July 2023

Nevada Bar Exam

JULY 2023

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Peter took his family sledding at Nevada Sledding Resort ("NVSR"). He rented a plastic sled from NVSR. Before Peter took his first sledding run at NVSR, he applied some "Super-Fast Ski Wax" to his sled. Dave, an employee of NVSR, gave Peter a hard push at the top of the run to get him started. Peter's sled sped uncontrollably down the run and overshot the finish area, launching him into the parking lot. Peter sued NVSR for the severe injuries he sustained.

During his case-in-chief, Peter sought to introduce the following evidence:

1. Testimony from Dave's wife, who happened to be at NVSR to have lunch with Dave, who will testify that she overheard Dave tell Peter immediately after Peter was injured "don't worry, I'm sure NVSR will cover all of your medical expenses."

2. Medical records that include a statement from Peter where he said that his back was sore where Dave pushed him.

3. A photograph of a sign installed at NVSR two weeks after the incident saying "Do not use any ski wax on your sled."

During its case-in-chief, NVSR sought to introduce the following evidence:

4. Testimony from Dave who will testify that he has pushed every customer this year the exact same way at the top of the sledding hill without any issues.

5. Testimony from Mr. Snow, a world-renown expert in the field of sledding resort design who has previously been qualified as an expert in California, Utah, and Oregon in the field. He will testify that "Super-Fast Ski Wax" should never be used on plastic sleds because it causes them to travel twice as fast than normal.

6. NVSR requests the court take judicial notice of the *Order of Dismissal* from a prior case involving Peter and a different sledding resort in California with the same claims involving different injuries.

Please discuss fully whether a court should admit the proffered evidence.

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NEVADA BAR EXAM

QUESTION NO. 2: ANSWER IN RED BOOKLET

Lenny has been licensed to practice law in Nevada for three years. His practice consists primarily of representing clients in connection with DUIs and simple divorces. He would like to expand his practice so he can afford to pay his student loans and buy a home. Lenny is now faced with the following circumstances about which he will have to make decisions:

A. Lenny's friend Frank, who is not a lawyer, has a large social media following. Frank has asked Lenny to become partners with him to form a legal document preparation business. Frank's proposal is that Lenny will create form documents for wills, trusts, divorces, and business organizations. Frank will solicit clients using his social media contacts and will communicate with prospective clients about their needs. Frank will hire and supervise a paralegal who will use Lenny's forms to prepare documents for the clients. Lenny will sign the divorce documents and submit them to the courts to obtain divorce decrees on behalf of the couples. Frank suggested that he and Lenny divide the profits of the business equally.

B. Lenny represents Dan in his divorce. Dan told Lenny there are bank accounts in Dan's name alone that he claims are his separate property. His wife is unaware that these accounts exist. Court rules require parties in a divorce to file a sworn financial disclosure form that identifies all of the couple's financial circumstances. Dan told Lenny that he is determined to avoid incurring legal fees to litigate whether the bank accounts are community or separate property. He asked Lenny how he could avoid disclosing the accounts and told Lenny that his

sister is willing to hold the money for him so there would be no accounts in his name to report. Dan asked Lenny what he should do and what would happen if he transferred the money to his sister.

C. Wendy asked Lenny to represent her in her divorce. Wendy's husband, Howard, had previously consulted with Lenny about a divorce. During his consultation, Howard told Lenny about a tax problem Wendy does not know about. Howard did not pay for the consultation. He hired another lawyer who filed a complaint for divorce against Wendy. Lenny is interested in representing Wendy but told her he may have a conflict due to his consultation with Howard. Wendy, who does not think Howard will care if Lenny represents her, asked Lenny if there is any way he can represent her. She also asked Lenny what Howard said in the consultation.

Please set forth in full detail the ethical issues that Lenny faces pursuant to the Nevada Rules of Professional Conduct and what decisions he should make regarding those issues.

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NEVADA BAR EXAM

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Adam hosted a college graduation party for his son, Blake, and Blake's classmates and their families. While planning the party, Adam saw the following posting on social media:

> *A Night of Comedy with Charlie!*
>
> *Winner of the 2022 Comedian of the Year TV Competition*
>
> *Star of the award-winning TV series, Charlie's World*
>
> *Family-friendly jokes and laughs from Charlie, stand-up star for over 20 years!*
>
> *Book now -- email CharlietheComic@CharliesWorld.comedy*
>
> *$12,000 for an evening full of fun!*
>
> *Posted by Charlie the Comic, August 8, 10:40 a.m.*

Knowing how famous Charlie was from his recent comedy special, Adam emailed Charlie and said, "Hi, Charlie. I just saw your August 8 post and am planning a graduation party for over 150 graduates and their families to be hosted in my backyard. Are you available on Friday, August 28 at 5:00 p.m. to perform for two hours and have a meet and greet for two more hours with our group? My friend, Steve, is a huge fan and just bought a copy of the script from Episode 1 of Charlie's World for you to sign during the meet and greet. I will pay your $12,000 fee in cash at the end of the night. My address is 1234 Broadway Street, Las Vegas, Nevada." Charlie responded by email, "See you then!"

On August 27, realizing he was supposed to be in New York City for an audition, Charlie reached out to his friend, Dee, and asked if she would perform at the graduation party. At 5:00 p.m. on August 28, Dee arrived at Adam's house and explained to Adam that she would be taking over for Charlie. She said she was new to comedy but had three years of experience as a dramatic actor and recently appeared in a few TV commercials.

Adam, disappointed that Charlie would not perform, reluctantly agreed to Dee performing at the party. Dee started her comedy routine, but her jokes were offensive and crude. Several guests started leaving the party, including Adam's friend Steve. Twenty minutes into Dee's routine, Adam stopped the performance, asked Dee to leave, and told her he would not be paying. Adam later brought an action in court against Charlie and Dee. Separately, Steve brought an action against Charlie.

Please discuss fully the following:

1. **What claims can Adam assert against Charlie and what are Charlie's defenses?**
2. **What claims can Adam assert against Dee and what are Dee's defenses?**
3. **What claims can be brought by Steve against Charlie and what are Charlie's defenses?**

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NEVADA BAR EXAM

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Silver Library is a public, taxpayer-funded library located in Sage, Nevada that is open daily to the public. Each month, the library highlights three books related to Nevada for its "Nevada Series." Silver Library displays the books at the entrance of the library and at City Hall and hosts a meet and greet with the authors at Silver Library. Silver Library also publicizes the Nevada Series each month in the local newspaper.

The Nevada Series is selected by a majority vote of all the librarians employed at Silver Library and its Board of Trustees based on the following guidelines: (1) any genre of book is considered, but the topic must highlight Nevada in some way; and (2) no book will be chosen and kept in circulation if it "is likely to insult any racial, ethnic, religious or gender-oriented group." Last week, three books were selected for the Nevada Series, including a book about the history of the Hoover Dam, a textbook about the evolving species of sagebrush, and a memoir about a Nevada youth who joined a foreign terrorist group.

When the book selections were publicized, the national political group Moms Against War ("MAW") planned to protest the memoir selection by organizing a sit-in at Silver Library. The City of Sage has an ordinance that requires groups of ten or more to obtain a permit from the City Manager before holding any protest in a government building. The ordinance allows the City Manager to approve or deny the permit application based on any "political sensitivities involved in the protest that may give rise to public safety issues." A local member of MAW applied for the permit and the City Manager, who is a decorated war veteran, summarily denied it because of "the City's staffing shortages."

Due to the intense media attention and several death threats sent to the librarians, the Board of Trustees voted to ban the memoir from Silver Library relying on the guideline that the book insulted a "gender-oriented group" like MAW.

The following week, one of the librarians employed at Silver Library posted on her social media page an explanation of why she did not vote for the memoir and insisted every copy of the memoir be burned and the ashes thrown at the author. Immediately following the post, the Board of Trustees fired the librarian, citing a violation of Silver Library's employee handbook prohibiting any behavior "unbecoming of a public employee."

Please fully discuss the U.S. constitutional issues raised in:

1. **MAW's lawsuit against the City Manager for denying the permit;**
2. **The memoir author's lawsuit against the Board of Trustees of Silver Library banning his book; and**
3. **The librarian's lawsuit against the Board of Trustees of Silver Library challenging her termination.**

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NEVADA BAR EXAM

QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

Carl was an employee in sales at ABC Auto Dealers in Las Vegas, Nevada. Carl also attended business classes part-time, hoping to become a successful entrepreneur. At school, Carl learned about a new vehicle manufacturing company, Beyond Inc., which was in the development stage of its first vehicle. Beyond Inc. was seeking "energetic entrepreneurs" to market its vehicles directly to consumers and to secure as many pre-orders as possible. Excited at the prospect of selling vehicles for a start-up company, Carl became a sales representative for Beyond Inc. after he applied online, working entirely on commission.

