

**SUMMARY OF NEVADA PUBLISHED OPINIONS**

**CIVIL LAW UPDATE**

**May 2023-Present**

**2024 Nevada District Court Judges Conference**

**April 12, 2024**

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advocacy and mediation

<b>JUDICIAL REVIEW OF ADMINISTRATIVE AGENCIES</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Jorrin v. State of Nevada Employment Security Division, et al.</i> 139 Nev. Adv. Op. 29 534 P.3d 978 (2023)</p>	<p>Filing deadline for PJR</p>	<p>Appeal from a district court order dismissing a petition for judicial review in an administrative law case.</p> <p>Affirmed.</p>	<p>NRCP 6(d)'s three-day mailing rule does not apply to extend the time period for filing a petition for judicial review under NRS 612.530(1) because the statute uses the date the administrative decision becomes final, not the service date, to trigger the time to file a petition, <i>overruling Kame v. Emp't Sec. Dep't</i>, 105 Nev. 22, 769 P.2d 66 (1989) to the extent it holds otherwise.</p>
<p><i>Kassebaum v. State of Nevada Department of Corrections</i> 139 Nev. Adv. Op. 34 535 P.3d 651 (2023)</p>	<p>Procedural requirement for appeal of disciplinary action</p>	<p>Appeal from a district order denying a petition for judicial review of an administrative action.</p> <p>Affirmed.</p>	<p>NAC 285.6562(2)(b), which requires a state employee to attach a copy of a written notification of discipline to an appeal form requesting a hearing to challenge the disciplinary action, is a mandatory claims-processing rule, not a jurisdictional requirement, that nevertheless required dismissal of appeal.</p>
<p><i>Killebrew v. State of Nevada, et al.</i> 139 Nev. Adv. Op. 43 535 P.3d 1167 (2023)</p>	<p>Judicial review of agency action to establish fee schedule</p>	<p>Appeal from a district court order granting summary judgment in a declaratory relief action.</p> <p>Affirmed.</p>	<p>Standard of review when assessing the validity of a regulation under NRS 233B.110 is if it violates constitutional or statutory provisions or exceeds the statutory authority of the agency. Arbitrary and capricious review is not contemplated (rejecting case law that contends otherwise). State Division of Land's use of multiple methodologies to establish fair market value of the use of state land did not exceed its statutory authority. Uniform fee approach was appropriate.</p>

<b>JUDICIAL REVIEW OF ADMINISTRATIVE AGENCIES</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Highroller Transportation, LLC v. Nevada Transportation Authority</i> 139 Nev. Adv. Op. 51 541 P.3d 793 (2023)</p> <p>Court of Appeals</p>	<p>Waiver of arguments not raised in administrative proceedings</p>	<p>Appeal from a district court order granting in part and denying in part a petition for judicial review of an administrative decision by the Nevada Transportation Authority.</p> <p>Affirmed.</p>	<p>A party in a contested case before the Nevada Transportation Authority must raise any arguments at the administrative hearing to preserve those arguments for subsequent review. Moreover, when a party to a contested case stipulates to informally dispose of the case and waive the findings of fact and conclusions of law otherwise required by NRS 233B.125, that party is bound by the terms of the stipulation and may not subsequently challenge the legal or factual underpinnings of the NTA's decision on judicial review.</p>

