its efforts to assert the autopsy reports were categorically confidential and remanded the matter solely for the district court to determine whether any information could be redacted from the reports, and also rejected the Coroner's assertion that it was immune from attorney's fees and costs.

The Review-Journal's resounding success in maintaining its district court victories was hard-fought and time consuming. As illustrated in the billing detail by date submitted in district court, the Review-Journal was required to dedicate substantial time and resources to reviewing and responding to the Coroner's filings

in these first two of the three prior appeals. In Case No. 74604, the Review-Journal not only had to file an Answering Brief, but also had engage in other motion work, such as opposing a motion to strike its appendix and filing a sur-reply. (6 JA1035-1037.) In Case No. 75095, the Review-Journal also filed more than a mere Answering Brief: the Review-Journal was required to oppose the Coroner's request for a stay of the order on fees and—after the Court granted the motion to stay—petitioned the Court for rehearing after this Court held, as a matter of first impression that governmental entities are entitled as a matter of right to a stay of a money judgment without posting a bond. *See Clark County Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev. 74, 415 P.3d 16 (2018). The Review-Journal was additionally required to respond to a notice of supplemental authorities filed by the Coroner a week before oral argument. (6 JA1037.) Finally, the Review-Journal dedicated significant time and resources to preparing for the consolidated oral argument on these two appeals. (6 JA1037-1038.) In short, the issues in the case were very important and required significant and sophisticated legal work.

C. The Review-Journal Fully Prevailed on Remand From this Court.

On remand, the onus was on the Review-Journal to establish that the public interest to be advanced by access to the autopsy records was "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 (quoting *Cameranesi v. U.S. Dep't of Defense*, 856 F.3d 626, 637 (9th Cir. 2017); alteration in original). This was no trivial burden. Rather, as illustrated by the extensive opening brief on remand, the Review-Journal had to dedicate substantial time and energy to establish the multiple public interests furthered by access to juvenile autopsy reports, including assessing the performance of the Coroner's office, furthering the integrity of criminal investigations, promoting law enforcement accountability and public confidence in law enforcement, providing the public with information regarding crimes of significant public interest, and facilitating the public's ability to assess how well local governmental entities tasked with protecting vulnerable and abused children from harm. (3 JA0487-0497; 3 JAJ0545-0548; *see also* 6 JA1039-1040.)

In its Answering Brief, the Coroner asserted there were approximately 680 autopsy reports and 150 external examinations responsive to the Review-Journal's request. (3 JA0533.) Rather than come forward with specific evidence or analysis as to how the information within the autopsy reports merited protection or articulate any specific privacy concern implicated by that information, the Coroner chose to rest its argument on its prior categorical assertions that the information contained within the autopsy reports should never be disclosed. (3 JA0516-0522.)

The district court conducted a hearing on remand on October 29, 2020. At the hearing, 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. (3 JA0603.) When pressed by the district court to explain how the Coroner could know what information should be redacted from the autopsy reports and examinations given that it had only reviewed the three samples, the Coroner glibly asserted that "it would be anything that's not related to the cause and manner of death," a response the district court rejected as "circular." (3 JA0604-0605.)

After hearing argument, the district court observed that "as a member of the community, it's just upsetting to see that there's this kind of heel dragging that would go on in a public records case, but it has." (3 JA0607-0608.) The district court then concluded that there are "multiple significant public interests" that would be advanced by access to unredacted versions of the autopsy records, both with respect to the three sample reports, and "even more so as to the balance of the reports, which have not been produced or offered even in the redacted form, because that means that even at this late date, the Coroner's Office made no effort to provide redacted reports on the balance of the 6- or 700 reports that came within the description of the materials that were requested by the Review Journal." (3 JA0608.)

The district court entered an order on November 20, 2020, directing the Coroner to disclose the autopsy records in unredacted form within ten days. (3 JA0622-0637.)

D. The Coroner Attempts to Evade Production by Moving for a Stay.

The same day district court entered its order on the remand proceedings, the Coroner attempted to further delay production and forced the Review-Journal to incur even more fees and costs by filing with the district court a motion for a stay pending appeal. (3 JA0638-0648.)

