

IN THE SUPREME COURT OF THE STATE OF NEVADA

REZA ZANDIAN A/K/A GOLAMREZA
ZANDIANJAZI A/K/A GHOLAM REZA
ZANDIAN A/K/A REZA JAZI A/K/A J.
REZA JAZI A/K/A G. REZA JAZI A/K/A
GHONOREZA ZANDIAN JAZI, AN
INDIVIDUAL,

Appellant,

vs.

JED MARGOLIN, AN INDIVIDUAL,

Respondent.

Nevada Supreme Court

Case No. 65960

Electronically Filed
Nov 13 2014 09:43 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

from the FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY
THE HONORABLE JAMES T. RUSSELL, District Judge

APPELLANT'S OPENING BRIEF

JASON WOODBURY
Nevada Bar No. 6870
KAEMPFER CROWELL
510 West Fourth Street
Carson City, Nevada 89703
Telephone: (775) 884-8300

Attorneys for Appellant, Reza Zandian

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Page

TABLE OF AUTHORITIES ii

OPENING BRIEF 1

STATEMENT OF JURISDICTION 1

ISSUES PRESENTED 2

STATEMENT OF CASE 2

STATEMENT OF FACTS 5

SUMMARY OF THE ARGUMENT 5

ARGUMENT 6

 I. STANDARD OF REVIEW 6

 II. NRS 598.0999(2) DOES NOT PERMIT AN AWARD OF
 ATTORNEYS’ FEES IN A PRIVATE CAUSE OF ACTION 6

 III. THE DISTRICT COURT ABUSED ITS DISCRETION IN
 AUTHORIZING SPECIALIZED FEE RATES FOR
 ROUTINE LEGAL WORK 13

CONCLUSION 16

CERTIFICATE OF COMPLIANCE 17

CERTIFICATE OF SERVICE 19

TABLE OF AUTHORITIES

Page

CASES

Nevada Cases

Albios v. Horizon Cmtys., Inc. 122 Nev. 409, 417, 132 P.3d 1022,
1027-28 (2006) 6

Banks v. Sunrise Hospital, 120 Nev. 822, 102 P.3d 52, 68 (2004) 6

Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) 6

Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals,
114 Nev. 1348, 1354, 971 P.2d 383, 386 (1998).....6, 7

Brunzell v. Golden Gate Nat’l Bank, 85 Nev. 345, 455 P.2d 31 (1969).....13

Butler v. State, 120 Nev. 879, 892-93, 102 P.3d 71 (2004).....10

Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000)10

Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 503, 797
P.2d 946 (1990).....10

Dearden v. Galli, 71 Nev. 199, 284 P.2d 384 (1955).....7

Dixon v. Second Judicial Dist. Ct., 44 Nev. 98, 101, 190 P. 352, 353
(1920).....7

Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994)7

Horgan v. Felton, 123 Nev. 577, 583, 1780 P.3d 982, 986 (2007)7

Mooney v. Newton, 43 Nev. 441, 187 P. 721..... 8

Rowland v. Lepire, 99 Nev. 308, 315, 662 P.2d 1332, 1336 (1983).....7

Smith v. Crown Fin. Servs., 111 Nev. 277, 281, 890 P.2d 769, 771-727

1	<u>Nevada Cases cont'd</u>	<u>Page</u>
2	State, Dep't of Human Resources v. Fowler, 109 Nev. 782, 784, 858	
3	P.2d 375, 376 (1993)).	6
4	Sun Realty v. Dist. Ct., 91 Nev. 774, 776, 542 P.2d 1072, 1074 (1975)	7
5	Zandian v. Margolin, Nevada Supreme Court case number 65205	3
6	Zandian v. Margolin, Nevada Supreme Court case no.65960	3, 15
7		
8	<u>Other State Courts</u>	
9	Miller v. Kehoe, 107 Cal. 340, 40 P. 485	8
10		
11	<u>NEVADA STATUTES</u>	
12	NRS 482 (2001)	12
13	NRS 598.096.....	9
14	NRS 598.0903.....	8, 9, 10
15	NRS 598.0963.....	9
16	NRS 598.0974.....	8
17	NRS 598.0975.....	10, 11
18	NRS 598.0983.....	9
19	NRS 598.0985.....	9
20	NRS 598.0999.....	passim
21		
22		
23	<u>OTHER AUTHORITIES</u>	
24	1 Stuart M. Speiser, Attorneys' Fees §12:3 at 463-64 (1973).....	7