<b>ARBITRATION</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>El Jen Medical Hospital, Inc. v. Tyler, et al.</i> 139 Nev. Adv. Op. 36 535 P.3d 660 (2023)</p>	<p>Motion to compel arbitration in wrongful death action</p>	<p>Appeal from a district court denying, in part, a motion to compel arbitration in a wrongful death action.</p> <p>Affirmed.</p>	<p>NRS 41.085 creates two separate wrongful death claims: one for the decedent’s heirs and the other for the decedent’s personal representative. Heirs were not bound to an arbitration agreement signed by the decedent – their claims are not derivative. District court correctly declined to compel heirs to arbitration.</p>
<p><i>RUAG Ammotec GMBH v. Archon Firearms, Inc., et al.</i> 139 Nev. Adv. Op. 48 538 P.3d 428 (2023)</p>	<p>Non-signatory’s motion to compel non-signatory to arbitration in contract action</p>	<p>Appeal from district court orders denying motions to compel arbitration.</p> <p>Reversed and remanded.</p>	<p>Nonsignatory to a contract containing an arbitration provision can only compel another nonsignatory to arbitrate by demonstrating the right to enforce the contract and that compelling the other nonsignatory to arbitration is warranted under one of the five theories outlined in <i>Truck Insurance Exchange v. Palmer J. Swanson, Inc.</i>, 124 Nev. 629, 189 P.3d 656 (2008): (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel.</p> <p>To do so based on estoppel, the claims must (1) rely on, arise out of or directly relate to the terms of the written agreement containing the arbitration provision or (2) involve allegations of substantially interdependent and concerted misconduct by both the nonsignatory seeking to compel arbitration and one or more of the signatories in connection with the contract obligations</p>

<b>CIVIL PROCEDURE</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<i>Pepper v. C.R. England, et al.</i> 139 Nev. Adv. Op. 11 528 P.3d 587 (2023)	Forum Non Conveniens	Appeal from a district court order dismissing a complaint for forum non conveniens.  Reversed and remanded.	A sister-state resident should be treated as a “foreign” plaintiff for the purposes of a forum non conveniens analysis and therefore afforded less deference in their choice of forum unless they can prove Nevada is a convenient forum by showing bona fide connections to the state.  District court abused its discretion in granting a motion to dismiss complaint based on forum non conveniens because it did not include a supporting affidavit.
<i>Sabater v. Razmy</i> 139 Nev. Adv. Op. 50 538 P.3d 1145 (2023)	Extension of Time for Service of Process	Appeal from a district court order dismissing a tort action for failure to timely effect service of process.  Affirmed.	When a plaintiff fails to demonstrate good cause for failing to seek an extension of time to serve the summons and complaint within the 120-day period set forth in NRCP 4(e), the district court may deny an untimely motion for an extension of time.  A motion to dismiss for failure to timely serve may be filed at any time, so long as a default has not been entered and defendant did not file an answer.

<b>CIVIL PROCEDURE</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Blige v. Terry</i> 139 Nev. Adv. Op. 60 540 P.3d 421 (2023)</p>	<p>Default Judgment</p> <p>Evidentiary rulings</p>	<p>Appeal from a district court amended default judgment in a tort action.</p> <p>Affirmed.</p>	<p>Defaulting party cannot be found to have impliedly consented to try claims that were not pleaded in the complaint. District court could not amend the pleadings to conform to the evidence per NRCP 15(b)(2) at a damages prove-up hearing to allow plaintiff to recover damages for an unpled claim.</p> <p>Case also addresses authentication of text messages, best evidence rule, cryptocurrency valuation, and conversion (demand for return of property not required)</p>
<p><i>Willard v. Berry-Hinckley Industries, et al.</i> 139 Nev. Adv. Op. 52 539 P.3d 250 (2023)</p>	<p>Relief from judgment</p>	<p>Consolidated appeals from district court orders denying NRCP 60(b) relief.</p> <p>Affirmed.</p>	<p>An order of dismissal does not apply “prospectively” within the meaning of NRCP 60(b)(5) to allow setting aside the judgment as “no longer equitable.”</p> <p>Because plaintiff could, and did, seek relief under NRCP 60(b)(1), he could not also seek relief pursuant to 60(b)(6) because the two subsections are mutually exclusive</p>