During the hearing on the Coroner's motion for stay pending appeal, the district court astutely commented that the Coroner's "motivation and goal all along has been to delay and deny" access to public records. (4 JA0719.) The district court observed that this pattern of delay and denial was potentially damaging to the health and welfare of vulnerable children:

> Why the Coroner's Office does not link arms with the Review-Journal and provide the public records freely and voluntarily is truly unimaginable.
>
> Put another way, even though the Coroner's Office is no -- under no obligation to prevent the death of children, it has the ability to assist in that goal.
>
> Wouldn't it want to? Rather than proactively assisting or even just passively participating in the efforts to assemble information that could in the future be instrumental in protecting children and preventing them from being tortured, abused, and murdered in the future, the Coroner's Office has dragged its heels and been brought before the Court kicking and screaming over objections that are frivolous, featherweight, and fallacious.
>
> Given the very significant interests being advanced and the complete absence of any actual particularized interest being articulated, the Coroner's actions with regard to the production of these records borders on the scandalous and impertinent.

(4 JA0716.) The district court also observed that if it "were left to weigh or balance the Coroner's claim of privacy without further articulation, specification, and proof," the process of assessing privacy interests would devolve—as it did here—into a "multi-phased, multi-tiered, multi-step process in which the public agency just resists and puts the requesting citizen in the position of jumping through hoops, manufactured one after the other by the public agency." (4 JA0717.) The district court further questioned whether "anyone can really imagine a more blatant and flagrant attempt to obstruct and frustrate the declared legislative purpose of the Nevada Public records Act[.]" (*Id*.)

The district court entered an order denying the Coroner's request for a stay on December 23, 2020. (4 JA0737-0762.) The Coroner then filed an Emergency Motion to Stay before this Court, requiring yet more legal work from the Review-Journal. This Court denied the stay in Case No. 82229. (6 JA1044-1045.) The Coroner then filed a motion for rehearing of the denial, and the Review-Journal again had to respond. (6 JA1045.) That, too, was denied. Only after this Court denied the Coroner's Motion for Rehearing of this Court's denial of the Coroner's emergency motion for stay[9] did the Coroner finally, on December 31, 2020, produce the unredacted records. (7 JA1229.)

[9] *See* Case No. 82229 at Doc. 20-46970 (December 30, 2020, order denying emergency petition for rehearing).

Even before the district court entered the December 23, 2020, order, the Coroner again endeavored to stymie access to the autopsy records. On December 17, 2020, the Coroner filed a notice of appeal and an emergency motion with this Court seeking a stay of the order on remand. *See* Nevada Supreme Court Case No. 82229 at Docs. 20-45667 and 20-45767. The Review-Journal dedicated substantial time and effort to opposing the Coroner's emergency motion. *See* Doc. No. 20-46550. (*See also* 6 JA1044.) As with the district court, this Court rejected the Coroner's efforts to delay production of the records, and entered an order on December 29, 2020, denying the Coroner's emergency motion. *See* Doc. No. 20-46727. The Coroner immediately petitioned for rehearing that same day (Doc. No. 20-46873), and this Court denied the request for rehearing on December 30, 2020. Doc. No. 20-46970. On December 31, 2020, the Coroner moved to voluntarily dismiss its latest appeal. Doc. No. 20-47031.

E. The Review-Journal Moves for an Award of the Reasonable Attorney's and Costs it Incurred in the Proceeding.

The Review-Journal first filed a Supplemental Motion for Attorney's Fees and Costs on December 11, 2020, along with a memorandum of costs. (7 JA1305.)[10] Because the Review-Journal was required to expend additional time and resources

[10] On January 12, 2021, while the briefing on the Supplemental Motion was pending, the district court judge previously assigned to this matter retired, and the matter was reassigned to a new district court. (7 JA1305.)

on opposing the Coroner's motions for a stay at both the district court and this Court, by stipulation, the Review-Journal filed its Amended Motion for Attorney's Fees and Costs on February 2, 2021, seeking all the fees and costs it had incurred in the litigation between November 9, 2017, and February 2, 2021. (6 JA1001-1132.) The Review-Journal subsequently filed an Errata on March 26, 2021, correcting its calculation of the fees and costs it incurred. (7 JA1222-1267.) In the Errata, the Review-Journal clarified that it had incurred $244,087.50 between November 9, 2017, and February 2, 2021. (7 JA1248.) On February 2, 2021, the Review-Journal also filed a Memorandum of Costs documenting $3,581.48 in costs the Review-Journal had incurred between November 9, 2017, through February 2, 2021. (5 JA0774-1000.) Combined with the $31,552.50 in fees and $825.00 in costs previously awarded by the district court in the February 1, 2018, Order, the Review-Journal sought $275,640.00 in attorney's fees and $4,406.48 in costs.