While at work at ABC Auto Dealers, Carl was assigned to assist Lisa with finalizing a contract for the purchase of a used vehicle, after Lisa had negotiated an acceptable price with ABC's sales manager. While alone with Lisa, and before she signed the ABC sales contract, Carl gave Lisa the vehicle marketing materials he had received from Beyond Inc. Carl told Lisa that she should explore a great deal on a new, technologically advanced vehicle and suggested she meet him for coffee on his day off and learn what the Beyond Inc. vehicle had to offer. Lisa agreed and left ABC Auto Dealers without signing the contract to purchase ABC's used vehicle.

Beyond Inc. provided Carl with very simple vehicle pre-order sheets and explained to him that Beyond Inc. would not have sales contracts for buyers to sign until the vehicles were in production. Beyond Inc. emphasized to Carl any potential buyers who pre-ordered a Beyond Inc. vehicle would do so without any financial obligation. Convinced that Lisa would be even more committed to the future purchase if she made a deposit, Carl told Lisa that pre-ordering the new vehicle would require a deposit of $10,000.00. Lisa gave Carl $5,000.00 in cash and a diamond ring worth $5,000.00 in exchange for a receipt detailing the value of the ring and the cash given for the deposit totaling $10,000.00.

After a year without producing one vehicle, Beyond Inc. declared bankruptcy. Carl refused to return the ring and cash to Lisa. Livid, Lisa sent ABC's manager an email that said, "I would have bought a car from you a year ago if Carl, that lying, stealing, pedophile employee of yours, had not stolen from me."

Please fully discuss the tort claims and types of damages, if any, that could be brought by:

1. **Lisa against Carl.**
2. **Lisa against Beyond Inc.**
3. **ABC against Carl.**
4. **Carl against Lisa.**

JULY 2023

NEVADA BAR EXAM

QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

Anthony and Brad were roommates. Anthony told Brad that their neighbors, the Millers, were going out of town and they should break into the Millers' house. Brad responded, "I don't know, that sounds bad and dangerous." Brad later agreed and said, "Ok, I will do it once." Two days later, Brad and Anthony watched the Millers leave their home and then headed over to the house. They entered the Millers' home and stole several diamond rings, a pair of diamond earrings, and two laptop computers.

The next week, Anthony approached Brad and told him that they could "hit" the Smiths' house that weekend. Brad told Anthony he was a little spooked last time and didn't want to do it again. Anthony assured Brad everything would be fine. Brad agreed to go with him. On Saturday, they watched as the Smiths left their house. They then entered the house. However, the Smiths quickly returned home because they had forgotten something and caught Brad and Anthony in their house. Mr. Smith tried to restrain Brad and a physical altercation ensued. Brad repeatedly punched and kicked Mr. Smith. Brad and Anthony then grabbed several TVs and tablets and left the residence, leaving Mrs. Smith crying and hiding in the corner.

A few days later, Anthony approached Brad again. This time he said the Goldbergs would not be home and they could "hit" them next. Brad told Anthony the last time was too violent, and he could not do it again. Anthony told Brad he was already in this and if he did not go with him, he would kill his family. Reluctantly, Brad went with Anthony, but was very scared. To calm Brad down, Anthony stopped at a bar and they each had several drinks. A few hours later, they stumbled out of the bar and headed over to the Goldbergs' where they entered the house. They were met by Mrs. Goldberg who tried to stop them. Anthony slapped Mrs. Goldberg and tied her hands with a rope. While he was tying her up, Brad collected several diamond necklaces and bracelets. They then fled the scene with the jewelry and left Mrs. Goldberg tied up in the kitchen.

Brad and Anthony were arrested as they were fleeing from the Goldbergs' house.

Please fully discuss which crimes Brad can be charged with and any defenses he may have.

NEVADA PERFORMANCE TEST (NPT)

Each NPT is a 2 hour exam designed to test the ability to complete a common legal task that a beginning lawyer would be expected to perform. You are required to use necessary legal skills in a real-life scenario.

You will be provided with a File. The File will contain source documents that will set forth the facts of the case and other background information. These materials may include interview transcripts, correspondence, investigative reports, client records, pleadings, internal memorandum, newspaper articles, legislative materials, medical records and correspondence between counsel. All facts recited are not relevant, and maybe incomplete, ambiguous or conflicting. You are expected to recognize what facts are relevant and to identify when facts are ambiguous and how such ambiguities could be resolved.

The second component of the exam materials is the Library. The Library may contain cases, statutes, administrative regulations and other legal authority commonly cited in a legal memorandum or used for reference. All legal sources are based on Nevada law. You may use abbreviated titles and omit page references when citing cases found in the Library.

The NPT is not a test of your knowledge of substantive law. The NPT is designed to evaluate your fundamental lawyering skills. Your answer will be evaluated on the content, thoroughness, and organization of your document based on these criteria:

- Ability to determine relevant factual details, to distinguish relevant from irrelevant facts, and to resolve potentially conflicting facts;
- Analysis of source legal authorities to determine applicable principles of law;
- Application of the controlling law to the relevant facts and circumstances;
- Effective communication in writing;
- Performing task in a timely matter; and
- Ability to follow the directives provided.

In preparing your written document, it is important that you concentrate on the materials in the File and Library, which provide the specific materials from which you should use. Use your general legal knowledge to assist you with analyzing the issues presented.

FILE

MEMORANDUM

To: New Associate
From: Senior Partner
Re: *FirstBank Nevada vs. Linda Swanson* – Foreclosure Matter
Date: July 27, 2023

The law firm's largest client, FirstBank Nevada ("FB"), has asked us to represent it in a real estate/foreclosure/judgment matter against Linda Swanson ("Swanson"). I met with Roger Stewart, the President of FB last week. My file notes from that meeting are attached. I am meeting with Mr. Stewart again tomorrow and I will need your responses before that meeting.

After reviewing the materials in the Library, please fully discuss the following questions and provide legal authority for your conclusions, where appropriate:

1) Does FB's Deed of Trust ("DOT") have a higher or lower priority than James' and Mary's leases? Does this matter? Please explain.
2) If FB forecloses the DOT, what is your recommended course of action so that James' lease survives the foreclosure and Mary's lease does not survive the foreclosure?
3) If FB follows the recommendations provided by its in-house counsel and either entirely forgoes pursuing a foreclosure of the DOT and just sues Swanson on the Promissory Note, or voluntarily releases its DOT before starting the deficiency action against Swanson, will FB be able to avoid the One Action Rule?
4) If FB foregoes pursuing a foreclosure and sues Swanson for recovery of the amount due to FB on the Loan, and if Swanson does not raise the One Action Rule as an affirmative defense, is FB precluded from proceeding with its lawsuit?
5) If FB proceeds with a non-judicial foreclosure and a deficiency remains after the foreclosure sale, can Swanson successfully defend the deficiency lawsuit by arguing that the One Action Rule precludes FB from pursuing a lawsuit against Swanson for the deficiency? Why or why not?

Please prepare a Memorandum which addresses each of these questions and which provides a full analysis of your conclusions, including citing to relevant caselaw or statutes. Please do not restate the facts unless relevant to your legal analysis.

CLIENT MEETING MEMORANDUM

FROM: LINDA AUGUSTA, SENIOR PARTNER

RE: *FIRSTBANK v. SWANSON* FILE – MEETING WITH ROGER STEWART, FIRSTBANK NEVADA'S PRESIDENT

DATE: JULY 20, 2023

I met with Roger Stewart, FirstBank Nevada's President this morning to discuss a new matter relating to Linda Swanson ("Swanson), who is a current customer/borrower with FirstBank Nevada ("FB").

The background facts as relayed to me by Mr. Stewart are as follows:

On June 15, 2020, FB loaned Swanson the sum of $1,500,000 (the "Loan") which was used to finance Swanson's purchase of a vacant office building containing two separate office spaces, located in Henderson, Nevada ("Property"). The Loan was interest only so no principal will be due until the maturity of the Loan in 2035, or sooner in the event of a default.

The Loan was evidenced by a Promissory Note signed by Swanson which was secured by a first Deed of Trust ("DOT") on the Property. The DOT contained a Power of Sale provision as permitted under NRS 107.080 and which also contained the following language: "Borrower hereby fully and voluntarily waives any and all rights protecting borrowers in the State of Nevada, including, without limitation, any statute requiring a lender to exhaust any remedies against real property used to secure the loan before seeking a monetary judgment on the debt." The Promissory Note also contained an acceleration clause which allows FB to "accelerate" the debt when there is a default that is not cured after any required notice and cure period.

Prior to finalizing and funding the Loan, FB performed a title search on the Property which showed that clear fee simple title to the Property was vested in Swanson. The title search did not show any liens, encumbrances, or other interests of record on the Property. FB also conducted a physical inspection of the Property which did not show any occupants in either of the office spaces. FB obtained a fair market value appraisal

of the Property on June 1, 2020, which showed a fair market value of $1,900,000. FB immediately and properly recorded the DOT with the Clark County Recorder after the Loan closing.

FB has now learned that in April 2020, prior to the closing on the Loan, Swanson entered into separate leases ("Leases") on the two vacant offices located on the Property. Lease One covered Office 1 with Mary Smith ("Mary"). Lease Two covered Office 2 with James Polk ("James"). Neither Mary nor James recorded any evidence of their leases with the Clark County Recorder. Swanson did not disclose the existence of the Leases to FB when she closed on the Loan. James and Mary started their office renovations in July 2020 and moved into their offices in October 2020.

