

1 Case No. 2023-CV-00162

2 Dept. No. 2

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

9 RICKY DEAN MILLER, an
10 individual, MARTIN SWISHER,
11 JR., an individual, JOSEPH
12 GIRDNER, an individual, and
13 ROBBE LEHMANN, an individual,

14 Petitioners,

15 vs.

SECOND ORDER REGARDING
PETITIONERS' ATTORNEY'S
FEES AND COSTS

14 DOUGLAS COUNTY SCHOOL DISTRICT,
15 SUSAN JANSEN, Trustee, Douglas
16 County School District, TRUSTEE
17 DAVID BURNS, Trustee, Douglas
18 County School District, TRUSTEE
19 KATHERINE DICKERSON, Trustee,
20 Douglas County School District,
21 and TRUSTEE DOUG ENGLEKIRK,
22 Trustee, Douglas County School
23 District,

24 Respondents.

25 _____/

26 On October 10, 2024, this Court entered its Order Regarding
27 *Petitioners' Attorney's Fees and Costs; Civil Penalties* holding
28 that Petitioners are entitled to recover from Respondent Douglas
County School District ("DCSD") and Respondent Trustees Susan
Jansen, David Burns, Katherine Dickerson and Doug Englekirk
("Trustees") their costs and reasonable attorney's fees pursuant
to NRS 239.011(2).¹ The Court directed briefing as to the amount

¹ Other orders of the Court touching on these issues are incorporated by
reference and not repeated herein.

1 of the attorney's fees and costs award and apportionment amongst
2 Respondents. These issues are ripe for determination and the
3 Court issues its findings of fact and conclusions of law.

4 FACTUAL BACKGROUND

5 On May 17 and July 26, 2023, Petitioners requested public
6 records contained within DCSD's servers and Trustees' personal
7 cell phones and electronic devices. DCSD, through its counsel,
8 produced some responsive documents from DCSD's servers and
9 Trustees' personal electronic devices but denied the existence of
10 additional responsive public records. Not convinced, Petitioners
11 sued.

12 Utilizing DCSD's counsel, DCSD and Trustees answered in
13 unity, again denying the existence of additional responsive public
14 records. DCSD and Trustees maintained this stance for an extended
15 time, ultimately volunteering to search servers and personal
16 electronic devices to prove their point. The searches instead
17 proved Petitioners' point as an additional 500 pages of responsive
18 public records on DCSD's servers and 6,136 pages of responsive
19 public records on Trustees' personal electronic devices were
20 discovered. DCSD and Trustees produced the additional records in
21 July 2024, approximately one year after case inception.

22 Petitioners demand their reasonable attorney's fees and costs
23 from DCSD and Trustees.

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1 Each named governmental entity failed to produce responsive
2 records within its legal custody or control for nearly one year
3 after Petitioners brought suit. Blame for the unacceptable and
4 unreasonable delay falls solely and equally on DCSD and each
5 individually named Trustee. See, *Order Regarding Respondents'*
6 *Motion to Stay and/or Enforce Settlement Agreement*, May 31, 2024,
7 ("To be clear, Respondents do not need a court order or a
8 settlement agreement to search servers and cell phones in response
9 to public records requests and nothing that this Court or
10 Petitioners have done during the scope of this litigation has
11 prevented Respondents from previously conducting the very search
12 that they now desire to perform"). Each governmental entity's
13 failure to timely produce responsive records within its respective
14 custody or control spurred and perpetuated the lawsuit. With one
15 exception noted below, the Court holds DCSD and each individually
16 named Trustee jointly and severally liable for Petitioners'
17 reasonable attorney's fees and costs in the proceeding. NRS
18 239.011(2).

19 The Court next considers the reasonableness of Petitioners'
20 requested attorney's fees (\$162,290.00) and costs (\$3,791.16).
21 Respondents generally assert Petitioners' attorney's fees are
22 grossly and patently unreasonable even though Respondents'
23 attorneys billed DCSD over \$149,000.00. Amongst the factors
24 relevant to the determination are those set forth in *Brunzell v.*
25 *Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).
26 The qualification and experience of Petitioners' counsel is not
27 contested nor is the reasonableness of the charged hourly rate.
28 Although the character of work involved in public records cases

1 is often simple, a number of challenging issues arose due to the
2 course taken by Respondents. Respondents do not contend that
3 Petitioners' counsel did not actually perform the work claimed.
4 All of the work claimed was related to Petitioners' efforts to
5 obtain public records from DCSD and Trustees. Petitioners' motive
6 in requesting the public records is irrelevant. Petitioners
7 succeeded in recovering "reams" of responsive records. The Court
8 finds no evidence of "over working" the case or proceeding without
9 reasonable grounds or in bad faith. Each Brunzell factor weighs
10 favorably for Petitioners.