The Coroner filed an opposition to the Review-Journal's Amended Motion on February 16, 2021. (6 JA1133-1162.) In a last-ditch effort to evade payment of the Review-Journal's fees and costs, the Coroner argued that—despite the ample procedural history to the contrary—that the Coroner, and not the Review-Journal, had "prevailed at every turn" in the litigation. (6 JA1139.) The Coroner also attempted to reduce any award of fees to the Review-Journal by questioning whether the extensive work performed by the Review-Journal was necessary to its successes

in the litigation and questioning the reasonableness of the Review-Journal's rates. (6 JA1137-1147.) And the Coroner asserted that the Review-Journal was not entitled to recover the fees and costs it incurred in litigating the three appeals initiated by the Coroner. (6 JA1148-1154.) The Review-Journal filed its Reply on February 23, 2021. (6 JA1163-1204.)

The district court conducted a hearing on March 2, 2021. (6 JA1206-1221.) During argument, the Review-Journal noted that it had miscalculated the fees sought in the Amended Motion, and orally waived $2,075.00 in fees that had been included. (6 JA1210.) After hearing argument from the parties, the district court granted the Review-Journal's Amended Motion, but substantially reduced the award requested by the Review-Journal with almost no explanation as to why, and no explanation as to whether and how it considered the factors set forth in *Brunzell*:

> [T]he Court finds that the Motion for Fees and Costs is hereby granted. However, the amount I came up with, not just the reduction that was in the $2,075, but other reductions that the Court believes is reasonable, costs will be awarded in the amount of $2,472.99. Fees will be awarded in the amount of $167,200.

(6 JA1220.) Because the district court's order represented a substantial reduction of the fees and costs sought, the Review-Journal asked if there was "any specific information the Court can provide" about what factors it relied on in making its reductions. (*Id.*) The Court's response provided little additional detail:

> It was just a matter of, counsel, basically, and, you know, you can call it the vast years of auditing bills for insurance companies. I went

> through and looked and did it. I spent about three and a half hours going through the bills, counsel. I don't have a problem with the blended rate. I just looked at certain issues and said, okay, is this an amount that I believe should have been. And then I pulled up the court record and said, How long was the hearing? And I just verified every one of those opinions and that's how I came up with my reasonable amount, counsel.

(6 JA1220-1221.) The district court entered a written order awarding the Review-Journal reduced fees and costs on April 8, 2021. Although the written order references *Brunzell*, it still provides no insight into how the district court's consideration of the *Brunzell* factors influenced its decision to substantially reduce the Review-Journal's award of fees and costs. (*See* 7 JA1278-1281.) Indeed, a review of the court's written findings regarding the *Brunzell* factors only raises additional questions about why the district court so substantially reduced the Review-Journal's requested fees.[11]

With regard to the first *Brunzell* factor, which requires courts to consider "the qualities of the advocate: his ability, his training, education, experience, professional standing and skill,"[12] the district court found that the rates sought for the Review-Journal's counsel and staff were reasonable. (7 JA1279.) With the second factor, the

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[11] For example, as discussed above, on February 1, 2018, the district court entered an order granting the Review-Journal the full $31,552.50 in attorney's fees and $825.00 in costs that it had incurred in the litigation through November 9, 2017. (2 JA468.) Because the district court's explanation of its reductions to the Review-Journal's award at the March 2, 2021, hearing was so circumspect, it is impossible to determine whether the district court's reduction impacted any of the fees the prior presiding court awarded to the Review-Journal.

[12] *Brunzell*, 85 Nev. at 349, 455 P.2d at 33

"character of the work" performed,[13] the district court found this factor also weighed in the Review-Journal's favor, particularly given the importance and complexity of the issues and the prominence of the parties. (*Id.*) The district court also found that the third *Brunzell* factor—the work actually performed by counsel[14]—also weighed in favor of awarding the Review-Journal attorney's fees and costs, observing that "[a]s demonstrated by the record of this case and the fees detail provided by the Review- Journal, counsel for the Review-Journal dedicated substantial time and resources to thoroughly researching and briefing each issue in this matter at both the district court and appellate levels and demonstrated substantial skill in the work performed." (7 JA1280.) And the district court also found the final *Brunzell* factor—"the result: whether the attorney was successful and what benefits were derived"—also weighed in favor of the Review-Journal given its success in the litigation. (*Id.*)

And yet, despite a series of findings under *Brunzell* that would seem to indicate the Review-Journal was entitled to recover all its fees, the district court nevertheless reduced the award of attorney's fees and costs by over a third. In so doing, the district court noted merely that its reductions to the Review-Journal's attorney's fees and costs was based only on a "review of the documentation provided by the Review-Journal and the Court's experience in insurance litigation." (7

[13] *See* n. 12, *supra*.
[14] *See* n. 12, *supra*.