In early 2022 Linda defaulted on the Loan. FB accelerated the Loan as permitted in the Promissory Note and is considering foreclosing its DOT, suing Swanson for repayment of the Loan, or both.

FB seeks our law firm's advice before commencing foreclosure to recover possession of the Property and filing a lawsuit to obtain a monetary judgment against Swanson for any deficiency (because the fair market value of the Property at the time of the foreclosure sale will be less than the amount due to FB on the loan balance based on the recent appraisal).

Mr. Stewart indicated that his preferred outcomes are as follows:

1) FB wants to retain James as a tenant after the foreclosure, but not Mary.
2) FB wants to simultaneously foreclose the DOT and sue Swanson for any difference between the fair market value of the Property and the loan balance as this will expedite the process and result in fewer legal fees.

Mr. Stewart provided me with a copy of an email from Lisa Brown, Esq., FB's in-house counsel, who reviewed the file. A copy of Ms. Brown's email is attached.

Roger Stewart

From: Lisa Brown <lbrownatty@fbnv.com>
Sent: Wednesday, July 19, 2023 9:43 AM
To: Roger Stewart <rstewartpres@fbnv.com>
Subject: SWANSON FILE

Mr. Stewart:

Pursuant to your request, I have reviewed Ms. Swanson's file in anticipation of FirstBank Nevada ("FB") filing a foreclosure and seeking damages against Ms. Swanson to recover the amount due to FB on the Loan, including, if necessary, any deficiency that may result after a foreclosure sale.

While a mortgage and a deed of trust have different legal characteristics, for our purposes, the terms "mortgage" and "deed of trust" (sometimes also referred to as a "trust deed") are used interchangeably, since both types of instruments are granted to a lender ("mortgagee" or "beneficiary") by a borrower ("mortgagor" or "grantor") to use the borrower's real property to secure the repayment of a loan. I will use the term "Mortgage" in this email, but my analysis and comments also apply to a "Deed of Trust".

When there is a foreclosure of a Mortgage (whether via a judicial foreclosure or a non-judicial foreclosure), all interests in the foreclosed property that are junior in priority ("Junior Interests") to the foreclosed Mortgage are eliminated, provided that the statutory requirements are met. A judicial foreclosure provides more flexibility than a non-judicial foreclosure when there are Junior Interests that the mortgagee does not want to eliminate. This is because the mortgagee can elect not to include the holder of a Junior Interest in the judicial foreclosure action, resulting in the property interest of the unnamed holder of the Junior Interest not being eliminated by the foreclosure. When a non-judicial foreclosure is used, this flexibility is unavailable and all junior interests in the mortgaged property are eliminated. Of course, in either type of foreclosure, any interest in the mortgaged property that is "superior" to the mortgagee is not affected by the foreclosure. Also, nothing precludes parties from negotiating new lease arrangements after a foreclosure.

There are two methods to foreclose a mortgage in Nevada. One method is to file a lawsuit, known as a "judicial foreclosure", in which the borrower/mortgagor and anyone else having an interest in the property are named as defendants. When a mortgagee/lender uses a judicial foreclosure, the mortgagor/borrower is provided a redemption period after the foreclosure sale to pay off the amount due to the lender and reclaim the property.

The second way to foreclose is sometimes referred to as a "non-judicial foreclosure" or a "power of sale foreclosure" because the relevant Nevada statute covering these types of foreclosures (NRS 107.080) requires that the Deed of Trust contain language authorizing the mortgagee/beneficiary to sell the property after a default. This language is known as a "Power of Sale".

There is no lawsuit filed when a non-judicial foreclosure is used. With a non-judicial foreclosure, the borrower/mortgagor is provided time before the non-judicial foreclosure to pay off the amount due to the lender and redeem the property, so there is no redemption period after the non-judicial foreclosure. Most lenders/mortgagees tend to use non-judicial foreclosure because it is faster, less expensive and does not provide the borrower/mortgagor with a post-foreclosure sale redemption period.

Nevada has a "One Action Rule" which is codified in NRS 40.430. In one legal treatise[1], the One Action Rule is defined as follows: "…{I]n the event of a default, the mortgagee's sole remedy is a foreclosure action and that any deficiency claim must be sought in that proceeding (citations omitted). The purpose of this rule is two-fold. One is to protect the mortgagor against multiplicity of actions when the separate actions, though theoretically distinct, are so closely connected that normally they can and should be decided in one suit (citations omitted). The other is to compel a creditor who has taken a mortgage on land to exhaust the security before attempting to reach any unmortgaged property to satisfy the claim (citations omitted)." See Section 8.2.

I have attempted to take care of issues regarding the One Action Rule by including broadly worded waiver language in the loan documents. Alternatively, if you are concerned about the One Action Rule, my recommendation is that FB voluntarily release its Mortgage and just sue Swanson to recover the Loan amount due to FB without pursuing any foreclosure at all.

[1] **Real Estate Finance Law**, Nelson, Whitman, Burkhart and Freyermuth, Sixth Edition. West Academic Publishing – Hornbook Series

Feel free to reach out to me if you have any questions.

Lisa

Lisa Brown, Esq.
In-House Counsel
FIRSTBANK NEVADA
Phone: 702-123-4567
Fax: 702-321-9876

LIBRARY

EXCERPTS FROM NEVADA REVISED STATUTES

Title 3. Remedies; Special Actions and Proceedings.
Chapter 40. Actions and Proceedings in Particular Cases Concerning Property.

NRS 40.430 Action for recovery of debt secured by mortgage or other lien; "action" defined.

1. Except in cases where a person proceeds under (NRS references omitted), and except as otherwise provided in (NRS references omitted), there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of (NRS references omitted)…..

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

. . .

6. As used in this section, an "action" does not include any act or proceeding:

…

(e) For the exercise of a power of sale pursuant to NRS 107.080.

…

NRS 40.435 Judicial proceedings in violation of NRS 40.430; provisions of NRS 40.430 as an affirmative defense.

1. The commencement of or participation in a judicial proceeding in violation of NRS 40.430 does not forfeit any of the rights of a secured creditor in any real or personal collateral, or impair the ability of the creditor to realize upon any real or personal collateral, if the judicial proceeding is:

(a) Stayed or dismissed before entry of a final judgment; or

(b) Converted into an action which does not violate NRS 40.430.

2. If the provisions of NRS 40.430 are timely interposed as an affirmative defense in such a judicial proceeding, upon the motion of any party to the proceeding the court shall:

(a) Dismiss the proceeding without prejudice; or

(b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate NRS 40.430.

3. The failure to interpose, before the entry of a final judgment, the provisions of NRS 40.430 as an affirmative defense in such a proceeding waives the defense in that proceeding. Such a failure does not affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

…

NRS 40.453 Waiver of rights in documents relating to sale of real property against public policy and unenforceable; exception.

Except as otherwise provided in NRS (NRS references omitted):

1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to the person by the laws of this state.
2. A court shall not enforce any such provision.

Title 9. Security Instruments of Public Utilities; Mortgages; Deeds of Trust; Other Liens. Chapter 107. Deeds of Trust.

NRS 107.080 Trustee's power of sale: Power conferred; required notices; effect of sale; circumstances in which sale must be declared void; civil actions for noncompliance with certain requirements; duty to post; duty to record; fees.

1. Except as otherwise provided in NRS (NRS references omitted), if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

…

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption.

…

Title 10. Property Rights and Transactions.
Chapter 111. Estates in Property; Conveyancing and Recording.

NRS 111.315 Recording of conveyances and instruments: Notice to third persons.

Every conveyance of real property, and every instrument of writing setting forth an agreement to convey any real property, or whereby any real property may be affected, proved, acknowledged and certified in the manner prescribed in this chapter, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which the real property is situated ….., but shall be valid and binding between the parties thereto without such record.

NRS 111.320 Filing of conveyances or other instruments is notice to all persons: Effect on subsequent purchasers and mortgagees.

Every such conveyance or instrument of writing, acknowledged or proved and certified, and recorded in the manner prescribed in this chapter or in NRS (NRS references omitted), must from the time of filing the same with the Secretary of State or recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

NRS 111.325 Unrecorded conveyances void as against subsequent bona fide purchaser for value when conveyance recorded.

Every conveyance of real property within this State hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real property, or any portion thereof, where his or her own conveyance shall be first duly recorded.

McMILLAN v. UNITED MORTGAGE CO.
Supreme Court of Nevada (1966)

This appeal concerns the remedy open on default to the holder of promissory notes secured by second deeds of trust. Involved is the interplay of two statutes: the "one-action rule" announced in NRS 40.430 pertaining to the enforcement of a right secured by mortgage on real estate, and (NRS reference omitted).

Here it is not suggested that the notes or the trust deeds grant a right to sue before exhausting the security. Nor did United Mortgage, before starting this suit, expressly or impliedly waive its security. The early case of *Hyman v. Kelly* (Nev. 1865), hints that one may abandon the security and sue for the collection of the debt. Instead, United Mortgage wishes to pursue alternative courses simultaneously, and we must decide whether this is permissible.

