

1 Father did not use his Motion to Compel as a vehicle to request leave to conduct post-
2 judgment discovery.

3 Father also argues that his legal contentions in his Motion to Compel and his
4 Opposition to Mother's Motion to Quash were zealous and creative, and that this Court
5 should be wary of chilling creative arguments. In its Order denying Father's Motion to
6 Compel and granting Mother's Motion to Quash, this Court noted that Father had not
7 requested leave to conduct post-decree discovery and that for that reason alone the Court
8 could deny his requests. However, the Court went on to address the fact that Father had
9 failed to overcome the privileged nature of that information.

10 Father's failure to request leave to conduct discovery was not "creative," but rather
11 a violation of NRCP 16.21's clear language. Additionally, the majority of his other
12 arguments were without merit. Father argued that because NRS 125.480 makes the
13 mental and physical health of the parents a factor in a custody determination, he should
14 be entitled to Mother's mental health records. Father utterly failed to address the
15 privileged nature of such records in his Motion to Compel. Additionally, the Court noted
16 that if the Legislature had intended for child custody proceedings to create an exception
17 to the privilege, they would have done so.

18 Father did not address the privileged nature of Mother's mental health records
19 until his Opposition to Mother's Motion to Quash. Therein, he argued that Mother's
20 privilege was overcome by NRS 49.213, because this case involves "abuse or neglect of a
21 person with a disability or a person who is legally incompetent." Father cited NRS
22 432B.140 for the definition of negligent treatment. This case is a child custody case and
23 not an action brought pursuant to NRS Chapter 432B.

24 The Court is not attempting to punish Father for creative and zealous arguments.
25 Rather, Father has demonstrated that he can research and clearly cite statutory language
26 and Court rules in his documents filed with this Court. However, despite having
27 knowledge of the requirement that he should file a request to conduct post-judgment
28 discovery, Father instead proceeded with his demands, and opposed Mother's request to
quash the subpoena.

1 The Court might not be inclined to impose Rule 11 sanctions simply for this failure
2 on Father's part. Father is self-represented, and it does not appear that Father believed
3 his arguments were frivolous. However, in its November 27, 2012, Order addressing the
4 discovery disputes, this Court made clear that Father was without leave of this Court to
5 conduct post-decree discovery. Yet, on December 10, 2012, Father filed a Motion for
6 Order to Show Cause against Coral Academy for failure to comply with a Subpoena
7 Duces Tecum and simultaneously filed a Motion for Order Shortening Time for the
8 Academy to respond. Father was made aware on November 27, 2012, that he should not
9 conduct post-decree discovery and was without leave of this Court to do so, and yet he
10 continued to do so by attempting to enforce a Subpoena Duces Tecum against Coral
11 Academy.

12 Father's attempts to engage in post-decree discovery in this matter have been
13 without leave of the Court, as clearly required by NRCP 16.21. Therefore, his Motion to
14 Compel and his Opposition to Mother's Motion to Quash were not warranted by existing
15 law or by a nonfrivolous argument for the extension, modification, or reversal of existing
16 law or the establishment of new law. Father has violated NRCP 11(b)(2).

17 NRCP 11(c)(2) states:

18 A sanction imposed for violation of this rule shall be limited to what is
19 sufficient to deter repetition of such conduct or comparable conduct by
20 others similarly situated. Subject to the limitations in subparagraphs (A) and
21 (B), the sanction may consist of, or include, directives of a nonmonetary
22 nature, an order to pay a penalty into court, or, if imposed on motion and
23 warranted for effective deterrence, an order directing payment to the movant
of some or all of the reasonable attorney's fees and other expenses incurred
as a direct result of the violation.

24 The Court finds that reasonable attorney's fees incurred as a direct result of the
25 violation are an appropriate sanction which might provide effective deterrence.

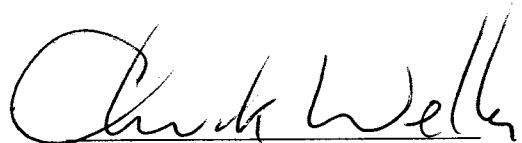
26 This Court has discretion to determine a reasonable fee in this case pursuant to
27 NRCP 11(c)(2). In exercising its discretion, the Court must evaluate the factors outlined
28 in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Those factors
include: (1) the qualities of the advocate (his ability, training, education, experience,

1 professional standing and skill); (2) the character of the work to be done (its difficulty, its
2 intricacy, its importance, time and skill required, the responsibility imposed and the
3 prominence and character of the parties where they affect the importance of the
4 litigation); (3) the work actually performed by the lawyer (the skill, time and attention
5 given to the work); and, (4) the result (whether the attorney was successful and what
6 benefits were derived). *Id.* at 349, 455 P.2d at 33.

7 Though counsel for Mother provided copies of her billing statements, she did not
8 file an Affidavit detailing all of the *Brunzell* factors. Counsel for Mother's Affidavit states
9 the work she did in connection with this matter and states her billable rate. However,
10 counsel for Mother must file and submit her Affidavit under *Brunzell* detailing all of the
11 factors. Thereafter, the Court will evaluate the reasonableness of the fees requested by
12 Mother.

13 **IT IS HEREBY ORDERED**

14 Dated: January 2, 2013.

15
16 
17 District Court Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of JUDGE CHUCK WELLER, and that I deposited for mailing at Reno, Nevada, a true copy of the attached document, addressed to:

Alexander Falconi
[REDACTED]

I further certify that that I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Kathrine Berning, Esq.

Dated this 2nd Day of January, ~~2012~~ 2013.

Blake
ADMINISTRATIVE ASSISTANT