JA1280.)

This appeal follows.

III. STANDARD OF REVIEW

This Court reviews the amount of fees awarded "'for an abuse of discretion, and will affirm an award that is supported by substantial evidence.'" *145 E. Harmon II Tr. v. Residences at MGM Grand - Tower a Owner's Ass'n*, 460 P.3d 455, 460 (Nev. 2020) (quoting *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015)). "But when the attorney fees matter implicates questions of law, the proper review is de novo." *Id.* (quoting *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006)); *see also Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1215, 197 P.3d 1051, 1057 (2008) (explaining that while awards of attorney fees are generally reviewed for abuse of discretion, "when issues raised on appeal involve purely legal questions, we review those issue de novo.").

"An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

IV. ARGUMENT

Pursuant to the plain language of the NPRA, when a requester prevails in a legal action to obtain access to public records, that requester is entitled to recover attorney's fees and costs from the governmental entity that resisted disclosure. *See*

Nev. Rev. Stat. § 239.011(2). The only limitation the Nevada Legislature has placed on this statutory entitlement to recovery is that the requester's fees and costs must be "reasonable." *Id.* As the record in both the district court and this Court shows, litigation in this matter was lengthy, complex, and time-consuming due to the Coroner's extreme efforts to resist and delay disclosure. Throughout this litigation, the Review-Journal succeeded in obtaining relief that was consistent with the letter of the NPRA and this Court's case law only to see the Coroner fight tooth and nail every time the courts rejected its arguments, oftentimes relying on "frivolous, featherweight, and fallacious" objections to resist disclosing public autopsy reports. (4 JA0176.)

Due to the Coroner's years-long intransigence, the costs of litigating this matter grew exponentially. Every hour of work by Review-Journal's counsel and every cost incurred over the course of nearly four years of litigation was reasonable and necessary to obtain the autopsy records requested in 2017, and to fight the Coroner's repeated efforts to limit access to those public records. Moreover, the work performed by the Review-Journal's counsel was critical to establishing that governmental entities are not immune from an award of fees and costs, thereby ensuring that similarly situated requesters will never be deprived of compensation for the work performed in obtaining access to public records.

Given the length of the litigation, the complexity of the litigation (particularly

given the Coroner's repeated efforts to prevent or forestall disclosure), and the importance of the work performed by counsel, the Review-Journal was entitled to recover all of its attorney's fees and costs, all of which were reasonably incurred and necessary to the ultimate successes realized in the case. The plain language of the NPRA requires no less. Thus, the district court's reduction of the Review-Journal's award plainly contravenes the letter and spirit of the NPRA.

Additionally, the district court's reduction of the award of fees and costs to the Review-Journal did not comport with this Court's opinion in *Brunzell* and its progeny. Although the district court found that each of the four factors weighed in favor of awarding fees and costs to the Review-Journal, it reduced the award of fees and costs by over $110,000.00 without almost no explanation other than it had relied "review of the documentation provided by the Review-Journal and the Court's experience in insurance litigation" to reduce the award by nearly 40%. (7 JA1280.) The district court's terse explanation fell well short of demonstrating that it considered the required factors or that the reduction to the award of fees and costs was supported by substantial evidence. *See, e.g.*, *Logan*, 131 Nev. at 266, 350 P.3d at 1143.

The Court is well-versed with the factual and procedural history of this case. Indeed, because this Court has overseen this matter longer than the recently-assigned district court judge, this Court is in as good a position—if not better—than the trial

court to determine the appropriate award of fees and costs. *See ACLU v. Blaine Sch. Dist. No. 503*, 95 Wash. App. 106, 121, 975 P.2d 536, 544 (1999) ("Because this court is in as good a position as the trial court, we will determine the appropriate award of attorney fees and costs.") This Court should therefore vacate the district court's order reducing the Review-Journal's award of fees and costs by over $110,000.00 and enter an order directing the Coroner to award the Review-Journal all its reasonable attorney's fees and costs.

A. The NPRA Entitles the Review-Journal to An Award of All the Reasonable Attorney's Fees and Costs it Incurred in Obtaining Access to Unredacted Juvenile Autopsy Reports.