(1) In the absence of a preclusive statute, two remedies are open on default to the holder of a secured promissory note. The debt may be enforced by a suit on the note, or by a sale of the land. At common law the creditor could pursue either remedy, or both at once. *Bank of Italy v. Bentley* (Cal. 1933). McMillan here contends that NRS 40.430[1] is such a preclusive statute and forces the creditor to first exhaust the security or show that it is valueless. Therefore, he suggests that this action upon the promissory notes was premature as the security had not been exhausted when suit was commenced, and until that is done a court cannot know whether the security is valueless, or

[1] NRS 40.430 reads: "There shall be but one action for the recovery of any debt, or for the enforcement of any right secured by mortgage or lien upon real estate, or personal property, which action shall be in accordance with the provisions of this section, and NRS 40.440 and 40.450. In such action, the judgment shall be rendered for the amount found due the plaintiff, and the court shall have power, by its decree or judgment, to direct a sale of the encumbered property, or such part thereof as shall be necessary, and apply the proceeds of the sale to the payment of the costs and expenses of the sale, the costs of the suit, and the amount due to the plaintiff. If the land mortgaged consists of a single parcel, or two or more contiguous parcels, situated in two or more counties, the court may, in its judgment, direct the whole thereof to be sold in one of such counties by the sheriff, and upon such proceedings, and with like effect, as if the whole of the property were situated in that county. If it shall appear from the sheriff's return that there is a deficiency of such proceeds and balance still due to the plaintiff, the judgment shall then be docketed for such balance against the defendant or defendants personally liable for the debts, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may thereupon be issued by the clerk of the court, in like manner and form as upon other judgments, to collect such balance or deficiency from the property of the judgment debtor."

of insufficient value to secure the debt. On the other hand, United Mortgage suggests that the "one-action rule" does not preclude suit on the note when the security for the debt has become valueless, or of insufficient value; to rule otherwise would effectively nullify the intendment of NRS 31.010 allowing ancillary attachment in these circumstances. We turn to resolve these divergent views.

(2) We must first decide whether a trust deed falls within NRS 40.430. The statute uses the term "mortgage." A trust deed is not mentioned. Also, it refers to an "action" for the recovery of a debt, and a "judgment" in that action. Thus, it is argued, that as a trust deed is technically not a mortgage, and is "foreclosed" by sale at public auction (NRS ch. 107) rather than by court action, the statute cannot apply.[2] The argument is not without persuasion. Yet California, from whom our statute was borrowed, holds squarely that a trust deed is within the statutory "one-action rule" relating to mortgages. In the leading case, *Bank of Italy v. Bentley*, *supra*, the court wrote: "Fundamentally, it cannot be doubted that in both situations the security for an indebtedness is the important and essential thing in the whole transaction. The economic function of the two instruments would seem to be identical. Where there is one and the same object to be accomplished, important rights and duties of the parties should not be made to depend on the more or less accidental form of the security." That court went on to state that in either event (whether a mortgage or a trust deed) there is an implied understanding between the parties that the land shall constitute the primary fund to secure the debt. As a practical matter there is no substantial dissimilarity between a mortgage with a power of sale and a deed of trust, except for the statutory right of redemption. *Sims v. Grubb* (Nev. 1959). We therefore agree with California and hold that a trust deed is within the intendment of NRS 40.430.

[Discussion of attachment omitted]

For the reasons expressed, the order below refusing to discharge the attachment is reversed.

[2] The differences between a trust deed and a mortgage are explored in depth by Professor A.M. Kidd at 3 Cal.L.Rev. 381 (1915).

John T. KEEVER v. NICHOLAS BEERS COMPANY
Supreme Court of Nevada (1980)

Respondent Nicholas Beers Co. sued appellants Keever and Moore for the balance due on a promissory note which had been secured by a second trust deed on real property. The note made by appellants was due, and partially unpaid. The district court rejected appellants-defendants' contentions below that recovery was barred by the one action rule, NRS 40.430, and by the anti-waiver provision of NRS 40.453; the court rendered judgment for respondent for the unpaid balance of the note plus interest. We reverse.

We are presented here with a situation in which a creditor has taken security for a debt, while making an arrangement by which, in case of default, the security cannot possibly return any amount of the debt. The creditor thus has no intention of looking to the security for repayment. We are called upon to decide whether suit upon the note evidencing the obligation is permissible under our statutes in these circumstances, and we conclude that it is not.

Chapter 40 of the Nevada Revised Statutes provides a comprehensive scheme of creditor and debtor protection with respect to the foreclosure and sale of real property subject to security interests. *See also* NRS 107.080 *et seq.* NRS 40.430(1), the one action rule, provides, in pertinent part:

> [t]here shall be but one action for the recovery of any debt, or for the enforcement of any right secured by mortgage or lien upon real estate, which action shall be in accordance with the provisions of this section and NRS 40.440 to 40.459, inclusive. In such action, the judgment shall be rendered for the amount found due the plaintiff, and the court shall have power ... to direct a sale of the encumbered property ... and apply the proceeds of the sale to... the amount due to the plaintiff.

NRS 40.459 limits the amount of a deficiency judgment which may be rendered after a judicial sale to the difference between the fair market value of the security at the time of the sale and the amount of the debt. NRS 40.453 provides that it is against the public policy of Nevada "for any document relating to the sale of real property to contain any provision whereby a mortgagor or trustor waives any right secured to him by the laws of this state," and that "[n]o court shall enforce any such provision." We have expressly held the one action rule applicable to deeds of trust as well as mortgages. *McMillan v. United Mortgage Co.* (Nev. 1966).

Our reading of these statutes indicated that respondent Beers cannot recover on its promissory note because the loss of the security for the obligation was due to its own action. Further, consent of appellants Keever and Moore to the arrangement on default was ineffective to permit suit directly on the promissory note. The right to have a secured creditor proceed against the security before attacking the general assets of the debtor is one of the "right[s] secured ... by the laws of this state," which the debtor cannot waive in advance. *See Paramount Ins. v. Rayson & Smitley* (Nev. 1970) (Thompson, J., concurring). The one action rule requires a creditor to proceed first against the security, unless the debtor waives the benefit of the rule by failing to raise it as a bar to the suit on the debt.[1] The right to waive the security is the debtor's, not the creditor's.[2]

…

The instruments executed by respondent, appellants, and the Bank, in which the prearranged disposition of the property on default was agreed upon, clearly bound appellants to accept the sale of the property to Mason-McDuffie at a specified price, rather than a sale under the procedures specified in NRS 40.430 *et seq.* or NRS 107.080 *et seq.* In so doing, appellants waived rights secured by the laws of this state in a "document relating to the sale of real property," which is precisely what the statute forbids our courts to enforce. Appellants' consent to respondent's release of its security interest was therefore ineffective to waive their right under NRS 40.430 to have the secured creditor pursue the security and procure a deficiency judgment for any amount by which the amount of the debt exceeded the fair market value of the security at the time of sale, determined by a judicial hearing, NRS 40.457, or by competitive bidding at a trustee's sale, *see Bank of Italy v. Bentley* (Cal. 1933). ….

…

---

[1] Our cases have made clear that a debtor may waive the one action rule by failing to assert it as a defense to a suit upon the underlying obligation. *Nevada Wholesale Lumber v. Myers Realty* (Nev. 1976). *Hyman v. Kelly* (Nev. 1865), holding that a creditor may waive the security, is limited to situations where the debtor does not raise the one action rule as a defense, and does not apply when a waiver of the security is made in a "document relating to the sale of real property," NRS 40.453(1).

[2] We note that, although the note sued upon was technically unsecured at the time suit was brought, *see Ferry v. Fisk* (Cal. Ct. App. 1921), when the loss of the security is procured through waivers prohibited by NRS 40.453, the one action rule may be asserted as a defense by the debtor.

It is fundamentally at odds with the policy of our statutes to permit a creditor to take a recorded security interest which encumbers the debtor's property with no intention of looking to the security in case of default. *See McMillan v. United Mortgage Co*.

We hold that when a trustor agrees, in a "document relating to the sale of real property," NRS 40.453(1), to an arrangement on default which ensures that the security will be insufficient to satisfy the debts which encumber it, and the creditor agrees to release the encumbrance instead of allowing its lien to be removed through foreclosure, NRS 40.430 *et seq.*, or trustee's sale, NRS 107.080 *et seq.*, recovery upon the underlying obligation is impermissible if the debtor raises the one action rule as a defense. We therefore reverse the judgment of the district court.

NEVADA PERFORMANCE TEST (NPT)

Each NPT is a 2 hour exam designed to test the ability to complete a common legal task that a beginning lawyer would be expected to perform. You are required to use necessary legal skills in a real-life scenario.

