DCRR
Attorney's Name
Attorney's Bar Number
Attorney's Firm Name
Attorney's Address
Attorney's Phone Number
Attorney's E-mail Address
Party Attorney Represents

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

*, Plaintiff(s), v. *, et al., Defendant(s).	CASE NO. DEPT NO. Date of Hearing: *, 20__ Time of Hearing: _____ a.m.

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

INSTRUCTIONS: SUBMITTING COUNSEL TO FILL OUT THE INFORMATION REQUESTED IN YELLOW BELOW. ALL OTHER MATTERS BELOW MUST BE LEFT FOR THE COURT TO FILL OUT.

Party/Attorney for Plaintiff(s): [LIST]

Party/Attorney for Defendant(s): [LIST]

On [HEARING DATE], the parties to the above-captioned matter appeared before the Honorable Discovery Commissioner [Erin Truman / Shara L. Larson] by and through their counsel listed above, on Movant's [INSERT FULL TITLE OF MOTION] (the "Motion"). The Court reviewed the Motion and [LIST ALL OTHER PLEADINGS], and entertained oral argument made by the parties. For good cause appearing, the Discovery Commissioner hereby makes the following findings and recommendations:

I. FINDINGS

[INSERT FINDINGS REGARDING UNDERLYING MOTION]

A court may not award attorney fees or costs unless authorized to do so by a statute, rule, or contract. *U.S. Design & Const. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002). Movant seeks an award of reasonable attorney fees [AND COSTS].

A. MOVANT SEEKS AN AWARD OF ATTORNEY FEES

The Motion seeks an award of attorney fees pursuant to [INSERT STATUTE, RULE, OR CONTRACT]. [INSERT STATUTE, RULE, OR CONTRACT] allows for an award of fees where [LIST CIRCUMSTANCES APPLICABLE TO THE REQUEST].

The court here has determined that an award of attorney fees is appropriate, subject to proof, under [INSERT STATUTE, RULE, OR CONTRACT] because [INSERT REASONS]. Having determined that the Movant is entitled to an award of fees, the court next turns its attention to the amount of the award. The court required Movant to provide a Memorandum of Fees and Costs consistent with [INCLUDE ALL THAT APPLY] *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983); *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). Movant's Memorandum of Fees and Costs was due on or before [DATE]. [NON-MOVING PARTY]'s response thereto was due [DATE]. The court made clear that untimely submissions would not be considered. Movant filed [NAME OF SUPPLEMENTAL PLEADING] on [DATE]. Movant's [NAME OF SUPPLEMENTAL PLEADING] [was/was not] timely filed. [NON-MOVING PARTY] filed [NAME OF PLEADING] on [DATE] OR [[NON-MOVING PARTY] did file a response thereto. [NON-MOVING PARTY]'s [NAME OF PLEADING] [was/was not] timely filed.

The court has great discretion regarding its decision to award fees and regarding the amount of fees granted. The court's discretion is "tempered only by reason and fairness." *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006) (quoting *University of Nevada v. Tarkanian*, 110 Nev. 581, 591, 879 P.2d 1180, 1186 (1994)).

"In determining the amount of fees to award, the [district] court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the" *Brunzell* factors. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (citing *Haley v. Eighth Judicial Dist. court*, 128 Nev. 171, 273 P.3d 855, 860 (2012) (internal quotations omitted)).

The Supreme court in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969) gave guidance on how a court is to determine the reasonable value of the work performed by a movant's counsel.[1] *Brunzell* directs courts to consider the following when determining a reasonable amount of attorney fees to award:

> (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.

Id. (internal quotation marks omitted). [IN FAMILY LAW CASES ADD THE FOLLOWING LANGUAGE]: In addition to the *Brunzell* factors, the court must evaluate the disparity of income between parties to family law matters. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970

[1] The court must determine the reasonable rates for all persons for whose time a party seeks reimbursement, including partners, associates, paralegals, and law clerks, etc. *See LVMPD v. Yeghiazarian*, 129 Nev. 760, 770, 312 P.3d 503, 510 (2013).

P.2d 1071, 1073 (1998).

The court can follow any rational method so long as it applies the *Brunzell* factors; it is not confined to authorizing an award of attorney fees exclusively from billing records or hourly statements. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (approving awards based on a "lodestar" amount, as well as a contingency fee arrangement). Although the court must "expressly analyze each factor", no single factor should be given undue weight. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33.