KAEMPFER CROWELL
510 W. Fourth Street
Carson City, Nevada 89703

1 **OPENING BRIEF**

2 COMES NOW, Appellant, REZA ZANDIAN (“ZANDIAN”), by
3 and through his attorneys, KAEMPFER CROWELL, and hereby
4 submits his *Appellant’s Opening Brief* (“*Opening Brief*”) and requests
5 that this Court reverse the *Order on Motion for Order Allowing Costs*
6 *and Necessary Disbursements and Memorandum of Points and*
7 *Authorities in Support Thereof* issued May 19, 2014 by the District
8 Court in this case below.
9

10 **STATEMENT OF JURISDICTION**

11 On May 19, 2014, the First Judicial District Court of the State of
12 Nevada in and for Carson City, the Honorable James T. Russell
13 presiding (“District Court”) issued an *Order on Motion for Order*
14 *Allowing Costs and Necessary Disbursements and Memorandum of*
15 *Points and Authorities in Support Thereof* (“*Order*”) in this case,
16 which constitutes a “special order entered after final judgment.”¹ On
17 May 20, 2014, notice of entry of the *Order* was served by mail upon
18
19
20
21
22

23 ¹ See Joint App. at Vol. IV, 549-58 [hereinafter “J.A.”]; NRAP
24 3A(b)(8).

1 counsel for ZANDIAN.² And on June 23, 2014, ZANDIAN filed his
2 timely *Notice of Appeal* of the Order.³

3 **ISSUES PRESENTED**

4 I. Whether the District Court incorrectly granted a motion
5 ordering post-judgment costs and fees in favor of Respondent,
6 Margolin and against, Appellant, ZANDIAN.
7

8 **STATEMENT OF CASE**

9 On December 11, 2009, Respondent, Jed Margolin
10 (“MARGOLIN”) filed a *Complaint* naming OPTIMA TECHNOLOGY
11 CORPORATION, a California corporation, OPTIMA TECHNOLOGY
12 CORPORATION, a Nevada corporation, and ZANDIAN as
13 Defendants.⁴ MARGOLIN alleged several claims for relief in the
14 original *Complaint*, all of which concerned ownership of four United
15 States patents and allegations of conduct which damaged
16 MARGOLIN’s interest in the patents.⁵ Subsequent to some initial
17 proceedings between December, 2009 and August, 2011,⁶
18
19

20 ² See J.A. at Vol. IV, 559-70.

21 ³ See J.A. at Vol. IV, 581-99; NRAP 4(a)(1).

22 ⁴ See J.A. at Vol. I, 1-10.

23 ⁵ See J.A. at Vol. I, 1-10.

24 ⁶ The proceedings prior to the filing of the *Amended Complaint* are not pertinent to this appeal. For information as to those initial

1 MARGOLIN filed an *Amended Complaint* naming the same
2 Defendants.⁷ The *Amended Complaint* served as MARGOLIN's
3 operative statement of claims for the remainder of the litigation.

4 MAROGLIN's *Amended Complaint* included five claims for
5 relief:

- 6 (1) "Conversion";⁸
- 7 (2) "Tortious Interference With Contract";⁹
- 8 (3) "Intentional Interference with Prospective Economic
9 Advantage";¹⁰
- 10 (4) "Unjust Enrichment";¹¹ and
- 11 (5) "Unfair and Deceptive Trade Practices."¹²

12 On June 24, 2013, MARGOLIN was granted a *Default Judgment*
13 against ZANDIAN on all claims.¹³

14 proceedings, see *Docket Sheet* at 9-10 (Nov. 5, 2014) (*Zandian v.*
15 *Margolin*, Nevada Supreme Court case number 65960).

16 ⁷ See J.A. at Vol. I, 11-18.