You will be provided with a File. The File will contain source documents that will set forth the facts of the case and other background information. These materials may include interview transcripts, correspondence, investigative reports, client records, pleadings, internal memorandum, newspaper articles, legislative materials, medical records and correspondence between counsel. All facts recited are not relevant, and maybe incomplete, ambiguous or conflicting. You are expected to recognize what facts are relevant and to identify when facts are ambiguous and how such ambiguities could be resolved.

The second component of the exam materials is the Library. The Library may contain cases, statutes, administrative regulations and other legal authority commonly cited in a legal memorandum or used for reference. All legal sources are based on Nevada law. You may use abbreviated titles and omit page references when citing cases found in the Library.

The NPT is not a test of your knowledge of substantive law. The NPT is designed to evaluate your fundamental lawyering skills. Your answer will be evaluated on the content, thoroughness, and organization of your document based on these criteria:

- Ability to determine relevant factual details, to distinguish relevant from irrelevant facts, and to resolve potentially conflicting facts;
- Analysis of source legal authorities to determine applicable principles of law;
- Application of the controlling law to the relevant facts and circumstances;
- Effective communication in writing;
- Performing task in a timely matter; and
- Ability to follow the directives provided.

In preparing your written document, it is important that you concentrate on the materials in the File and Library, which provide the specific materials from which you should use. Use your general legal knowledge to assist you with analyzing the issues presented.

FILE

MEMORANDUM

TO: Candidate
FROM: Melinda Crow, Government Records Advocates (GRA) Executive Director & Senior Attorney
SUBJECT: Motion for Attorneys' Fees in *GRA v. Pierce*
DATE: July 27, 2023

We are very pleased to have you as the newest member of the legal team at Government Records Advocates (GRA).

As you know, we were recently successful in obtaining 320 pages of public records about several recent incidents in the Everett, Nevada jail, which is run by the Everett Chief of Police, Randy Pierce. Our next step is to file a motion with the trial court for costs and attorneys' fees. Following the GRA Format for Trial Court Motions, attached, please use the materials in this File and Library to draft the Legal Argument section of our Motion for Costs and Attorney's Fees.

The File contains the draft I have started of my Affidavit for this motion and other materials that give you what you need, including the Costs and Fees Statement for work done so far. I will update and finalize the Costs and Fees Statement before filing our motion, so your draft motion should leave blank any numbers or amounts for the final dollar totals sought.

Thank you.

OFFICE MEMORANDUM

TO: All Attorneys, Government Records Advocates
FROM: Supervising Attorney
SUBJECT: Guidelines for Trial Court Motions
DATE: November 19, 2019

The following guidelines apply to persuasive briefs filed by our office in trial courts in support of motions, including motions for summary judgment.

III. Legal Argument

The body of each argument should analyze applicable legal authority and persuasively argue that both the facts and the law support our position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished. Courts are not persuaded by exaggerated, unsupported arguments.

A brief should not contain a single broad argument heading. Break the argument into its major components and write carefully crafted subject headings that summarize the arguments each covers. The argument headings should be complete sentences that succinctly summarize the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or a statement of an abstract principle. Examples:

> Improper: Plaintiff has satisfied the exhaustion of administrative remedies requirement.
>
> Proper: Where Plaintiff requested an administrative hearing by timely completing Form 3B, but the prison has refused to schedule a hearing, Plaintiff has satisfied the exhaustion of remedies requirement.

Do not prepare a table of contents, a table of cases, a statement of the facts, or an index; these will be prepared, as required, after the draft is approved.

[DRAFT] Affidavit of Melinda Crow

I, Melinda Crow, declare under penalty of perjury under the laws of Nevada that the following facts are true and correct:

1. I am an attorney licensed to practice in Nevada and Colorado. I received my J.D. from the University of Colorado in 2010. Following graduation, I clerked for a member of the Colorado Supreme Court for a year and then joined the law firm of Smith, Smythe, and George, in Boulder, Colorado. The firm specialized in land use issues, and in that context I developed expertise in obtaining access to public records, both federal records through the Freedom of Information Act (FOIA) or state or local records using the relevant state laws regarding access to public records.

2. I became a partner at Smith, Smythe, and George after my sixth year. The following year, in 2017, I moved to Nevada, passed the bar exam, and became licensed in Nevada. I then established a new public interest law firm, Government Records Advocates (GRA), located in Reno, for which I continue to serve as the inaugural executive director and legal director. GRA has established itself as a leading law firm handling public records act requests in Nevada, and one of the best in the country. We now have three attorneys on staff, all of whom specialize in public records requests, particularly under the Nevada Public Records Act (NPRA).

3. GRA prides itself on being part of the movement for government accountability. We do the work of obtaining government records and then make those records available to journalists, academics, and others interested in good government.

4. I am frequently invited to lecture to attorneys, judges, journalists, and citizens interested in access to public records based on the expertise I have developed in the NPRA and other public records acts over the 12 years I have practiced in this area. Most recently I was invited to speak on *Litigation Strategies for Government Accountability* at the American Bar Association annual meeting.

5. On March 6, 2023, following all applicable NPRA requirements and procedures, GRA sent to Everett Police Chief Randy Pierce a request for records pertaining to seven disciplinary and medical incidents that had occurred in the Everett City Jail between December 2022 and February 2023.

6. Instead of responding as required by the NPRA, Chief Pierce ignored that NPRA request.

7. I left telephone messages for Chief Pierce on April 15th and 20th of this year but received no response.

8. I called Chief Pierce again on May 16th and was able to speak with him. Chief Pierce told me then that he had no intention of providing the records because it would require doing a search of his database. I explained that the NPRA required him to provide the records requested and asked him to send me his refusal in writing.

9. I have attached as "Attachment A" and incorporate by reference the memo I received from Chief Pierce that accurately describes the content of our telephone conversation.

10. GRA filed a Writ of Mandamus to enforce the NPRA in White County District Court on June 12, 2023.

11. On June 30, 2023, without any further court proceedings or filings, GRA received 320 pages of documents from Chief Pierce that were responsive to the March 6th NPRA request. These documents appear to be complete.

12. I have attached as "Attachment B" and incorporate by reference a transcript of a radio interview that Chief Pierce conducted in which he explained his reason for providing the records. I listened to and recorded the interview when it aired, and attest to the accuracy of the transcript.

13. GRA has been awarded attorneys' fees in three recent cases: Estrada v. Municipal Pool (White County District Court 2022); Blackstone v. Douglas County Medical Center (Douglas County District Court 2022), and Carlaw v. Regents of the State of Nevada (Clark County District Court 2021). In each case GRA fees were awarded in the following amounts: Senior Attorney - $300 per hour; Junior Attorney - $185 per hour; Certified Paralegal - $70 per hour.

14. I have attached as "Attachment C" and incorporate by reference a Statement of Costs and Fees that shows that GRA spent $___ [I will add final amount prior to signing and filing] in court costs and is

entitled to be awarded $_____ [I will add final amount prior to signing and filing] in attorney's fees.

/signature & date & location to be added/

EXHIBIT "A"

TO: Melinda Crow

FROM: Chief Randy Pierce, Everett Police Department

SUBJECT: Your NPRA request

DATE: May 16, 2023

Melinda,

As I told you earlier on the phone, I have had good reasons for ignoring your NPRA request of March 6th. The information you are seeking exists in our database, but we would need to search the database to get what you are seeking. Thus you are asking us to create a new record which we do not need to do under the NPRA. So we are not going to provide anything in response to your request. Have a good day.

EXHIBIT "B"

TRANSCRIPT

WILX Radio, Sherm Lowe Show, WHITE COUNTY REPORTS, July 2nd, 2023 (interview with Randy Pierce)

[....]

Sherm Lowe: I'm pleased to be talking with Randy Pierce, straight-talking long-time Police Chief over at Everett. Chief, how's the fishing over in Everett this summer?

Randy Pierce: I've been too busy to do much fishing but I hear it's a good season.

Sherm Lowe: Let's talk now about the problems at the jail. What exactly has been going on?

Randy Pierce: As people know, we had a series of unfortunate incidents with some problem inmates and, I'll say, some things happening that did not make me happy, or anyone else happy. There's a lot I cannot talk about, of course. But I can assure everyone that we have corrected the problems and things are back to normal. It's never easy, but my team and I do a great job.

Sherm Lowe: I understand that you turned over the documents that the lawyers were trying to get. That surprised a lot of us following it because you'd been pretty strong about not wanting to do that.

Randy Pierce: You've got that right, Sherm. I don't think I should have to share our internal records that way, but once we got taken to court it was easier and better for the taxpayers to just give them the documents they wanted. We need to concentrate on public safety, not waste our time arguing about paperwork.

Sherm Lowe: Do you have any thoughts on the tax issues that are making people in Everett upset?

Randy Pierce: Well, Sherm, I'm just a humble public servant. The local tax issue is above my pay grade. Whatever happens, we'll keep serving the good people of Everett.

[....]