The district court's substantial reduction of the fee award is contrary to the NPRA, which emphasizes that its provisions must be construed liberally to further the important goal of increasing government transparency. *See* Nev. Rev. Stat. § 239.001(2). The NPRA contemplates that requesters must be made whole if they have been forced to pursue costly and time-consuming litigation to overcome governmental resistance to transparency. The district court's order, however, allows the Coroner to take a free pass on a significant portion of the fees it forced the Review-Journal to incur.

Pursuant to Nev. Rev. Stat. § 239.011, if a governmental entity refuses to disclose public records, the requester may "apply to the district court in the county in which the book or record is located for an order" either permitting the requester

to inspect or copy the records or requiring the governmental entity to provide a copy of the records to the requester. Nev. Rev. Stat. § 239.011(1)(a)-(b). "If the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." Nev. Rev. Stat. § 239.011(2).

This Court explained, "…by its plain meaning, [Nev. Rev. Stat. § 239.011(2)] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs." *LVMPD v. Blackjack Bonding*, 131 Nev. 80, 89, 343 P.3d 608, 615 (2015); *accord Coroner*, 458 P.3d at 1061. A party does not need to prevail on all or even most of the issues in a case in order to be the "prevailing party." Rather, a party seeking records prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added) (internal quotations omitted); *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty*., 116 Nev. 616, 628–29, 6 P.3d 465, 473 (2000) (reversing an order denying access and remanding to district court to award fees).

The Review-Journal is the prevailing party in this matter, as the Review-Journal obtained an order mandating access to records. (3 JA0636.) The district court recognized this and stated that the Review-Journal "is the prevailing party and [the court] will consider its supplemental application for fees and costs, including those

that were previously awarded." (3 JA0617.) Because the Review-Journal prevailed, it was entitled to recover all its reasonable attorney's fees and costs. Nev. Rev. Stat. § 239.011(2).

As the record of this case amply demonstrates, the Coroner's resistance to disclosing public records is the reason that the Review-Journal's fees were in excess of $275,000.00. During a December 10, 2020, hearing on the Coroner's request for a stay of the order directing it to produce unredacted copies of the juvenile autopsy reports, the Court lambasted the Coroner for its prolonged resistance to fulfilling its duties under the NPRA. The court observed that "the Coroner's Office has dragged its heels and been brought before the Court kicking and screaming over objections that are frivolous, featherweight, and fallacious." (4 JA0716.)

That the Review-Journal overcame such a "blatant and flagrant attempt to obstruct and frustrate the declared legislative purpose of the Nevada Public Records Act" (4 JA0717) underscores the importance and scope of the Review-Journal's victory in this matter—and the need to make the Review-Journal whole for all work the Coroner forced it to perform. Not only did the Review-Journal prevail in obtaining the documents in unredacted form, but it also successfully defeated the Coroner's arguments that governmental entities are immune from fees awards under the NPRA.

Thus, as the district court correctly recognized, the victories the Review-

Journal obtained in the case were the result of mighty efforts against the Coroner's resistance to complying with the NPRA. Because the Review-Journal prevailed at every significant stage of the litigation—at the district court the first time, in front of this Court in the Coroner's first two appeals, on remand to the district court, and again in a third aborted appeal filed by the Coroner—the Review-Journal was entitled under the NPRA to an award of all the fees and costs it incurred in achieving the results it has in this case.

The fees award guaranteed to prevailing requesters by Nev. Rev. Stat. § 239.011(2) is a necessary tool to encourage governmental entities to comply with their obligations under the NPRA. By reducing the Review-Journal's fees award with almost no explanation, however, the district court has created the potential that the Coroner or other governmental entities will engage in the same sort of heel-dragging litigation to resist disclosure of public records, force requesters to incur thousands and even hundreds of thousands of dollars in litigation, and then leave the prevailing requester with a substantial portion of his or her fees uncompensated. If left standing, the district court's order will essentially create a litigation tax for access to public records. Thus, the district court's reduction of the fees award with little to no explanation should be reversed.

B. The District Court Erred in Reducing the Review-Journal's Award.

Under this Court's decision in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), a court must consider each of the following factors in determining the reasonableness of attorney fees:

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

Brunzell, 85 Nev. at 349, 455 P.2d at 33. "In determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the factors set forth in *Brunzell*." *Haley v. Dist. Ct.*, 128 Nev. 171, 178, 273 P.3d 855, 860 (2012) (internal quotation omitted).