17 ⁸ See J.A. at Vol. I, 14-15.

18 ⁹ See J.A. at Vol. I, 15.

19 ¹⁰ See J.A. at Vol. I, 15.

20 ¹¹ See J.A. at Vol. I, 16.

21 ¹² See J.A. at Vol. I, 16.

22 ¹³ See J.A. at Vol. I, 35-37. The *Default Judgment* is the subject of
23 another appeal pending with this Court. See *Zandian v. Margolin*,
24 Nevada Supreme Court case number 65205.

1 Subsequent to the *Default Judgment*, MARGOLIN filed a
2 *Motion for Order Allowing Costs and Necessary Disbursements and*
3 *Memorandum of Points and Authorities in Support Thereof*
4 (“*Motion*”).¹⁴ Among other relief, the *Motion* requested that the
5 District Court award MARGOLIN \$34,632.50 in attorneys’ fees
6 incurred after entry of the *Default Judgment*, from October 18, 2013
7 through April 18, 2014.¹⁵ In response to the *Motion*, ZANDIAN filed
8 *Defendants’ Motion to Retax and Settle Costs*¹⁶ and an *Opposition to*
9 *Motion for Order Allowing Costs and Necessary Disbursements*.¹⁷
10 MARGOLIN filed a *Reply in Support of Motion for Order Allowing*
11 *Costs and Necessary Disbursements and Memorandum of Points*
12 *and Authorities in Support Thereof*¹⁸ and the issue was submitted to
13 the District Court.¹⁹

16 On May 19, 2014, the District Court ruled on the *Motion* and
17 issued its *Order on Motion for Order Allowing Costs and Necessary*
18

19 _____
20 ¹⁴ See J.A. at Vol. III, 411-94.

21 ¹⁵ See J.A. at Vol. III, 415, 419-77.

22 ¹⁶ See J.A. at Vol. III, 495-505.

23 ¹⁷ See J.A. at Vol. IV, 537-45.

24 ¹⁸ See J.A. at Vol. IV, 506-33.

¹⁹ See J.A. at Vol. IV, 546-48.

1 *Disbursements and Memorandum of Points and Authorities in*
2 *Support Thereof.*²⁰ The Order granted MARGOLIN's request for fees,
3 determining that such an award was authorized by NRS
4 598.0999(2).²¹ This appeal followed.²²

5 STATEMENT OF FACTS

6
7 The issue presented in this appeal, whether the District Court
8 properly awarded MARGOLIN attorney's fees under NRS
9 598.0999(2), is legal in nature and does not implicate any facts
10 which are in dispute.

11 SUMMARY OF THE ARGUMENT

12 NRS 598.0999(2) does not authorize an award of fees in
13 litigation between private parties. The District Court's *Order*—which
14 relies exclusively on that provision in making such an award—should
15 be reversed. Further, even if NRS 598.0999(2) did authorize a
16 private attorneys' fee award, the District Court abused its discretion
17 in authorizing a specialized fee rate for general and routine legal
18 work.
19

20 \\\

21
22 ²⁰ See J.A. at Vol. IV, 549-58.

23 ²¹ See J.A. at Vol. IV, 551-52.

24 ²² See J.A. at Vol. IV, 581-640.

ARGUMENT

I. STANDARD OF REVIEW

Usually, a trial court’s decision as to an award of attorneys’ fees is reviewed by this Court for an “abuse of discretion.”²³ However, a court cannot “award attorney fees absent authority under a statute, rule, or contract.”²⁴ And a trial court’s interpretation of statute “presents a question of law, subject to *de novo* review.”²⁵ Thus, when the issue is not whether the district court *should* have awarded fees but, rather, whether the court had statutory discretion *at all* to award attorneys’ fees, the matter is subject to *de novo* review by this Court. That is the threshold question presented in this case.

II. NRS 598.0999(2) does not permit an award of attorneys’ fees in a private action.

Nevada jurisprudence generally follows the “American Rule” which requires that litigants bear their own attorneys’ fees incurred in

²³ See *Bobby Berisini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1354, 971 P.2d 383, 386 (1998) (citing *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993)).