EXHIBIT "C"

GOVERNMENT RECORDS ADVOCATES (GRA)
Shining a Bright Light on Government

Statement of Costs and Fees

Matter: Pierce - Everett City Jail

Attorney: Melinda Crow

Fees

Date	Name	Work Performed	Hours	Rate	Fees
3/3/23	Sr. Atty Crow	Review of jail newspaper stories	1.5	$300	$450.00
3/4/23	Cert. PA Gregg	Preparation of NPRA request	1.9	$70	$133.00
3/4/23	Sr. Atty Crow	Review & finalizing NPRA request	1.1	$300	$330.00
4/15/23	Sr. Atty Crow	P.C. to Chief Pierce, left message	0.1	$300	$30.00
4/20/23	Sr. Atty Crow	P.C. to Chief Pierce, left message	0.1	$300	$30.00
5/16/23	Sr. Atty Crow	P.C. with Chief Pierce	0.5	$300	$150.00
5/23/23	Cert. PA Gregg	Preparation of Writ	3.3	$70	$231.00
5/26/23	Sr. Atty Crow	Review & revision of Writ	1.1	$300	$330.00
7/2/23	Cert. PA Gregg	Record & transcript of Pierce interview	2.1	$70	$147.00
7/27/23	Sr. Atty Crow	Preparation of affidavit	2.0	$300	$600.00
7/27/23	Sr. Atty Crow	Preparation of memo to new associate, including research	2.2	$300	$660.00
		Total Fees:			$3,091.00

Costs Advanced

Date		Costs
6/12/23	Petition for Writ Court Filing Fee	$210.00
	Total Costs:	$210.00
	Total:	$3,301.00

LIBRARY

EXCERPTS FROM NEVADA REVISED STATUTES

Title 19. Miscellaneous Matters Related to Government and Public Affairs.
Chapter 239. Public Records.

NRS 239.010. Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be prepared by governmental entity and provided in electronic format unless other medium requested.

1. Except as otherwise provided in this section and [other enumerated statutes] and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate, including, without limitation, electronically, the confidential information from the information included in the public book or record that is not otherwise confidential.

4. If requested, a governmental entity shall provide a copy of a public record in an electronic format by means of an electronic medium. Nothing in this subsection requires a governmental entity to provide a copy of a public record in an electronic format or by means of an electronic medium if:

(a) The public record:

(1) Was not created or prepared in an electronic format; and

(2) Is not available in an electronic format; or

(b) Providing the public record in an electronic format or by means of an electronic medium would:

(1) Give access to proprietary software; or

(2) Require the production of information that is confidential and that cannot be redacted, deleted, concealed or separated from information that is not otherwise confidential.

5. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in the medium that is requested because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided …, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

NRS 239.011. Application to court for order compelling disclosure of public book or record in legal custody or control of governmental entity for less than 30 years; priority; appeal

1. If a request for inspection, copying or copies of a public book or record open to inspection and copying is denied or unreasonably delayed or if a person who requests a copy of a public book or record believes that the fee charged by the governmental entity for providing the copy of the public book or record is excessive or improper, the requester may apply to the district court in the county in which the book or record is located for an order:

(a) Permitting the requester to inspect or copy the book or record;

(b) Requiring the person who has legal custody or control of the public book or record to provide a copy to the requester; or

(c) Providing relief relating to the amount of the fee,

as applicable.

2. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. 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.

3. If the governmental entity appeals the decision of the district court and the decision is affirmed in whole or in part, 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 for the appeal.

4. The rights and remedies recognized by this section are in addition to any other rights or remedies that may exist in law or in equity.

Everett S. M. BRUNZELL v. GOLDEN GATE NATIONAL BANK
Supreme Court of Nevada (1969)

Appellant Everett S. M. Brunzell signed on January 14, 1964, a 'Continuing Guaranty' with Respondent Golden Gate National Bank ('Bank'), agreeing to pay any and all indebtedness, not to exceed $50,000, of First Capital Corporation ('Capital'). The agreement provided that the 'guaranty shall not apply to any indebtedness created after actual receipt by Bank of written notice of its revocation as to future transactions.' Appellant claims that such a written notice of revocation was given to Bank in letter form dated October 15, 1965, but that thereafter, on April 1, 1966, Capital executed a note for $40,000 payable to Bank in exchange for Bank's canceling two $20,000 notes which were due in August 1965 (prior to the time that Bank received Capital's letter of October 15, 1965). The only payment received on the $40,000 note of April 1, 1966, was $700. Bank sued Brunzell as a guarantor for the balance of $39,300 plus interest, costs, and attorneys' fees. After both sides presented their evidence before the jury, respondent moved for a directed verdict pursuant to the provisions of NRCP 50(a). The trial judge granted the motion and ordered that Bank have judgment against Brunzell for $39,300 plus interest, costs, and attorneys' fees in the sum of $5,000.

Appellant asserts that the district court abused its discretion in awarding Bank $5,000 in attorneys' fees. As the Arizona court said in Schwartz v. Schwerin, 85 Ariz. 242, 336 P.2d 144, 146 (1959):

> 'it seems advisable that we state the well-known basic elements to be considered in determining the reasonable value of an attorney's services. From a study of the authorities it would appear such factors may be classified under four general headings (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. Furthermore, good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight.' (Emphasis by court.)

We will not substitute our opinion for that of the trial court unless as a matter of law there has been an abuse of discretion. The value to be placed on the services rendered by counsel lies in the exercise of

sound discretion by the trier of the facts. As this court has said previously, ‘Their (counsel's) legal responsibility is shown to have been competently discharged, and their work skillfully performed. The lower court did not abuse its discretion in its determination of the reasonable value of their services.’

The judgment is affirmed.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEVADA v.
NEVADA POLICY RESEARCH INSTITUTE
Supreme Court of Nevada (2018)

In this appeal, we consider whether the Nevada Public Records Act (the Act) requires the Public Employees' Retirement System of Nevada (PERS) to disclose certain employment and pension payment information about its government retirees held in its computer database when sought through a public records request. We hold that where the requested information merely requires searching a database for existing information, is readily accessible and not confidential, and the alleged risks posed by disclosure do not outweigh the benefits of the public's interest in access to the records, the Act mandates that PERS disclose the information.

FACTS AND PROCEDURAL HISTORY

Respondent Nevada Policy Research Institute, Inc. (NPRI) submitted a public records request to appellant PERS seeking payment records of its government retirees, including retiree names, for the year 2014. NPRI sought to post this information on their TransparentNevada.com website for the public to view. Despite having previously disclosed the requested information to NPRI for the year 2013, PERS refused to disclose the requested information for the following year. PERS argued that the raw data feed that an independent actuary uses to analyze and value the retirement system did not contain the names of its government retirees, only redacted social security numbers, and it had no duty to create a new document in order to satisfy NPRI's request. NPRI alternatively requested any other records that would contain the following information for the year 2014: retiree name, years of service credit, gross pension benefit amount, year of retirement, and last employer. PERS still refused to disclose the requested information by denying the availability of any such record.

NPRI filed a petition for a writ of mandamus in district court seeking retiree name, payroll amount, date of retirement, years of service, last employer, retirement type, original retirement amount, and COLA increases. NPRI asserted that the requested information is not confidential because it is a public record and is easily accessible through an electronic search of the PERS database. Following an evidentiary hearing, the district court concluded that the requested information was not confidential, that the risks posed by disclosure did not outweigh the benefits of the public's interest in access to these records, and that PERS had a duty to create a document with the requested information. Thus, the district court granted

NPRI's petition and ordered disclosure. However, the district court ordered PERS to produce only retiree name, years of service credit, gross pension benefit amount, year of retirement, and last employer.

DISCUSSION

PERS argues that the district court's decision goes against this court's holding in *Public Employees' Retirement System of Nevada v. Reno Newspapers Inc.*, (*Reno Newspapers*) (Nev. 2013), where we held that there is no duty "to create new documents or customized reports by searching for and compiling information from individuals' files or other records.'' *Id.*

Conversely, NPRI argues that the information requested constitutes a public record under the Act because it is information that is stored on a governmental computer and that PERS is required to disclose the information because the records are readily accessible and PERS has previously disclosed the information sought.

The Nevada Public Records Act

The Nevada Legislature enacted the Nevada Public Records Act to "foster democratic principles," NRS 239.001, and "promote government transparency and accountability by facilitating public access to information regarding government activities." *Reno Newspapers*; *City of Reno v. Reno Gazette-Journal* (Nev. 2003).

We are cognizant of these important goals and, thus, have held that the Act's "provisions must be liberally construed to maximize the public's right of access," and "any limitations or restrictions on [that] access must be narrowly construed." *Reno Newspapers, Inc. v. Gibbons (Gibbons)* (Nev. 2011) (citing NRS 239.001(1)-(3)). In addition, there is a presumption in favor of disclosure.

While an individual retiree's physical file, which contains personal information such as social security numbers and beneficiary designations, may not be inspected in its entirety, that does not make all the information kept in that file confidential when the information is stored electronically and PERS can extract the nonconfidential information from the individual files.

The requested information did not require the creation of a new record

Although PERS correctly notes that a public agency has no duty to create a new record in response to a public records request, it improperly concludes that disclosure in the present case requires the creation of a new record simply because it would involve searching its database for information. Several courts have distinguished between public records requests that simply require an agency to search its electronic

database in order to obtain the information requested from those that require the agency to compile a document or report *about* the information contained in the database.