<b>REAL PROPERTY</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<i>Wishengrad v. Carrington Mortgage Services, et al.</i> 139 Nev. Adv. Op. 13 529 P.3d 880 (2023)	Foreclosure under terms of HELOC	Appeal from district court orders granting summary judgment and a motion to dismiss in a home foreclosure dispute.  Affirmed.	A home equity line of credit with a defined maturity and closed draw period may be classified as a negotiable instrument as well as a promissory note, as it involves an unconditional promise to pay a fixed amount of money rather than a revolving line of credit.  A property held in the name of its residents' trust is owner-occupied for the purposes of NRS 107.015(6) and NRS 40.437(12)(c).
<i>Federal Housing Finance Agency v. Saticoy Bay LLC</i> 139 Nev. Adv. Op. 15 531 P.3d 1232 (2023)	Jurisdiction over series LLCs	Certified question under NRAP 5 concerning jurisdiction over series LLCs.  Certified question answered.	A court does not obtain jurisdiction over a series LLC created pursuant to NRS 86.296 if only the master LLC is named as a party. Instead, provided the series LLC has observed the corporate formalities in NRS 86.296(3), the individual series LLC must be sued in its own name in order for a court to obtain jurisdiction over it.
<i>LV Debt Collect, LLC v. The Bank of New York Mellon, et al.</i> 139 Nev. Adv. Op. 25 534 P.3d 693 (2023)	Presumptive discharge of lien	Appeal from a district court order granting a motion for summary judgment in an action to quiet title.  Affirmed.	The recording of a notice of default does not render a debt "wholly due" for conclusive presumption of discharge under NRS 106.240 even where the recorded notice declares all sums secured by the deed of trust immediately due and payable. Additionally, the foreclosure by the HOA for unpaid dues was in violation of a bankruptcy stay and void, so the sale to a purported bona fide purchaser was also void.

<b>REAL PROPERTY</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<i>Posner v. U.S. Bank</i> , 140 Nev. Adv. Op. 22 (2024)	Presumptive discharge of lien - judicial foreclosure	Appeal from a district court order denying a motion for a preliminary injunction in an action to quiet title.  Affirmed	Instituting judicial foreclosure proceedings does not trigger 10-year time frame in NRS 106.240 in which mortgage lien is discharged. When the debt becomes wholly due is determined by the terms of the deed of trust.
<i>Deutsche Bank National Trust Company v. Fidelity National Trust Insurance Company</i> 139 Nev. Adv. Op. 45 536 P.3d 915 (2023)	Claim on title insurance policy after HOA foreclosure	Appeal from a district court order granting a motion to dismiss, certified as final under NRCP 54(b), in an insurance matter.  Affirmed	Where superpriority HOA assessment lien that extinguished the insured's deed of trust arose post-policy, the post-policy enforcement of lien did not come within title policy coverage, even though pre-policy CC&Rs gave HOA right to attach and enforce lien
<i>Holland v. Anthony L. Barney, Ltd.</i> 139 Nev. Adv. Op. 49 540 P.3d 1074 (2023)  Court of Appeals		Appeal from a district court order granting summary judgment in a fraudulent transfer action.  Reversed and remanded	An equitable lien placed on a property to satisfy a debt permits a lienholder to enforce the value of the equitable lien even where the property has been subsequently transferred to a non-debtor spouse during divorce proceedings and has preclusive effect on the parties and in subsequent legal proceedings.



<b>REAL PROPERTY</b>			
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<i>Abbott v. City of Henderson</i> 140 Nev. Adv. Op. 3 542 P.3d 10 (2024)	Recreational Use Statute	Appeal from a district court summary judgment in a negligence action.  Affirmed.	NRS 41.510 applies to a city park, recognizing that <i>Boland v. Nevada Rock &amp; Sand Co.</i> , 111 Nev. 608, 611, 894 P.2d 988, 990 (1995), has been superseded by statute. List of activities in statute is non-exhaustive and walking and assisting child in a playground is a recreational activity. “willful conduct with respect to the baseline condition necessary for injury is not the same as willful failure to guard against the hazard.” It “requires a design to inflict injury.”