²⁴ *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006) (citing *State, Dep’t of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993)).

²⁵ *Albios*, 122 Nev. at 417, 132 P.3d at 1028 (citing *Banks v. Sunrise Hospital*, 120 Nev. 822, 102 P.3d 52, 68 (2004)).

1 the course of litigation.²⁶ The only exception to application of the
2 American Rule in Nevada occurs when a contract, statute or court
3 rule authorizes an award of attorneys' fees.²⁷ However, because these
4 exceptions are in "derogation of common law," they are "strictly
5 construed."²⁸ Thus, deviations from the American Rule are justified
6 only by an "express"²⁹ statutory provision which establishes the
7 exception in "plain terms."³⁰
8

10 ²⁶ See *Smith v. Crown Fin. Servs.*, 111 Nev. 277, 281, 890 P.2d 769,
11 771-72 ("It has been a consistent rule throughout the United States
12 that a litigant has no inherent right to have his attorneys' fees paid by
13 his opponent or opponents. Such an item is not recoverable in the
14 ordinary case as damages, nor as costs, and hence is held not
15 allowable in the absence of some provision for its allowance either in
16 a statute or rule of court, or some contractual provision or stipulation.
This sweeping general rule has been applied in legions of cases to
preclude recovery of attorneys' fees, whether by the plaintiff or by the
defendant, from one's opponent in a civil action." (quoting 1 Stuart
M. Speiser, *Attorneys' Fees* §12:3 at 463-64 (1973)).

17 ²⁷ See *Horgan v. Felton*, 123 Nev. 577, 583, 1780 P.3d 982, 986
18 (2007) (citing *Rowland v. Lepire*, 99 Nev. 308, 315, 662 P.2d 1332,
1336 (1983)).

19 ²⁸ *Bobby Berosini*, 114 Nev. at 1352, 971 P.2d at 385 (citing *Gibellini*
20 *v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994)).

21 ²⁹ See *Sun Realty v. Dist. Ct.*, 91 Nev. 774, 776, 542 P.2d 1072, 1074
(1975) (citing *Dearden v. Galli*, 71 Nev. 199, 284 P.2d 384 (1955)).

22 ³⁰ *Dixon v. Second Judicial Dist. Ct.*, 44 Nev. 98, 101, 190 P. 352, 353
23 (1920) ("The general rule is that counsel fees are not recoverable by a
24 successful party either in an action at law or in equity except in the
enumerated instances where they are expressly allowed by a statute....
And in the absence of a statute authorizing it in plain terms, no such

1 In this case, it is undisputed that there was no agreement and
2 no rule which authorized an award of attorneys' fees. Rather, a single
3 statutory provision, NRS 598.0999(2), was the basis for
4 MARGOLIN's *Motion* and the District Court's *Order*. In pertinent
5 part, that statute provides:

6 *NRS 598.0999 Civil and criminal penalties for violations.*

7
8

9 2. Except as otherwise provided in NRS 598.0974, in any
10 action brought pursuant to the provisions of NRS 598.0903 to
11 598.0999, inclusive, if the court finds that a person has willfully
12 engaged in a deceptive trade practice, the district attorney of
13 any county in this State or the Attorney General bringing the
14 action may recover a civil penalty not to exceed \$5,000 for each
15 violation. The court in any such action may, in addition to any
16 other relief or reimbursement, award reasonable attorney's fees
17 and costs.³¹

18 This provision does not support the District Court's ruling awarding
19 MARGOLIN post-judgment attorneys fees.

20 First, NRS 598.0999(2) is only triggered by actions "brought
21 pursuant to NRS 598.0903-598.0999."³² Those provisions of Nevada
22 law authorize the commencement of actions by the Nevada Attorney

23 fee can be taxed on appeal." (*citing Mooney v. Newton*, 43 Nev. 441,
24 187 P. 721; *Miller v. Kehoe*, 107 Cal. 340, 40 P. 485)).

³¹ NRS 598.0999(2).