Other jurisdictions have employed similar logic when analyzing an agency's duty of disclosure under their respective public records laws. For example, in *American Civil Liberties Union v. Arizona Department of Child Safety*, the Arizona Court of Appeals held that "[s]earching an electronic database to produce existing records and data is not the same as searching an electronic database to compile information about the information it contains." (Az. Ct. App. 2016). That court reasoned that "[w]hen a public employee fills out a form to obtain public records from, for example, a storage or file room, the employee has created a record to retrieve records that already exist. Creating a query to search an electronic database is functionally the same." *Id.* Thus, "Arizona's Public Records Law requires a state agency to query and search its database to identify, retrieve, and produce responsive records for inspection if the agency maintains public records in an electronic database." *Lunney v. State* (Az. Ct. App. 2017) (internal quotation marks omitted).

We agree with these courts and similarly hold that the Act requires a state agency to query and search its database to identify, retrieve, and produce responsive records for inspection if the agency maintains public records in an electronic database. In doing so, we clarify that the search of a database or the creation of a program to search for existing information is not the "creat[ion] [of] new documents or customized reports," as contemplated by *Reno Newspapers*.

CONCLUSION

We conclude that searching PERS' electronic database for existing and nonconfidential information is not the creation of a new record and therefore affirm the district court's order in this regard.

[dissent omitted]

LAS VEGAS METROPOLITAN POLICE DEPARTMENT v.
CENTER FOR INVESTIGATIVE REPORTING, INC.
Supreme Court of Nevada (2020)

The Nevada Public Records Act (NPRA) requires governmental entities to make nonconfidential public records within their legal custody or control available to the public. NRS 239.010. If a governmental entity denies a public records request, the requester may seek a court order compelling production. NRS 239.011(1). If the requesting party prevails, the requester is entitled to attorney fees and costs. NRS 239.011(2). Here, we are asked to determine whether the requesting party prevails for purposes of an award of attorney fees and costs when the parties reach an agreement that affords the requesting party access to the requested records before the court enters a judgment on the merits. To answer that question, we adopt the catalyst theory. "Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation." *Graham v. DaimlerChrysler Corp.* (Cal. 2004). Applying the catalyst theory here, we agree with the district court that respondent was entitled to reasonable attorney fees and costs under NRS 239.011(2). We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1996, American rap artist Tupac Shakur was shot and killed at the intersection of Flamingo Road and Koval Lane in Las Vegas. The case is still an open investigation.

In December 2017, the Center for Investigative Reporting, Inc. (CIR) submitted a public records request to the Las Vegas Metropolitan Police Department (LVMPD) under the NPRA. CIR sought records related to Tupac's murder. One month later, when LVMPD still had not responded to the request, CIR followed up and pointed out that LVMPD had not complied with the NPRA's five-day period for responding to public records requests. LVMPD responded that same day and notified CIR that the public records request was forwarded to a Public Information Officer for follow-up. Twelve days later, CIR reached out again and notified the Office of Public Information that LVMPD was more than one month overdue in responding to the public records request under the NPRA. CIR did not receive a response.

In March 2018, roughly three months after its initial request, CIR followed up for a third time, to no avail. About two weeks later, CIR's counsel sent a letter to LVMPD's Director of Public Information setting forth LVMPD's failure to comply with its statutory obligations under the NPRA and demanding a response within seven days. LVMPD responded eight days later by producing a two-page police report

but failed to indicate whether additional records existed or were otherwise exempt. Then, CIR contacted LVMPD and inquired whether it had withheld records that were responsive to CIR's request and, if so, under what legal authority. Assistant General Counsel for LVMPD responded the following day, acknowledging that LVMPD should have originally advised CIR that it would research the request and respond within 30 days. Further, LVMPD stated that because Tupac's murder was an "open active investigation," any other records in the investigative file were (i) not public records under NRS 239.010(1), (ii) declared by law to be confidential, (iii) subject to the "law enforcement privilege," and (iv) protected from disclosure because law enforcement's policy justifications for nondisclosure outweigh the public's interest in access to the records.

Dissatisfied with LVMPD's response, CIR contacted LVMPD and disputed that the records were confidential because LVMPD labeled the investigation "open" and "active" and again asked LVMPD to comply with its statutory obligations under the NPRA. However, LVMPD maintained the records were not subject to disclosure.

CIR then filed a petition for a writ of mandamus, seeking to inspect or obtain copies of all records related to Tupac's murder within LVMPD's custody and control. The district court indicated during a hearing on the petition that LVMPD had not met its burden of demonstrating that all records in the investigative file were confidential under Nevada law. The district court gave LVMPD two options: produce the requested records with redactions or participate in an in-camera evidentiary hearing regarding confidentiality. LVMPD opted for the latter, and the district court scheduled a sealed evidentiary hearing. But before the scheduled hearing, LVMPD and CIR reached an agreement: LVMPD would produce portions of its records along with an index identifying and describing any redacted or withheld records. As part of the agreement, CIR reserved the right to challenge LVMPD's redactions or withholdings and reserved the right to seek attorney fees and costs pursuant to NRS 239.011(2). Over the next three months, LVMPD provided CIR with roughly 1,400 documents related to Tupac's murder.

At a subsequent status check, LVMPD and CIR informed the district court that they disagreed as to whether CIR "prevailed" for purposes of an award of attorney fees and costs under NRS 239.011(2). CIR asserted that the district court should follow the catalyst theory of recovery, which allows a petitioner to recover fees as the prevailing party in a public records case where the petitioner's actions led to the disclosure of information. LVMPD argued CIR had not prevailed because it did not obtain a judgment in its favor, given that the parties had reached an agreement before the district court entered a judgment on the merits. The district court entertained argument on the issue and ruled that CIR prevailed because the

filing of its petition caused LVMPD to produce the records. The district court subsequently entered a written order dismissing the petition as moot based on the parties' agreement, concluding that CIR had prevailed for purposes of NRS 239.011(2), and affording CIR time to file a motion for attorney fees and costs.

DISCUSSION

The primary issue before us is whether CIR prevailed for purposes of NRS 239.011(2). LVMPD argues that CIR did not prevail because the district court did not enter an order compelling production of the requested records. LVMPD contends that the district court erroneously applied the catalyst theory to determine whether CIR prevailed. CIR argues that it prevailed because the filing of its petition caused LVMPD to turn over the records, which it originally refused to disclose. Instead of requiring that the requester receive a judgment on the merits, CIR argues that this court should follow other courts that apply a catalyst theory to determine whether a requester prevailed and therefore is entitled to attorney fees.

NRS 239.011(1) provides that if a governmental entity denies a public records request, the requester may seek a court order permitting inspection of the record or requiring the government to provide a copy of the record to the requester. NRS 239.011(2) provides that "[i]f the requester *prevails*, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." (Emphasis added.) However, the Legislature did not define "prevails."

In adhering to the catalyst theory, the New Jersey Supreme Court pointed out a policy reason for allowing an attorney fees award in a public records action absent a judgment on the merits—the potential for government abuse in that an agency otherwise could "deny access, vigorously defend against a lawsuit, and then unilaterally disclose the documents sought at the eleventh hour to avoid the entry of a court order and the resulting award of attorney's fees." *Mason v. City of Hoboken* (N.J. 2008). We agree that this is a sound policy reason and supports utilizing the catalyst theory to determine whether a requester has prevailed in an NPRA lawsuit. That theory also promotes the Legislature's intent behind the NPRA—public access to information. *See* NRS 239.001.

Under the catalyst theory, a requester prevails when its public records suit causes the governmental agency to substantially change its behavior in the manner sought by the requester, even when the litigation does not result in a judicial decision on the merits. *Graham v. DaimlerChrysler Corp.* (Cal. 2004). But as the Ninth Circuit has explained, "[t]here may be a host of reasons why" a governmental agency might

"voluntarily release[ ] information after the filing of a [public records] lawsuit," including reasons "having nothing to do with the litigation." *First Amendment Coal. v. U.S.* (9th Cir. 2017). In other words, while "'the mere fact that [the government] ha[s] *voluntarily* released documents [should] not preclude an award of attorney's fees to the [requester],' it is equally true that 'the mere fact that information sought was not released until after the lawsuit was instituted is insufficient to establish that'" the requester prevailed. *Id.* Accordingly, there must be a "causal nexus between the litigation and the voluntary disclosure or change in position by the Government." *Id.*

We therefore hold that a requester is entitled to attorney fees and costs under NRS 239.011(2) absent a district court order compelling production when the requester can demonstrate "a causal nexus between the litigation and the voluntary disclosure or change in position by the Government." *First Amendment Coal.* To alleviate concerns that the catalyst theory will encourage requesters to litigate their requests in district court unnecessarily, the court should consider the following three factors: (1) "when the documents were released," (2) "what actually triggered the documents' release," and (3) "whether [the requester] was entitled to the documents at an earlier time." *Id.* (quoting *Church of Scientology v. USPS* (9th Cir. 1983). Additionally, the district court should take into consideration (1) whether the litigation was frivolous, unreasonable, or groundless, and (2) whether the requester reasonably attempted to settle the matter short of litigation by notifying the governmental agency of its grievances and giving the agency an opportunity to supply the records within a reasonable time. *See Graham* (discussing limitations on the catalyst theory).