After determining the reasonable value of an attorney's services analyzing the factors established in *Brunzell*, the court must then provide sufficient reasoning and findings concerning those factors in its order. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005). The court's decision must be supported by "substantial evidence". *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

Substantial evidence supporting a request for fees must be presented to the court by "affidavits, unsworn declarations under penalty of perjury, depositions, answers to interrogatories, [or] admissions on file". EDCR 2.21(a). Sworn statements submitted pursuant to EDCR 2.21(a) must be sufficient to satisfy NRCP 56(e). EDCR 2.21(c). Unsworn statements of counsel and conclusory statements in pleadings not otherwise presented in compliance with EDCR 2.21(a) may not be considered by the court. The Supreme Court has confirmed that the *Brunzell* factors must be presented by affidavit or other competent evidence. *Miller v. Wilfong*, 121 Nev. 619, 624, 119 P.3d 727, 730 (2005); *Katz v. Incline Vill. Gen. Improvement Dist.*, 452 P.3d 411 (Nev. 2019), *cert. denied*, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020) (citing *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762,

765 (1989) (holding that an affidavit documenting the hours of work performed, the length of litigation, and the number of volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable determination of attorney fees, even in the absence of a detailed billing statement); *Cooke v. Gove*, 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among other evidence, two depositions from attorneys testifying about the value of the services rendered)). An award that is not based on such substantial evidence is subject to reversal, as the court will have no factual basis on which to base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

In the instant matter, Movant provided the court with the following sworn testimony and other evidence: [LIST SWORN STATEMENT(S) AND ALL OTHER EVIDENCE RELIED UPON]. Movant argues each *Brunzell* factor as follows:

1. The Qualities of the Advocate

2. The Character of the Work

3. The Work Performed

4. The Result

5. Disparity in Income (Only in family law matters)

In response, [NON-MOVING PARTY] argues [SUMMARIZE].

B. SUMMARY OF FEES SOUGHT

Movant provided evidence suggesting [NAME OF ADVOCATE] spent [NUMBER OF

HOURS] at the rate of $____ per hour on matters related to the activities for which the court ordered an award of fees. [REPEAT FOR EACH ADVOCATE]. Movant asks the court for an award of $_____ in attorney fees. [ALTERNATIVELY, USE LODESTAR, CONTINGENCY FEE ANALYSIS, ETC.]

The court has reviewed [LIST SWORN STATEMENT(S) AND ALL OTHER EVIDENCE RELIED UPON IN SUPPORT OF REQUEST FOR FEES], as well as any response thereto and finds:

_____ Movant has adequately addressed the factors required by *Brunzell* and its progeny. Movant has detailed the qualities of the advocate, the character of the work performed, the actual work performed by the attorney, including skilled time and attention given to the work, and the result. Movant has provided competent evidence in support of Movant's request for fees.

_____ Movant has not adequately addressed the factors required by *Brunzell* and its progeny. Movant has not detailed the qualities of the advocate, the character of the work performed, the actual work performed by the attorney, including skilled time and attention given to the work, and the result sufficiently or Movant referenced the same but not by competent evidence as required by the Supreme Court, depriving the court here of an evidentiary upon which to grant the request.[2] Movant has not provided sufficient competent evidence in support of Movant's request for fees.

_____ Movant failed to file a timely Memorandum of Costs and Fees, precluding an order granting the same.

[2] An award that is not based on such substantial evidence is subject to reversal, as the court will have no factual basis on which to base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

The court finds the analysis required under [INCLUDE ALL THAT APPLY] *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983); *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)

_____ was satisfied. The factors addressed by [THAT/THOSE] case(s), prerequisite to an award of attorney fees, were set forth in the Motion with specificity as addressed above.

_____ was not satisfied.

The court finds the fees charged by Movant's counsel in this matter:

_____ were necessary to the matter and are reasonable in the marketplace given the experience and qualities of the advocates in the amount granted by the court.

_____ were not proven necessary and/or reasonable.

C. MOVANT SEEKS AN AWARD OF COSTS [OMIT IF COSTS ARE NOT SOUGHT]

Movant seeks an award of costs pursuant to [INSERT STATUTE, RULE, OR CONTRACT]. [INSERT STATUTE, RULE, OR CONTRACT] allows for an award of fees in the following circumstances [LIST].

Courts have broad discretion to award costs. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). A memorandum of costs must be supported by an affidavit. *See* NRS 18.110. Further, any documentary evidence required to prove that the costs were actually incurred, necessary, and related to the action, must be presented by affidavit or other competent evidence. EDCR 2.21(a). Parties may not simply estimate a reasonable amount of costs, but must provide the court with proof that the costs were actually incurred. *Cadle*, 131 Nev. at 120, 345 P.3d at 1054 (citing *Gibellini v. Klindt*, 110 Nev. 1201, 1205–06, 885 P.2d 540, 543 (1994) (holding that a party may not estimate costs based on hours billed)).