³² *Id.*

1 General³³ and Nevada's district attorneys³⁴ in regard to deceptive
2 trade practices. They do not authorize a private right of action.
3 Therefore, MARGOLIN's action was not "brought pursuant to NRS
4 598.0903-598.0999" and the provision which the *Motion and Order*
5 relied upon does not apply.
6

7 Second, even if NRS 598.0903-598.0999 is deemed to
8 authorize private causes of action, subsection (2) of NRS 598.0999
9 restricts an award of attorneys' fees to only those actions brought by
10 the Attorney General or a district attorney. The penultimate sentence
11 establishes that the Attorney General or district attorney "may
12 recover a civil penalty" up to \$5,000 for a deceptive trade practice.³⁵
13 Then the final sentence of NRS 598.0999 goes on to state, "The court
14 *in any such action* may, in addition to any other relief or
15 reimbursement, award reasonable attorney's fees and costs."³⁶ The
16 language "any such action" clearly refers to the preceding sentence
17 which addresses the recovery of a civil penalty by the Attorney
18 General or district attorney. To read the language otherwise renders
19
20

21 ³³ See NRS 598.096; NRS 598.0963.

22 ³⁴ See NRS 598.0983; 598.0985.

23 ³⁵ NRS 598.0999(2).

24 ³⁶ See *id.* (emphasis added).

1 the words “in any such action” superfluous and removes all meaning
2 provided by the context. Nevada law rejects such an interpretation.³⁷

3 This point—clear enough with even a cursory glance at the plain
4 language—becomes unmistakable when the provision at issue is
5 considered in conjunction with NRS 598.0975. That statute directs
6 the disposition of “all fees, civil penalties and *any other money*
7 collected pursuant to the provisions of NRS 598.0903 to 598.0999,
8 inclusive.”³⁸ Money collected in the course of an action initiated by
9 the Attorney General goes to the State General Fund.³⁹ Money
10 collected in the course of an action initiated by a district attorney goes
11 to the county treasurer.⁴⁰ The only exceptions to the required
12 disposition of funds collected pursuant to NRS 598.0999 are: (1)
13
14
15
16

17 ³⁷ *Butler v. State*, 120 Nev. 879, 892-93, 102 P.3d 71 (2004) (“Statutes
18 should be given their plain meaning and ‘must be construed as a
19 whole and not be read in a way that would render words or phrases
20 superfluous or make a provision nugatory. Further, every word,
21 phrase, and provision of a statute is presumed to have meaning.”
(footnote omitted) (*quoting Charlie Brown Constr. Co. v. Boulder
City*, 106 Nev. 497, 503, 797 P.2d 946 (1990); *overruled on other
grounds, Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259
(2000)).

22 ³⁸ NRS 598.0975(1) (emphasis added).

23 ³⁹ See NRS 598.0975(1)(a).

24 ⁴⁰ See NRS 598.0975(1)(b).

1 criminal fines;⁴¹ and (2) “restitution.”⁴² The first category, criminal
2 fines, is not at issue in this appeal. As to the second, NRS 598.0975
3 directs:

4 Money collected for restitution ordered in such an action *must*
5 be deposited by the Attorney General and credited to the
6 appropriate account of the Attorney General for distribution to
the person for whom the restitution was ordered.⁴³

7 NRS 598.0975 comprehensively addresses money collected pursuant
8 to NRS 598.0999 and directs the disposition of that money. And
9 there is no category of money which flows directly from a judgment
10 debtor, such as ZANDIAN, to a judgment creditor, such as
11 MARGOLIN. This conclusively establishes that NRS 598.0999 does
12 not provide authorization for an award of attorneys’ fees in a private
13 cause of action.
14

15 Third, even if it was applicable to MARGOLIN’s claim in
16 general, the provision does not apply to post-judgment attorneys’ fees
17 which the *Motion* requested and the *Order* granted. Nothing in the
18 language of the provision expresses or implies that it authorizes any
19

20 \\\

21
22 ⁴¹ Presumably, such fines are disbursed in the same manner as other
criminal fines.

23 ⁴² NRS 598.0975(3)(b).

24 ⁴³ *Id.*

1 award subsequent to a judicial adjudication that there has been a
2 violation of Chapter 598 of Nevada Revised Statutes.