11 DCSD and Trustees cite multiple grounds for reducing
12 Petitioners' requested attorney's fees and costs.

13 **1) Blocked Billing**

14 Given the Court's ruling as to joint and several liability,
15 the blocked billing method utilized by Petitioners' counsel does
16 not present a roadblock to apportioning liability amongst
17 Respondents. Nor has the Court found it difficult to assess the
18 character of the work done or the work actually performed by
19 Petitioners' counsel. The Court does not require further briefing
20 and does not reduce or eliminate Petitioners' attorney's fees on
21 account of the blocked billing methodology.

22 **2) Time Prior to Second Amended Petition/Joinder of Trustees**

23 All iterations of the Petition complain that DCSD and
24 Trustees failed to produce requested public records. At anytime
25 prior to the filing of any iteration of the Petition, DCSD and
26 Trustees could have simply produced the requested records. They
27 did not. The mere fact that Petitioners might have made
28 procedural mistakes or suffered adverse rulings in righteous

1 pursuit of legal recourse presents no basis to reduce the
2 attorney's fee award. The Court takes note of the efforts
3 Petitioners were forced to employ just to get Trustees served.

4 **3) Attorney's Fees Accruing after Failed Settlement**

5 On March 27, 2024, the parties placed a settlement agreement
6 on the record. The terms of the proposed settlement merely
7 required DCSD and Trustees to do that which the law requires;
8 conduct adequate searches, produce responsive records and pay
9 Petitioners' then-accrued attorney's fees of \$70,000. Given the
10 financial component, the settlement was necessarily contingent on
11 DCSD Board approval.

12 DCSD's Board rejected the settlement, prompting Petitioners
13 to continue pursuit of the lawsuit. In July 2024, DCSD and
14 Trustees produced 6,636 pages of responsive records. DCSD and
15 Trustees now argue that their untimely production put a hard stop
16 on compensable attorney's fees.

17 The Court disagrees. Given the timing and quantity of the
18 production, it was reasonable for Petitioners' counsel to continue
19 to work the case and push forward with the hearing. Recall, DCSD
20 and Trustees vociferously denied the existence of additional
21 responsive documents for over one year before producing 6,636
22 pages of responsive documents shortly before the hearing. Against
23 this backdrop, Petitioners are not faulted for failing to accept
24 Respondents' representation to the effect of, "No other responsive
25 documents exist, we really mean it this time, believe us." This
26 is particularly so given that DCSD and Trustees did not comply
27 with this Court's order requiring detailed affidavits/declarations
28 of compliance in reference to the searches. See, *Order Regarding*

1 Respondents' Motion to Stay and/or Enforce Settlement Agreement,
2 May 31, 2024. Petitioners' reasonable attorney's fees accrued
3 after the failed settlement are compensable.

4 The Court finds distinction between DCSD and Trustees in
5 assessing responsibility for perpetuation of the lawsuit after the
6 failed settlement. DCSD and its counsel initially took on and
7 defended Trustees, proclaiming a unified defense decrying the
8 existence of additional responsive documents on DCSD's servers and
9 Trustees' personal devices. DCSD and Trustees held a united front
10 with joint representation through the attempted settlement
11 agreement placed on the record on March 27, 2024. The settlement
12 required the approval of DCSD's Board, a contingency completely
13 outside of Trustees' control given Trustees' inability to vote due
14 to conflict. Three DCSD trustees not named in the lawsuit ("Non-
15 Party Trustees"), acting collectively as the DCSD Board and, ergo,
16 DCSD², voted against settlement. It matters not for the purpose
17 of this order why the settlement was rejected by DCSD. It is
18 material and undeniable, however, that DCSD's rejection of the
19 settlement caused Petitioners to accrue additional attorney's fees
20 and costs and substantially delayed the legally required
21 production of responsive records (the settlement called for DCSD
22 not only to search its own servers but also to facilitate and pay
23 for forensic searches of Trustees' personal devices). Absolutely
24 nothing, including the DCSD vote, precluded DCSD from proceeding
25 with the searches of DCSD's servers and Trustees' phones, as
26 agreed by Trustees. However, DCSD's rejection of the settlement

27 ² While DCSD may be sued without its board being named (NRS 386.010 and NRS
28 12.105), DCSD's Board is the body corporate (NRS 386.110(1)) having the
rights and powers provided to school districts in NRS Title 34 (NRS
385.005(1)).

