

CHRIS DEROSE, CLERK
BY _____ DEP
H. Gearhart
H. GEARHART, FILED

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1 R. L. Whitmer
2 6333 N. Scottsdale Rd.
3 Casita 21
4 Scottsdale, Arizona 85250
5 602.531.2615

6 Pro Per

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 R. L. WHITMER,
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Petitioner.

CV2016-055080

**REPLY IN SUPPORT OF
PETITIONER'S REQUEST FOR
AN ORDER TO COMPEL THE
PRODUCTION OF DOCUMENTS
AND SCHEDULING OF
DEPOSITIONS**

(Assigned to the Honorable
Cynthia Bailey)

Accelerated Consideration
Requested

11 v.
12 HILTON CASITAS HOMEOWNERS
13 ASSOCIATION, also known as
14 HILTON CASITAS COUNCIL OF
15 HOMEOWNERS, also known as
16 COUNCIL OF CO-OWNERS, also
17 known as HILTON CASITAS
18 COUNCIL OF CO-OWNERS; and
19 MICHAEL BENGSON, as President of
20 the named Respondent
21 Respondents.

22 The request before the Court is one of scheduling and does not involve a
23 dispute on whether the requested documents are discoverable. Mr. Shaw's, the
24 HOA's general counsel, only issue is whether he as an officer of the HOA can be
25 noticed to be deposed regarding non-attorney-client privileged legal expenses of
26 the HOA. "[I]nformation as the identity of the client, the amount of the fee, the
27 identification of payment by case file name, the general purpose of the work
28 performed, and whether an attorney coached a client on his testimony" are not
protected by the attorney-client privilege. *United States v. Bauer*, 132 F.3d 504,
509 (9th Cir.1997). "Information regarding the payment of fees is nor privileged."

1 **Gerald B. Lefcourt P.C. v. United States** 125 F.3d 79, 86 (2d Cir. 1997).

2 The HOA's general counsel's reluctance to be questioned on the 2017 legal
3 expenses is understandable as his deposition will contradict the Respondents'
4 2017 compliance defense in this proceeding.

5 It is within the Court's discretion whether to grant the order and to remain
6 within the schedule, or have parties engage in costly and time-consuming process
7 which will delay and expanded the schedule. The HOA general counsel's
8 misconduct during the deposition of Mr. Bengson, the HOA president, interrupting
9 the questioning, citing rules without providing copies of the rules to support his
10 position, and specifically misciting Rule 30(b)6 as a basis for Mr. Bengson not to
11 answer questions, resulted in cutting short the Bengson deposition and the HOA's
12 general counsel stipulating to additional deposition.

13 Accordingly, the Petitioner respectfully requests that the Court grant and
14 enter the requested order.

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16 Dated this 22nd day of January 2019.

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20 R. L. Whitmer

21 COPY handed directly to Mr. Shaw
22 on this 22nd day of January 2019:

23 Augustus Shaw
24 Shaw & Lines Law Firm
25 4523 E. Broadway Rd.
26 Phoenix, AZ 85040
27
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