3 Fourth, the provision at issue has been the law in Nevada since
4 July 1, 2001.⁴⁴ It has not previously been interpreted by this Court to
5 authorize an award of attorneys' fees to a private litigant like
6 MARGOLIN.
7

8 And, finally, even if the language of NRS 598.0999 could
9 plausibly be stretched to allow for an award of attorneys' fees in
10 private litigation, the award in this case is not consistent with the
11 jurisprudence of this Court. This Court has consistently held that
12 only an "express" authorization evident in the "plain language" of a
13 statutory provision justifies deviation from the American Rule. At a
14 minimum, the language of NRS 598.0999 is ambiguous enough that
15 its application to this case is not "express" or "plain" and, for that
16 reason, the extension of the language to private litigation should be
17 rejected.
18

19 \\\\
20 \\\\
21 \\\\
22 \\\\
23

24 ⁴⁴ See 2001 Stat. of Nev. 482.

1 **III. The District Court abused its discretion in**
2 **authorizing specialized fee rates for routine legal**
3 **work.**⁴⁵

4 As noted hereinabove, the District Court enjoys discretion in
5 determining the amount of a reasonable fee award when such an
6 award is authorized by law. But that discretion is not without
7 restraint. *Brunzell v. Golden Gate Nat'l Bank*⁴⁶ established the
8 framework by which fees are to be evaluated. That *Brunzell*
9 framework involves consideration of several factors in determining
10 the reasonable value of legal services.⁴⁷ One factor, the most
11 pertinent in this case, requires the District Court to consider “*the*
12 *character of the work to be done*: its difficulty, its intricacy, its
13 importance, time and skill required....”⁴⁸

14
15 Most of the legal work during the time frame addressed in the
16 *Motion* was completed by two attorneys for MARGOLIN, both of
17 whom charged at a rate of \$300 per hour.⁴⁹ MARGOLIN claimed that
18

19 ⁴⁵ If the Court determines that NRS 598.0999 does not support the
20 District Court’s award in the *Order*, the issue addressed in this
21 Section III is rendered moot and need not be reviewed.

22 ⁴⁶ 85 Nev. 345, 455 P.2d 31 (1969).

23 ⁴⁷ *See Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33-34.

24 ⁴⁸ *Brunzell*, 85 Nev. at 349, 455 at 33 (emphasis in original).

⁴⁹ *See J.A. Vol. IV* at 553 (“The amount of attorney’s fees awarded
 only includes reasonable attorney’s fees from October 18, 2013 to

1 this elevated hourly rate was necessary due to counsels' experience
2 and specialized skills in regard to "patent and deceptive trade
3 practices litigation" which is a "niche practice that requires a high
4 degree of legal skill and care in order to be performed properly and
5 effectively."⁵⁰ Noting that "the customary fee charged by attorneys
6 with our experience for similar patent and deceptive trade practices
7 matters in Nevada ranges between \$275-\$450 per-hour,"
8 MARGOLIN's counsel argued that the \$300 hourly fee was an
9 appropriate rate for the work performed from October 18, 2013
10 through April 18, 2014.⁵¹

12 While it may very well be the case that an attorney experienced
13 and specialized in patent and intellectual trade practice issues
14 justifies a rate of \$300 per hour, that rate is not consistent with the
15 work at issue here. Subsequent to the *Default Judgment*, there was
16 no need for a specialist as the work entailed only common and
17 generalized legal issues. Specifically, the work of MARGOLIN's
18 counsel from October 2013 to April 2014 involved collection efforts
19
20

21 April 18, 2014, as follows: 11.4 hours of work performed by [Attorney
22 1] at \$300 per-hour (\$3,420.00); [and] 75.3 hours of work performed
23 by [Attorney 2] at \$300 per-hour (\$22,590.00).")

23 ⁵⁰ J.A. at Vol. III, 416, 419-23.

24 ⁵¹ J.A. at Vol. III, 420.