1 drove a wedge between DCSD and Trustees necessitating that each
2 pursue independent counsel. The Court finds that the delay
3 occasioned by the failed settlement is attributable to DCSD, not
4 Trustees and not Petitioners. The Court holds DCSD solely
5 accountable for Petitioners' reasonable post-settlement attorney's
6 fees.

7 **4) Meetings/Communication with Sharla Hales**

8 The financial components of the attempted settlement, as well
9 as any other efforts to settle the financial components,
10 necessarily involved Non-Party Trustees. Non-Party Trustees
11 engaged Sharla Hales, Esq., and voted to reject the proposed
12 settlement. Since Trustees could not vote due to conflict, the
13 votes of Non-Party Trustees, acting collectively as DCSD's Board,
14 killed the settlement. Subsequent efforts made by Petitioners to
15 salvage settlement necessarily ran through Ms. Hales. Time spent
16 by Petitioners' counsel corresponding with Ms. Hales was work
17 towards resolution of Petitioners' public records requests and the
18 resultant reasonable attorney's fees are compensable pursuant to
19 NRS 239.011(2).

20 **5) Board Meetings/Agenda Items**

21 Work performed by Petitioners' counsel as to the subject
22 board meetings and agenda items was work towards Petitioners'
23 public records requests. The resultant reasonable attorney's fees
24 are compensable pursuant to NRS 239.011(2).

25 **6) Reply to Opposition to Second Amended Petition**

26 Respondents question whether Petitioners' reply to the Second
27 Amended Petition was legally authorized and question the time
28 spent drafting the same. Respondents never moved to strike the

1 reply and the Court considered the reply. The reply presents as a
2 reasonable, good faith response to the opposition and the
3 corresponding attorney's fees are compensable pursuant to NRS
4 239.011(2).

5 **7) Communications w/ DCSD Counsel**

6 Trustees object to being held responsible for attorney's fees
7 attributable to discussions between Petitioners' counsel and
8 DCSD's counsel. DCSD and Trustees had the same attorney until
9 after settlement failed. Given that the Court is not holding
10 Trustees liable for Petitioners' attorney's fees accrued after the
11 failed settlement, this issue is moot.

12 **8) Motion to Amend/Reconsider**

13 Petitioners' motion to amend and/or reconsider was part of
14 the proceedings for which Petitioners are entitled to attorney's
15 fees pursuant to NRS 239.011(2). The Court ruled against
16 Petitioners on the merits but the motion was not unreasonable or
17 pursued in bad faith. The corresponding attorney's fees are both
18 reasonable and compensable.

19 **9) Costs**

20 All costs requested by Petitioners were reasonably incurred
21 in pursuit of public records from DCSD and Trustees in this
22 proceeding and are compensable.

23 Conclusion

24 The Court finds that Petitioners requested attorney's fees of
25 \$162,290.00 and costs of \$3,791.16 were reasonably accrued by
26 Petitioners in this proceeding and Petitioners are entitled to the
27 same. NRS 239.011(2).

28 The total award of \$166,081.16 is payable by Douglas County

1 School District, \$70,000.00 of which is joint and several with
2 each of the named Trustees.

3 \$70,000.00 of the total award is payable by Trustee Susan
4 Jansen in her capacity as a governmental entity, joint and several
5 with DCSD and other named trustees.

6 \$70,000.00 of the total award is payable by Trustee David
7 Burns in his capacity as a governmental entity, joint and several
8 with DCSD and other named trustees.

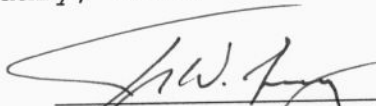
9 \$70,000.00 of the total award is payable by Trustee Katherine
10 Dickerson in her capacity as a governmental entity, joint and
11 several with DCSD and other named trustees.

12 \$70,000.00 of the total award is payable by Trustee Doug
13 Englekirk in his capacity as a governmental entity, joint and
14 several with DCSD and other named trustees.

15 Petitioners shall prepare, circulate and submit a proposed
16 judgment and, upon entry thereof, serve notice of entry on all
17 parties as provided in NRCP 58.

18 IT IS SO ORDERED.

19 DATED this 21st day of February, 2025.

20
21 
22 THOMAS W. GREGORY
23 DISTRICT JUDGE
24
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1 Copies served by mail on February 21st 2025, addressed to:

2 Richard J. McGuffin, Esq.
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