<b>TORTS</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Taylor v. Keith Brills, M.D., et al.</i> 139 Nev. Adv. Op. 56 539 P.3d 1188 (2023)</p>	<p>Medical malpractice</p>	<p>Appeals from a judgment following a jury verdict in a medical malpractice action, a post-judgment order granting in part and denying in part a motion to retax and settle costs, and a post-judgment order denying attorney fees.</p> <p>Reversed and remanded.</p>	<p>Neither assumption-of-the-risk defense nor evidence of informed consent is proper in a medical malpractice action where the plaintiff's consent is uncontested.</p> <p>Evidence of a procedure's risks must fall within NRS 41A.100(1) (standard of care and medical causation), and courts must analyze on case-by-case basis whether the evidence should still be excluded because its potential to confuse the jury substantially outweighs its probative value</p> <p>Expert testimony to show that the billing amounts of medical damages are reasonable and customary is not required when other evidence demonstrates reasonableness.</p> <p>NRS 42.021(1) contemplates evidence only of actual benefits paid to the plaintiff by collateral sources. Because insurance write-downs do not create any payable benefit to the plaintiff, they are inadmissible under NRS 42.021(1).</p> <p>Asking the jury in closing argument "to send a message" is not prohibited "so long as the attorney is not asking the jury to ignore the evidence."</p>

<b>TORTS</b>			
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<p><i>Valley Health System, LLC v. Murray, et al.</i> 140 Nev. Adv. Op. 14</p>	<p>Breach of fiduciary duty claim in the context of medical negligence</p>	<p>Consolidated appeals from a district court judgment pursuant to a jury verdict and orders awarding attorney fees and costs in a medical malpractice action.</p> <p>Affirmed in part, reversed in part, vacated in part, and remanded.</p>	<p>Hospitals do not owe a fiduciary duty to patients in connection with medical treatment. District court had to apply NRS Chapter 41A’s damages cap to the award of noneconomic compensatory damages.</p> <p>Claim is duplicative because it is one of medical malpractice.</p> <p>Prejudgment interest cannot be awarded on future damages.</p>
<p><i>Engelson v. Dignity Health, et al.</i> 139 Nev. Adv. Op. 58 542 P.3d 430 (2023)</p> <p>Court of Appeals</p>	<p>Statute of limitations in professional negligence action</p> <p>Wrongful death</p>	<p>Appeal from a district court order granting motions to dismiss in a professional negligence action.</p> <p>Reversed and remanded.</p>	<p>Accrual date for discovery of injury ordinarily is a fact question for the jury. Only when evidence “irrefutably demonstrates” accrual date may a district court make the determination as a matter of law.</p> <p>District court did not have irrefutable evidence that decedent or estate administrator were in possession of medical records prior to her death or on inquiry notice prior to her death that the care decedent legal injury (i.e. damage and negligence).</p> <p>An affidavit of merit need not opine as to the element of causation to support a professional negligence-based wrongful death claim under NRS 41A.071.</p>

<b>TORTS</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
			<p>Arguments for made for the first time in a motion for reconsideration that a district court considers and decides can be considered on appeal.</p> <p>Exhibits attached to complaint and legal authorities attached to motion to dismiss briefing do not convert motion to summary judgment.</p>
<p><i>Igtiben, M.D. v. Eighth Judicial District Court and Smith, et al.</i> 140 Nev. Adv. Op. 9</p> <p>Court of Appeals</p>	<p>Professional negligence and wrongful death</p>	<p>Original petition for a writ of mandamus challenging a district court order denying a motion to dismiss a complaint in a professional negligence and wrongful death action.</p> <p>Petition granted.</p>	<p>Once plaintiff or plaintiff's representative receive all necessary medical records documenting the relevant treatment and care at issue, inquiry notice of a claim for professional negligence and wrongful death under NRS 41A.097(2) commences.</p>
<p><i>Sunrise Hospital and Medical Center, LLC v. Eighth Judicial District Court and Grace</i> 140 Nev. Adv. Op. 12</p>	<p>Privilege created by the federal Patient Safety and Quality Improvement Act of 2005 (PSQIA), 42 U.S.C. §§ 299b-21-299b-26</p>	<p>Original petition for a writ of prohibition challenging a district court order compelling discovery.</p> <p>Petition granted.</p>	<p>The PSQIA provides that "patient safety work product shall be privileged and shall not be . . . subject to discovery . . . [or] admitted as evidence in any Federal, State, or local governmental civil proceeding." 42 U.S.C. §§ 2994-22(a)(2), (4).</p> <p>Patient safety work product comes in two categories: identifiable and nonidentifiable.</p>