1 toward satisfaction of the *Default Judgment* and oppositions to
2 ZANDIAN's efforts to set aside and stay the *Default Judgment*.⁵² This
3 work does not implicate any need for a legal specialist—and certainly
4 not a specialist in such a highly technical field as patent and trade
5 practice law. While MARGOLIN has every right to employ and to pay
6 for the services of whomever he wishes to perform work related
7 to his case, the work at issue in regard to the District Court's *Order*
8 simply did not require that. As there is no question a more
9 generalized practitioner with much less experience could have
10 performed the function equally as well, the District Court should have
11 reduced the rate to reflect the non-specialized rate of a general
12 practitioner.
13
14

15 For this reason, the District Court abused its discretion in
16 applying a rate of \$300 per hour for the attorneys involved in this
17 case, and the *Order* should be reversed and remanded on that basis.

18 \\\

19 \\\

20 \\\

21
22
23 ⁵² See J.A. at Vol. I, 44 – Vol. III, 410; *Docket Sheet* at 3-4 (Nov. 5,
24 2014) (*Zandian v. Margolin*, Nevada Supreme Court case number
65960).

1 **CONCLUSION**

2 ZANDIAN respectfully requests that this Court reverse the
3 District Court’s *Order on Motion for Order Allowing Costs and*
4 *Necessary Disbursements and Memorandum of Points and*
5 *Authorities in Support Thereof*, and remand this matter to the
6 District Court for further proceedings consistent with its ruling.
7

8 DATED this 12th day of November, 2014.

9 **KAEMPFER CROWELL**

10
11 BY: 

12 JASON D. WOODBURY
13 Nevada Bar No. 6870
14 510 West Fourth Street
15 Carson City, Nevada 89703
16 Telephone: (775) 884-8300
17 Facsimile: (775) 882-0257
18 Attorneys for *Appellant*,
19 **REZA ZANDIAN**
20
21
22
23
24

KAEMPFER CROWELL
510 W. Fourth Street
Carson City, Nevada 89703

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2003 in 14 point Georgia** font;

or

This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the pasts of the brief exempted by NRAP 32(a)(7)(c), it is either:


Proportionally spaced, has a typeface of 14 points or more and contains 2,539 words; or

Monospaced, has 10.5 fewer characters per inch, and contains ____ words or ____ lines of text; or

Does not exceed ____ pages.

1 3. Finally, I hereby certify that I have read this appellate
2 brief, and to the best of my knowledge, information, and belief, it is
3 not frivolous or interposed for any improper purpose. I further
4 certify that this brief complies with all applicable Nevada Rules of
5 Appellate Procedure, in particular NRAP 28(e)(1), which requires
6 every assertion in the brief regarding matters in the record to be
7 supported by a reference to the page and volume number, if any, of
8 the transcript or appendix where the matter relied on is to be found. I
9 understand that I may be subject to sanctions in the event that the
10 accompanying brief is not in conformity with the requirements of the
11 Nevada Rules of Appellate Procedure.
12

13 DATED this 12th day of November, 2014.
14

15
16 
17 JASON D. WOODBURY
18 Nevada Bar No. 6870
19 KAEMPFER CROWELL
20 510 West Fourth Street
21 Carson City, NV 89703
22
23
24

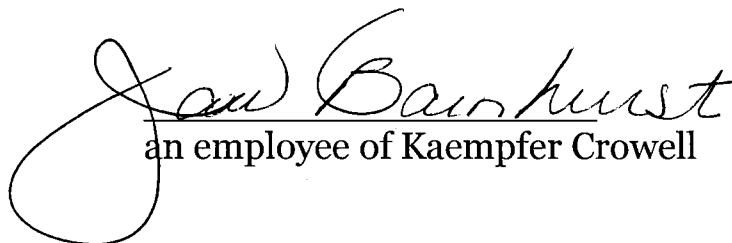
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1), I declare that I am an employee of
Kaempfer Crowell and on this 12th day of November, 2014, I served a
copy of the foregoing *Appellant's Opening Brief* by Nevada Supreme
Court CM/ECF Electronic Filing addressed to each of the following:

Adam P. McMillen
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511

DATED this 12th day of November, 2014.


an employee of Kaempfer Crowell