Applying the catalyst theory here, the district court determined that CIR prevailed for purposes of NRS 239.011(2). We agree. CIR tried to resolve the matter short of litigation. CIR put LVMPD on notice of its grievances and gave LVMPD multiple opportunities to comply with the NPRA. At each juncture, LVMPD either failed to respond or claimed blanket confidentiality. It was not until CIR commenced litigation and the district court stated at a hearing that LVMPD did not meet its confidentiality burden that LVMPD finally changed its conduct. The record thus supports the conclusion that the litigation triggered LVMPD's release of the documents. LVMPD does not proffer any other reason aside from the litigation that it voluntarily turned over the requested documents. And it appears that CIR was entitled to at least some of the documents at an earlier time because it is unlikely the blanket confidentiality privilege LVMPD eventually asserted applied to all responsive documents in LVMPD's possession. Critically, LVMPD agreed to turn over roughly 1,400 documents when faced with an in-camera evidentiary hearing. Thus, the record supports the district court's determination that the lawsuit was the catalyst for the

LVMPD's release of the requested records. Accordingly, CIR prevailed in the NPRA proceeding and is entitled to attorney fees and costs pursuant to NRS 239.011(2). As the LVMPD does not otherwise challenge the attorney fees and costs award, we affirm the judgments of the district court.

LAS VEGAS REVIEW-JOURNAL v. CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER

Supreme Court of Nevada (2022)

The Las Vegas Review-Journal (LVRJ) appeals from an order awarding it costs and attorney fees in proceedings under-the Nevada Public Records Act (NPRA). The district court's award discounted the costs and fees the LVRJ requested by almost 40%. The LVRJ contends that the district court abused its discretion by imposing such a substantial discount without explaining its reasons for doing so. We agree. We therefore vacate and remand this matter to the district court to explain and, if appropriate, modify its award.

I.

A.

The NPRA requires governmental agencies to make their nonconfidential records available to the public on request. NRS 239.010. In 2017, the LVRJ asked the Clark County Office of the Coroner (the Coroner) to produce autopsy reports for the preceding five years for juveniles who died while under the supervision of the Clark County Department of Child and Family Services. When the Coroner refused, the LVRJ sued. *See* NRS 239.011(1) (affording a record requester the right to apply to the district court for an order compelling production). The district court ordered the Coroner to provide the LVRJ with the autopsy reports it had requested. It also awarded the LVRJ the roughly $32,000 in costs and fees it had incurred to that point. *See* NRS 239.011(2) (providing that a prevailing record requester is entitled to recover costs and reasonable attorney fees).

The Coroner appealed both the record-production order and the order awarding costs and fees. It sought and obtained stays pending appeal of these orders. *See Clark Cty. Office of the Coroner /Med. Exam'r v. Las Vegas Review-Journal* (Nev. 2018). After briefing and argument, this court affirmed in part, reversed in part, and vacated and remanded in part. *Clark Cty. Office of the Coroner/Med. Exam'r v. Las Vegas Review-Journal* (Nev. 2020). On the merits, we rejected the Coroner's claims that the law categorically exempts juvenile autopsy reports from public inspection, *id.*, and immunizes the Coroner from *cost* and fee awards in NPRA litigation., *id.* But we credited the Coroner's alternative argument that the district court did not adequately consider the juvenile decedents' privacy interests before ordering the reports produced without redaction and vacated and remanded for the district court to do so. *Id.* The remand made it "premature to conclude [the] LVRJ will ultimately prevail in its NPRA action," *id.*, so we also vacated the $32,000 cost and fee award, *id.*

On remand, the district court conducted the further proceedings this court directed. It reviewed selected autopsy reports, considered the parties' supplemental briefs and arguments, and again ordered the Coroner to provide the LVRJ with unredacted copies of the juvenile autopsy reports. The district court rejected the Coroner's argument that the reports so far implicated the juvenile decedents' privacy interests that; those interests outweighed the public's interest in learning the information, the reports contained. It denied the Coroner's motion for a stay pending appeal of its second production order.

The Coroner appealed and moved this court for an emergency stay. We denied the Coroner's emergency motion and the petition for reconsideration that followed. Without a stay, the Coroner had no choice but to comply with the district court's production order, which it did on December 31, 2020. That same day, the Coroner filed a motion to voluntarily dismiss its second appeal as moot.

B.

In district court, the LVRJ timely filed the motion for costs and attorney fees underlying this appeal. It supported the motion with detailed billing records and an affidavit of counsel, describing her firm, its expertise, and the going rate for NPRA work. The motion requested $3,581.48 in costs and $275,640 in attorney fees, for a total of $279,221.48. This sum comprised all the costs and fees the LVRJ had incurred in the case, including (in round numbers) the $32,000 spent to obtain the first production order and the $110,000 spent to oppose the Coroner's two appeals ($93,000 on the first appeal and $17,000 on the second). The remainder represents the costs and fees the LVRJ incurred on remand to obtain the second production order and preparing to enforce that order by contempt, if necessary, when the Coroner did not timely comply with it. In opposition, the Coroner mainly argued that the fees sought were unreasonable and that the LVRJ was not entitled to recover the costs and fees associated with the Coroner's two prior appeals.

The district court granted the LVRJ's motion in part. It found that the LVRJ prevailed in the litigation and that its fee application met each of the factors Nevada caselaw establishes for deciding the reasonableness of a fee request. *See Brunzell v. Golden Gate Nat'l Bank* (Nev. 1969). But having made these findings, which seemingly supported an award of the full amount requested, the district court reduced the amount by $110,000, or nearly 40%, awarding $2,472 in costs and $167,200 in attorney fees, for a total of $169,672. When the LVRJ asked the judge to explain the reduction, he cited his years of experience "auditing bills for insurance companies" and stated that, after spending "about three and a half hours going through the bills [I] looked at certain issues and said, okay, is this an amount that I believe [it] should have been." The district judge added that the reduction "[h]as nothing to do with the quality of

work ... I think you guys are outstanding, both sides in this matter and it was a hard-fought case." The district court's written order did not elaborate further on the reasons for the reduction.

The LVRJ appealed; the Coroner did not cross-appeal.

II.

Our legal system generally requires parties to pay their own litigation expenses, including attorney fees, unless a statute, rule, or contract authorizes shifting them from one party to another. The NPRA includes a fee-shifting statute, NRS 239.011(2) (2019), that is both one-sided and mandatory. By its terms, this statute *entitles* a prevailing record requester to recover costs and reasonable attorney fees:

> 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.

(emphasis added). It does not make reciprocal provision for the government to recover costs and fees from the requester, should the government prevail. In this way, NRS 239.011(2) incentivizes the government to honor public record requests outside of court, since the government must pay its own litigation expenses if it wins and both its own and its opponent's litigation expenses if it loses.

A record requester "prevails" for purposes of NRS 239.011(2) "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." By this measure, the LVRJ prevailed and is entitled to recover costs and fees in this case—the district court so held and the Coroner does not seriously contend otherwise. But to be recoverable, the fees must be "reasonable," NRS 239.011(2).

A district court enjoys wide discretion in determining what fees are reasonable to award. *Logan v. Abe* (Nev. 2015). However, that discretion is not boundless. "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." *Moreno v. City of Sacramento* (9th Cir. 2008); *see Schwartz v. Estate of Greenspun* (Nev. 1994) (cautioning "the trial bench to provide written support ... for awards of attorney's fees" because "[i]t is difficult at best for this court to review claims of error in the award of such fees where the courts have failed to memorialize, in succinct terms, the justification or rationale for the awards"). In other words, the district court should show its work and provide "a concise but clear explanation" of the reasoning behind its award amount. *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Shuette v. Beazer Homes*

Holdings Corp. (Nev. 2005) (noting that this court will uphold an award of attorney fees where the district court "provides sufficient reasoning and findings in support of its ultimate determination").

The district court's order does not adequately explain the near 40% discount it imposed. Addressing reasonableness, the order correctly processes the LVRJ's fee application through the *Brunzell* factors. *See Brunzell* (directing district courts, in determining a reasonable fee, to consider the quality of the advocate, the character of the work needed to be done, the work performed, and the result). It makes extensive written findings that each of the *Brunzell* factors supported awarding the LVRJ the fees it requested. But it then abruptly changes course, subtracting $110,000 from the $275,640 total sought. The order gives no explanation for the reduction except to state: "Based upon the Court's review of the documentation provided by [LVRJ] and the Court's experience in insurance litigation, the Court finds [LVRJ] is awarded $167,200 in attorneys fees."

We therefore affirm the attorney fees and costs order in the amount thus far awarded but vacate so much of the order as discounts the fees and costs requested by the LVRJ and remand for the district court to make adequate and specific findings as to any additional reasonable fees and costs the LVRJ incurred and is entitled to recover in this case.