Without competent evidence to "determine whether a cost was reasonable and necessary, a district court may not award costs." *Cadle*, 131 Nev. at 121, 345 P.3d at 1054 (citing *Bobby Berosini, Ltd.*, 114 Nev. at 1353, 971 P.2d at 386).

"'[R]easonable costs' must be actual and reasonable, 'rather than a reasonable estimate or calculation of such costs.'" *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). Movant must "demonstrate how such [claimed costs] were necessary to and incurred in the present action." *Id.*, 114 Nev. at 1352-53, 971 P.2d at 386. Conclusory arguments, or even statements in sworn testimony, that the costs were "reasonable and necessary" do not suffice. An award of costs based on such a conclusory statement is subject to reversal, as the court will lack "evidence on which to judge the reasonableness or necessity of each [cost]". *Cadle*, 131 Nev. at 121, 345 P.3d at 1054-55. Rather than merely *telling* the court the costs were reasonable and necessary, counsel's affidavit must attach "justifying documentation" verifying the costs were incurred and must *demonstrate* how those costs were both reasonable and necessary to the matter at issue. *Id.* (citing *Bobby Berosini, Ltd.*, 114 Nev. at 1352-53, 971 P.2d at 386). Without "justifying documentation" ***and*** counsel's explanation, there is "no way [for the court to] determined whether the cost was reasonable or necessary." *Id.*, 131 Nev. at 121-22, 345 P.3d at 1055.

The court has reviewed [LIST SWORN STATEMENT(S) AND ALL OTHER EVIDENCE RELIED UPON IN SUPPORT OF REQUEST FOR COSTS]. Movant argues [SUMMARIZE]. In response, [NON-MOVING PARTY] argues [SUMMARIZE].

The court finds:

_____ Movant has adequately demonstrated through sworn testimony and "justifying documents" how the claimed costs were actually incurred, and were "reasonable and necessary"

to the action.

_____ Movant has not adequately *demonstrated* through sworn testimony and "justifying documents" how the claimed costs were actually incurred, and/or were "reasonable and necessary" to the action. Conclusory statements do not suffice. Accordingly, an award of costs is DENIED.

_____ Movant has not provided the court with receipts or other "justifying documents" introduced by competent testimony; thus, there is "no way [for the court to] determined whether the cost was reasonable or necessary." *Cadle*, 131 Nev. at 121-22, 345 P.3d at 1055.

_____ Movant failed to file a timely Memorandum of Costs and Fees, precluding an order granting the same.

II. RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED [INSERT RECOMMENDATIONS REGARDING THE UNDERLYING MOTION]

IT IS FURTHER RECOMMENDED, consistent with the findings herein,

_____ an award of attorney fees is GRANTED against _____ the amount of $_____.

_____ an award of attorney fees is DENIED.

[ONLY INCLUDE THE FOLLOWING LANGUAGE IF COSTS ARE BEING SOUGHT]

IT IS FURTHER RECOMMENDED, consistent with the findings herein,

_____ an award of costs is the amount of $_____ is GRANTED.

_____ an award of costs is DENIED.

IT IS FURTHER RECOMMENDED the award must be paid within ___ days of entry of an order affirming and adopting these Recommendations.

The Discovery Commissioner, having met with counsel for the parties, discussed the issues noted above, and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this _____ day of _____, 20__.

_____
THE HONORABLE (ERIN LEE TRUMAN/SHARA L. LARSON)
DISCOVERY COMMISSIONER

[CASE NAME AND CASE NUMBER]

Submitted by:

_____
Attorney's Name
Attorney's Firm Name
Attorney's Address
Attorney's E-mail Address
Counsel for _____

Approved as to form and content by:

_____
Attorney's Name
Attorney's Firm Name
Attorney's Address
Attorney's E-mail Address
Counsel for _____

N O T I C E

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on_____20__.

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed by United States Postal Service, postage prepaid, on _____, 20___ to the parties listed below at their last known address(es):

_____ Electronically e-filed and e-served to all registered counsel and parties on _____, 20__, Pursuant to N.E.F.C.R. Rule 9.

By:_____
COMMISSIONER DESIGNEE

ORDCR
Attorney's Name
Attorney's Bar Number
Attorney's Firm Name
Attorney's Address
Attorney's Phone Number
Attorney's E-mail Address
Party Attorney Represents

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

*, Plaintiff(s), v. *, et al., Defendant(s).	CASE NO. DEPT NO. HEARING DATE: HEARING TIME: 9:00 a.m.

ORDER
RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

The court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ No timely objection having been filed,

_____ After reviewing the objections to the Report and Recommendations and good cause appearing,

* * *

CASE NAME:
CASE NO:

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (attached hereto)

_____ IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner for reconsideration or further action.

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for _____, 20__, at _____:_____ a.m.

_____