While express findings on each *Brunzell* factor "are not necessary for a district court to properly exercise its discretion," a court must nevertheless "demonstrate that it considered the required factors, and the award must be supported by substantial evidence." *Logan*, 131 Nev. at 266, 350 P.3d at 1143 (citation omitted). To determine whether the district court properly exercised its discretion in reducing the award of attorney's fees, the record must "demonstrate[] the district court's requisite consideration of the *Brunzell* factors in reaching its decision." *Haley*, 273 P.3d at 860; *see also Branch Banking & Tr. Co. v. Lavi*, No. 67123, 2016 Nev. Unpub.

LEXIS 150, at *2 (May 11, 2016) (unpublished disposition) (reversing a reduced fee award because "[w]hile the district court stated that it considered the reasonableness of the requested attorney fees under the *Brunzell* factors and reduced the award of attorney fees by $25,092, it is unclear from the record before us why the court determined that amount was unreasonable or even which attorneys had incurred that amount. Without any analysis regarding which fees or costs are reasonable or what the $25,092 reduction applied to, we cannot adequately review the award of attorney fees and costs").

In other words, while this Court has declined to require courts to formulaically apply the *Brunzell* factors, it still requires courts to make specific findings which demonstrate their consideration of the *Brunzell* factors, and must ensure any fees award (or, as here, any reduction of a fees award) is supported by substantial evidence.

The United States Court of Appeals for the Ninth Circuit has adopted a similar approach to calculating attorney's fees. In determining a reasonable attorney's fee, "the district court's first step is to calculate a 'lodestar' by multiplying the number of hours it finds the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *McGrath v. County of Nevada*, 67 F.3d 248, 252 (9th Cir. 1995) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

Like the courts of this state, federal district courts have "a great deal of

discretion in determining the reasonableness" of an attorney's requested fee. *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992) (citations omitted). "Despite this general deference, the district court is required to articulate not only the reasons for its findings regarding the propriety of the hours claimed or for any adjustments it makes either to the prevailing party's claimed hours or to the lodestar." *Id.* As the United States Supreme Court held in *Hensley*, despite the district courts' broad discretion to determine a fee award, "[i]t remains important… for the district court to provide ***a concise but clear explanation*** of its reasons for the fee award." *Hensley*, 461 U.S. at 437 (emphasis added); *accord Vargas v. Howell*, 949 F.3d 1188, 1195 (9th Cir. 2020); *see also Moreno v. City of Sacramento,* 534 F.3d 1106, 1111 (9th Cir. 2008) ("When the district court makes its award, it must explain how it came up with the amount. The explanation need not be elaborate, but it must be comprehensible.") "Without some indication or explanation of how the district court arrived at the amount of fees awarded, it is simply not possible for [the appellate court] to review such an award in a meaningful manner." *Chalmers v. City of L.A.*, 796 F.2d 1205, 1213 (9th Cir. 1986); *see also Ferland v. Conrad Credit Corp*., 244 F.3d 1145, 1151-52 (9th Cir. 2001) (vacating an order reducing a fee award by more than half where the Circuit could not "determine the basis for the district court's decision to so substantially reduce the hours for which it permitted fees"); *McGrath*, 67 F.3d at 253 ("If the district court fails to provide a clear indication of how it

exercised its discretion, we will remand the fee award for the court to provide an explanation.").

The need for a comprehensible explanation is even more important where, as here, a court substantially reduces a requested fee award. As the Ninth Circuit explained in *Moreno*, "[w]here the difference between the lawyer's request and the court's award is relatively small, a somewhat cursory explanation will suffice. But where the disparity is larger, ***a more specific articulation of the court's reasoning is expected***." *Id.* at 1111 (citing *Bogan v. City of Boston*, 489 F.3d 417, 430 (1st Cir. 2007) (emphasis added)); *see also Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 739 (9th Cir. 2016) (holding that a "30% reduction is large enough that the parties were entitled to a more detailed explanation of the court's reasoning") (citation omitted); *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1136-37 (9th Cir. 2012) (similar).

In the instant matter, the district court did not sufficiently demonstrate that it considered the *Brunzell* factors, nor did it clearly or comprehensibly articulate how those factors influenced its decision to dramatically reduce the award of fees to the Review-Journal. Instead, the district court broadly stated that it made "reductions that the Court believes is reasonable" with little explanation as to what entries it was reducing, which *Brunzell* factors it considered in making "reasonable" deductions, or anything that would enable the Review-Journal or this Court to assess the

reasonableness of the district court's reduction of the award. (6 JA1220.)