<b>TORTS</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
			<p>Nonidentifiable patient safety work product may be voluntarily disclosed, and when it is, it is exempted from privilege.</p> <p>None of the statutory exceptions for identifiable patient safety work product applied. District court incorrectly found a waiver of the privilege outside those listed in statute.</p> <p>District court incorrectly interpreted regulation to mean that patient safety work product disclosed permissibly shall not remain privileged.</p> <p>PSQIA privilege cannot be waived. The only factors bearing on whether identifiable patient safety work product may be privileged under the PSQIA are (1) whether the materials were created for the purpose of reporting to a patient safety organization and (2) whether they were so reported. If they are so privileged, then courts must consider whether one of the exceptions made explicit by 42 C.F.R. § 3.204(b) applies.</p>

<b>CONTRACT</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Lucky Lucy D LLD v. LGS Casino LLC, et al.</i> 139 Nev. Adv. Op. 26 534 P.3d 689 (2023)</p>	<p>Non-performance due to COVID restrictions</p>	<p>Consolidated appeals from district court orders on motions for summary judgment and a post-judgment award of attorney fees and costs in a contract action.</p> <p>Affirmed in part and reversed in part.</p>	<p>Seller Lucky Lucy did not materially breach its contractual obligation to buyer LGS to maintain its property and conduct its business in the manner generally consistent with which it had maintained the property and business when it temporarily closed during the COVID-19 pandemic. Nevada’s governor ordered casinos to temporarily close and Lucky Lucy was required to comply with that directive. Similarly, LGS did not breach when it was unable to obtain the necessary gaming licenses when the pandemic delayed issuance of those licenses.</p>
<p><i>Starr Surplus Lines Insurance v. Eighth Judicial District Court and JGB Vegas Retail Lessee, LLC</i> 139 Nev. Adv. Op. 32 535 P.3d 254 (2023)</p>	<p>Insurance contract</p>	<p>Original petition for a writ of mandamus or prohibition challenging a district court order denying a motion for summary judgment in an insurance action.</p> <p>Petition granted.</p>	<p>Plaintiff, which owns and operates a retail shopping mall, filed a claim with its insurance company seeking coverage for lost business income, extra expenses, and other applicable coverage stemming from losses incurred during COVID-19. Supreme Court a reversed the lower court’s denial of summary judgment, holding that the commercial property insurance policy did not provide coverage for the economic losses plaintiff suffered because it did not constitute “direct physical loss or damage” covered under the policy.</p>

<b>CONTRACT</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Tough Turtle Turf, LLC v. Scott, et al.</i> 139 Nev. Adv. Op. 47 537 P.3d 883 (2023)</p>	<p>Unconscionable non-compete provision</p>	<p>Appeal from a district court order denying a preliminary injunction.</p> <p>Reversed and remanded with instructions.</p>	<p>Non-compete clause was not procedurally unconscionable. Employees had meaningful opportunity to review employment agreement even though document was one of many attached to an email. Merger of non-compete covenant into preceding paragraph was not sufficiently procedurally unconscionable to invalidate it without an additional showing of substantive unconscionability.</p>

