

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRUCE HARRISON BIRCH,  
Appellant,  
vs.  
STATE BAR OF NEVADA,  
Respondent.

No. 72160

**FILED**

AUG 08 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Bruce Harrison Birch appeals from a district court order dismissing a petition for a writ of mandamus concerning attorney disciplinary records. Eighth Judicial District Court, Clark County; Nancy L. Alf, Judge.

Birch filed a petition for a writ of mandamus, seeking an order directing respondent, the State Bar of Nevada, to release certain information regarding grievances that it had received against attorney Robert Bruce Lindsay. For support, Birch cited the Nevada Public Records Act (NPR A), which requires governmental entities to make records available to the public for inspection unless they are otherwise declared confidential. NRS 239.010(1).<sup>1</sup> The State Bar moved to dismiss Birch's complaint under NRCP 12(b)(5), arguing that the NPR A did not apply to its disciplinary records based on separation of powers principles. Alternatively, the State Bar sought dismissal even if the NPR A applied, asserting that Birch did not show that the records he sought were public

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<sup>1</sup>We cite to the current version of NRS 239.010(1), which has been amended numerous times since Birch filed his petition, as those amendments do not affect the outcome of this appeal.

under SCR 121, which governs the confidentiality of the State Bar's disciplinary records. The district court ultimately granted the State Bar's motion, finding that the NPRA did not apply to its disciplinary records. This appeal followed.

Having reviewed Birch's informal brief and the record on appeal, we conclude that the district court's decisions should be affirmed, albeit for a reason somewhat different than the one identified by the district court. *See Deja Vu Showgirls of Las Vegas v. State, Dep't of Taxation*, 130 Nev. \_\_\_, \_\_\_ n.4, 334 P.3d 387, 390 n.4 (2014) (affirming the district court's decision for a reason other than the one relied on by the district court). In particular, while Birch argues the information he sought was subject to disclosure because the associated records were public under SCR 121, he failed to provide any documents or other materials demonstrating that he actually submitted a request for the information to the State Bar or that the State Bar denied such a request. Thus, even if we were to assume that the NPRA applied here,<sup>2</sup> without any documents supporting his petition, Birch has not demonstrated that he actually requested, and was denied, information that is publicly available under SCR 121. Indeed, he has failed to demonstrate that he actually requested any information from the State Bar or that any such request was denied.


Under these circumstances, Birch failed to satisfy his burden of establishing that he was entitled to extraordinary writ relief. *Cf. Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004)

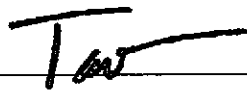
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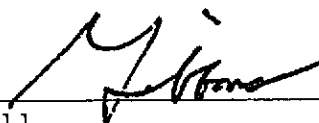
<sup>2</sup>In light of the basis for our disposition of this appeal, we do not address the applicability of the NPRA to the State Bar. *See Miller v. Burk*, 124 Nev. 579, 588-89, 188 P.3d 1112, 1118-19 (2008) (recognizing that appellate courts will not resolve constitutional questions that are unnecessary to the disposition of an appeal).

(concluding, in resolving a petition for writ relief filed in the supreme court, that petitioners have the burden of demonstrating extraordinary relief is warranted and that, when "essential information is left out of the petition and accompanying documentation," courts have no way of properly evaluating the petition). And we therefore conclude that the district court did not abuse its discretion in dismissing Birch's petition for mandamus relief. *See Reno Newspapers, Inc. v. Haley*, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010) (stating that appellate courts review district courts' decisions to grant or deny writ petitions for an abuse of discretion). Accordingly, we affirm that decision.

It is so ORDERED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Nancy L. Allf, District Judge  
Bruce Harrison Birch  
Parsons Behle & Latimer/Reno  
Eighth District Court Clerk

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<sup>3</sup>Given our resolution of this matter, we deny as moot Birch's request for a transcript of the December 14, 2016, hearing before the district court.