At best, the district court supported the fees award reduction at the hearing by referencing its experience in insurance defense litigation (6 JA1220), an area of law that is radically different from public records litigation. As set forth in the Review-Journal's Amended Motion for Attorney's Fees and Costs, the litigation for access to the juvenile autopsy records "required knowledge of the NPRA (including its legislative history), the First Amendment, the Freedom of Information Act (5 U.S.C. § 552), and laws and statutes pertaining to privilege and confidentiality, such as HIPAA, Chapter 432B of the Nevada Revised Statutes, the legislative history of AB 57, and a review of other state and federal court rulings regarding public access to autopsy reports." (6 JA1020.) Thus, while the district court undoubtedly has extensive legal experience in insurance defense, it is unclear how that experience in a very different area of law informed its significant reductions here.

The district court also stated that it "looked at certain issues and said, okay, is this an amount that I believe should have been. And then I pulled up the court record and said, how long was the hearing? And then I just verified every one of those opinions and that's how I came up with my reasonable amount, counsel." (6 JA1220-1221.) The district court, however, provided no information as to what "certain issues" it reviewed or which hearing or hearings it reviewed on the court record. Thus, it is impossible to discern or assess the district court's process.

As the record of this case demonstrates, the district court conducted seven hearings in this matter prior to the hearing on the Review-Journal's Amended Motion for Attorney's Fees and Costs. (7 JA1303-1305 (reflecting that the district court conducted hearings on 9/28/2017, 12/12/2017, 1/11/2018, 2/15/2018, 5/18/2020, 10/29/2020, and 12/10/2020).) Additionally, this Court heard oral argument on the Coroner's first two appeals on October 7, 2019. It is therefore unclear which hearings the district court reviewed, which of those hearings it reduced the Review-Journal's fees for, or the specific bases for why the district court believed it was necessary to reduce the fees for any particular hearing. The district court's rationale also ignored the practical reality that the length of any particular hearing is not necessarily indicative of the work that counsel may be required to perform on any related motion or pleading, or to adequately prepare for a hearing.

Additionally, it is unclear whether the district court's review of the work performed by the Review-Journal included work performed before the Review-Journal's November 29, 2017, motion for attorney's fees and costs. As noted above, the district court previously assigned to the matter entered an order on February 1, 2018, granting the Review-Journal all the attorney's fees and costs it had accrued through November 9, 2017. (2 JA0468.) The prior district court assigned to the litigation was in the best position to assess whether the Review-Journal was entitled to compensation for its efforts in obtaining an order granting it access to the autopsy

records. However, because the currently assigned district court simply stated that it "looked at certain issues" neither the Review-Journal nor this Court can reasonably discern whether those "certain issues" encompassed work that the previously assigned district court determined was fully compensable.

Thus, the district court failed to provide the sort of detailed explanation necessary for the parties—and this Court—to assess why it reduced the Review-Journal's fees request by more than one third.

Additionally, as discussed above, in the district court's written order, the court's findings regarding the *Brunzell* factors weigh in favor of a full award of fees and costs. On each of the four *Brunzell* factors, the district court made findings that were clearly favorable to the Review-Journal. (7 JA1296-1298.) And yet, despite these findings, including finding that the work performed by the Review-Journal was necessary and "demonstrated substantial skill," the district court substantially reduced the Review-Journal's fee award. (7 JA1298-1299.)

C. This Court Should Determine the Appropriate Award of Reasonable Attorney's Fees and Costs.

"[A] district court may abuse its discretion when it clearly disregards guiding legal principles." *Flamingo Realty v. Midwest Dev.*, 110 Nev. 984, 991, 879 P.2d 69, 74 (1994) (citation omitted). Further, in appeals pertaining to awards of fees and costs, appellate courts can exercise their independent discretion in fee awards cases and direct entry of specific awards of attorney's fees when justice so demands. *See,*

e.g., *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1357, 971 P.2d 383, 388-89 (1998) (directing entry of a reduced award of fees and costs to respondents after determining district court abused its discretion); *see also Shriners Hosps. for Children v. Firstar Bank, N.A. (In re Estate of Somers*), 277 Kan. 761, 773, 89 P.3d 898, 907 (2004) ("While great deference is given a trial court in these matters, this court has stated that 'appellate courts, as well as trial courts, are experts as to the reasonableness of attorneys' fees and may, in the interest of justice, fix counsel fees when in disagreement with views of the trial judge.'") (quoting *Buchanan v. Emp'rs Mut. Liab. Ins. Co.*, 201 Kan. 666, 676, 443 P.2d 681, 689 (1968); other citations omitted).