<b>ANTI-SLAPP</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Panik v. TMM, Inc.</i> 139 Nev. Adv. Op. 53 538 P.3d 1149 (2023)</p>	<p>Anti-SLAPP statutes</p>	<p>Appeal from a district court order denying an anti-SLAPP special motion to dismiss.</p> <p>Reversed and remanded.</p>	<p>Nevada’s anti-SLAPP statute does not preclude particular claims for relief but instead applies to any communication that qualifies as a statutorily protected communication under NRS 41.660 irrespective of the claim for relief asserted as to that communication.</p> <p>For first prong, district court should look at statements that give rise to the claims, not the claims themselves.</p> <p>For second prong, relevant inquiry is not whether the plaintiff can establish a genuine issue of material fact but whether the plaintiff can produce prima facie evidence in support of its claims.</p> <p>Case involved third-party complaint asserting claims for trade libel, misappropriation of trade secrets, conversion; injunctive relief, abuse of process, and alter ego liability.</p>



<b>ANTI-SLAPP</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<i>Clark County v. 6635 W Oquendo LLC</i> 140 Nev. Adv. Op. 15		Appeal from a district court order denying an anti-SLAPP special motion to dismiss.  Affirmed.	A governmental entity is not a "person" within the language of NRS 41.660 entitled to bring an anti-SLAPP motion, referring to NRS 0.039, which says, "[person] does not include a government, governmental agency or political subdivision of a government."
<i>Wynn v. The Associated Press, et al.</i> 140 Nev. Adv. Op. 6 542 P.3d 751 (2024)	Anti-SLAPP in defamation case brought by public figure	Appeal from a district court order granting an anti-SLAPP special motion to dismiss.  Affirmed.	Two-prong framework laid out in NRS 41.660(3). Prong 1: court must "determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a).  If the moving party makes this initial showing, the burden shifts to the plaintiff under Prong 2 to show "with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b).  Under the second prong, a public figure defamation plaintiff must provide sufficient evidence for a jury, by clear and convincing evidence, to reasonably infer that the publication was made with actual malice.

<b>FEE AWARDS</b>			
<b>CASE NAME</b>	<b>TOPIC</b>	<b>POSTURE</b>	<b>SUMMARY</b>
<p><i>Aguilar v. Lucky Cab Co., et al.</i> 140 Nev. Adv. Op. 1 540 P.3d 1064 (2024)</p>	<p>Offers of judgment</p>	<p>Consolidated appeals from district court orders dismissing a complaint with prejudice and denying costs and interest.</p> <p>Reversed and remanded with instructions.</p>	<p>When offeror conveys an offer that is exclusive of allowances such as costs, expenses, interest, and attorney fees, the offeror promises to pay any such recoverable amounts separately from the offer amount. As a result, offeror cannot obtain dismissal of the complaint per NRCP 68(d)(2) unless the offeror pays both the offer amount and any additional allowances.</p> <p>“In this unique context [of NRCP 68 dismissal], acceptance of an offer effectively renders the offeree a prevailing party” entitled to fees and costs. “[W]e remind offerors that the language they choose to use in their offer of judgment is critical to both NRCP 68(g)'s penalty stage and NRCP 68(d)'s dismissal stage.”</p>
<p><i>Lamont’s Wild West Buffalo, LLC v. Nathaniel Terry</i> 140 Nev. Adv. Op. 11</p>	<p>Fees as sanctions under NRCP 11, NRS 18.010(2)(b) and NRS 7.085</p>	<p>Appeal from a district court order denying a motion for attorney fees as sanctions.</p> <p>Affirmed in part, reversed in part, and remanded with instructions.</p>	<p>Although district court properly denied NRCP 11 motion for sanctions for failure to comply with safe-harbor requirements, the district court erred by denying attorney fees under NRS 18.010(2)(b) and NRS 7.085 for the same perceived procedural flaw, as the NRCP 11 procedural requirements do not apply to awards under those statutes.</p>