In this case, the district court's order on the Review-Journal's request for fees disregarded two guiding legal principles that the interest of justice requires this Court to correct. As discussed above, the district court's trimming of over $110,000.00 from the Review-Journal's attorney's fees and costs ignores the NPRA's statutory guarantee that a prevailing requester is entitled to an award of all its reasonable attorney's fees and costs in the proceeding (Nev. Rev. Stat. § 239.011(2)) as well as the NPRA's mandate that its provisions must be interpreted liberally to further the important goal of increased governmental transparency. Nev. Rev. Stat. § 239.001(2).

Second, as also discussed above, the district court's decision to make such a

drastic reduction to the Review-Journal's award was almost entirely unexplained. As *Brunzell* and its progeny teach, while a district court is not required to exhaustively explain its consideration of the *Brunzell* factors, it must still demonstrate that it considered each of the factors, and that its decision regarding an award of fees and costs is supported by substantial evidence. *Logan*, 131 Nev. at 266, 350 P.3d at 1143. The need for a specific, factually supported review of the *Brunzell* factors was particularly important here given how substantial a reduction the district court made to the Review-Journal's requested award. And yet, all the district court stated was that it "looked at certain issues and said, okay, is this an amount that I believe should have been. And then I pulled up the court record and said, How long was the hearing?" and made reductions to the fees and costs from there. (6 JA1220-1221.) The district court did not explain which "certain issues" it reviewed, which hearings it reviewed, or how it determined what the "the amount that [it] believ[ed] should have been." (*Id.*) Because the district court failed to adequately explain its exercise of discretion in reducing fees, this Court should exercise its own discretion to assess the appropriate award of fees and costs to the Review-Journal.

Uniquely, this Court is also in a better position than the district court to assess the appropriate award of fees and costs to the Review-Journal. As discussed above, the original district court assigned to this matter retired after entering the order on

remand, but before the Review-Journal filed its amended motion for attorney's fees and costs. Prior to retirement, the district court judge previously assigned to the matter had spent over 3.5 years presiding over the case, reviewed all pleadings, papers, and exhibits filed by the parties, and was responsible for the entry of all substantive orders pertaining to the public's right of access to the autopsy records, as well as the Review-Journal's pre-appeal entitlement to fees and costs as the prevailing requester. While the district court to which the matter was reassigned had the ability to review the history of the matter, it lacked the intimate familiarity with the facts and law of the case the prior district court had built over the years. This Court, which has presided over multiple appeals arising from the litigation, has sufficient knowledge of the factual and procedural history of this case, as well as the quantity and quality of work performed by counsel for the Review-Journal. Thus, this Court should vacate the district court's order and direct the Coroner to pay the Review-Journal all of its attorney's fees and costs in this matter.

V. CONCLUSION

After years of litigation, the Review-Journal prevailed in obtaining unredacted copies of the juvenile autopsy reports it requested the Coroner provide in 2017. Under the plain terms of the NPRA, the Review-Journal is, as a prevailing requester, entitled to recover from the Coroner all the reasonable attorney's fees and costs it accrued over this protracted proceeding. The district court's order reducing the

Review-Journal's fee award with little explanation was contrary to the NPRA's express mandate that its terms must be construed liberally to maximize governmental transparency. Moreover, the district court's reduction of the Review-Journal's fees defies this Court's precedent in *Brunzell* and its progeny, as the district court failed to provide sufficient explanation as to which time entries it refused to allow, which time entries it reduced, which costs it disallowed, or its process for making those determinations.

In light of these manifest errors, this Court should exercise its discretion to vacate the district court's order and remand this matter with instruction to award the Review-Journal $275,640.00 in attorney's fees and $4,406.48 in costs.

DATED this 14th day of September, 2021.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
MCLETCHIE LAW
602 South Tenth Street
Las Vegas, Nevada 89101
Telephone: (702) 728-5300; Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Counsel for The Las Vegas Review-Journal

CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 28.2:

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because the APPELLANT'S OPENING BRIEF has been prepared in a proportionally spaced typeface (14-point Times New Roman font).

I further certify that this APPELLANT'S OPENING BRIEF complies with the type-volume limitation of NRAP 32(a)(7)(ii) because it contains 10,445 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of September, 2021.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
MCLETCHIE LAW
602 South Tenth Street
Las Vegas, Nevada 89101
Telephone: (702) 728-5300; Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Counsel for The Las Vegas Review-Journal

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT'S OPENING BRIEF 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 Anderson and Jackie V. Nichols
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145

Steven B. Wolfson and Laura Rehfeldt
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
CIVIL DIVISION
500 S. Grand Central Pkwy., 5th 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