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In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 KENNETH SCOTT COLEY aka KING
COLEY,

CASE NO. 96C137946
DEPT. XXV

12 Petitioner,

13 vs.

14 NEVADA DEPARTMENT OF PUBLIC
15 SAFETY, DIVISION OF PAROLE AND
PROBATION; DOES I-X; and ROE ENTITIES
16 I-X, inclusive,

17 Respondents.

18 PETITION FOR WRIT OF MANDAMUS

19
20 Petitioner Kenneth Scott Coley ("Ken"), by and through his counsel, the law firm of
21 Gordon Silver in conjunction with the Legal Aid Of Southern Nevada Pro Bono Project, hereby
22 requests this Court enter a Writ of Mandamus to compel, the Nevada Department of Public
23 Safety, Division of Parole and Probation (the "Division"), to comply with Section 16 of Chapter
24 476 of the 2005 Statutes of Nevada, and pursuant to its terms, grant Ken's application for request
25 of change of discharge from dishonorable to honorable.

26 This Petition is supported by the concurrently filed Memorandum of Points and
27 Authorities; and the Declaration of Paola M. Armeni, Esq. (the "Armeni Declaration"), attached
28 hereto as **Exhibit 1**.

1 Ken further requests that this Court entertain oral argument for consideration of this
2 Petition.

3 Dated this 5th day of February, 2015.

4 GORDON SILVER

5 

6 PAOLA M. ARMENI
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12 Tel: (702) 796-5555
13 *Attorneys for Petitioner Kenneth Scott Coley*
14 *In conjunction with Legal Aid Center of*
15 *Southern Nevada Pro Bono Project*

16 **NOTICE OF HEARING**

17 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
18 above and foregoing Petition for Writ of Mandamus on for hearing before this Court on the
19 _____ day of February, 2015 at the hour of _____ .m. of said day, or as
20 soon thereafter as counsel can be heard in Department No. XXV.

21 Dated this 5th day of February, 2015.

22 GORDON SILVER

23 

24 PAOLA M. ARMENI
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The need for the filing of this writ arises from the wrongful denial by the Division of
4 Ken's application to change his discharge status from dishonorable to honorable. Ken has had a
5 trouble free life for many years. He continues to work to better himself, and in furtherance of
6 that pursuit, recently sought to seal his criminal records. However, a dishonorable discharge
7 from probation in 1996 remains an on-going barrier to that effort.

8 Upon Ken's request to change his dishonorable discharge to an honorable discharge, the
9 Division improperly determined that Ken was not qualified for reconsideration of his discharge
10 status designation for the very reason he was dishonorably discharged in the first place, i.e. his
11 failure to successfully complete community service. The only actual disqualifying factors the
12 Division could or should have applied, i.e. that the applicant committed a new crime; absconded;
13 or committed a violent act or a threat to public safety while on probation, are not applicable to
14 Ken by the Division's own admission. Because Ken has no other plain, speedy and adequate
15 remedy at law to correct the Division's misapplication of other factors in determining his
16 disqualification from consideration, a writ of mandamus is necessary to compel the Division's
17 compliance.

18 In 2005, the Nevada Legislature passed SB 282, the relevant provisions of which were
19 enacted in the 2005 Statutes of Nevada Chapter 476, Section 16 at pages 2360 – 2361
20 (hereinafter "Section 16"), which allows a person dishonorably discharged from probation to
21 apply to the Division, in accordance with its regulations, for a change to an honorable discharge.
22 In enacting the required implementing regulations, now set forth in NAC 213.720 through NAC
23 213.790, the Division created the application process but did nothing to change, nor indeed could
24 it, the disqualifying factors enumerated by the Legislature. When Ken questioned his subsequent
25 disqualification and denial, however, the Division took the astounding position that Section 16 is
26 not actual law, but instead simply historical text and not binding.

27 For all of these reasons, as more fully set forth below, Ken respectfully requests this
28 Honorable Court grant his petition and issue a writ of mandamus to compel the Division to grant

1 him an honorable discharge without further delay.

2 II. STATEMENT OF FACTS

3 On May 5, 2014, Ken applied to the Division to request his dishonorable discharge be
4 changed to an honorable discharge, pursuant to Section 16. (See S.B. 282, 2005 Leg., 73rd Sess.
5 (NV 2005), a true and correct copy of which is attached hereto as **Exhibit 1-A**). Section 16
6 affords persons who were dishonorably discharged from probation the opportunity to obtain an
7 honorable discharge when certain criteria are met. (See *id.* at § 16).

8 Section 16 provides in pertinent part:

9 1. Notwithstanding any other provision of law, except as otherwise
10 provided in subsection 2, a person who was dishonorably discharged from
11 probation or parole before the effective date of this section, until July 1, 2008,
12 may apply to the Division of Parole and Probation of the Department of Public
13 Safety, in accordance with the regulations adopted by the Division pursuant to the
14 provisions of this section, to request that his dishonorable discharge from
15 probation or parole be changed to an honorable discharge from probation or
16 parole.

17 2. A person who was dishonorably discharged from probation or parole
18 may not apply to change his discharge to an honorable discharge pursuant to this
19 section if his dishonorable discharge was based, in whole or in part, upon:

20 (a) The fact that he committed a new crime, other than a violation
21 of a traffic law for which he was issued a citation, during the period of his
22 probation or parole;

23 (b) The fact that his whereabouts were unknown at the time of his
24 discharge from probation or parole; or

25 (c) Any incident involving his commission of a violent act or an
26 act that threatened public safety during the period of his probation or
27 parole.

28 (*See id.*).

Section 16, subsection 3 required the Division to adopt regulations establishing
guidelines and procedures used to carry out the provisions of Section 16. (*See id.* at § 16(3)). As
set forth in subsection 3, the procedures were to include a mechanism for applicants who have
outstanding financial obligations, in the form of unpaid restitution and/or supervision fees, to
make a good faith effort to satisfy those obligations. (*See id.*). In 2006, the Division adopted the

1 required regulations, later codified in Nevada Administrative Code ("NAC") 213.720 through
2 213.790. (See NAC 213.720 – NAC 213.790, a true and correct copy of which is attached hereto
3 as **Exhibit 1-B**).

4 In 2008, in compliance with Section 16, subsection 5, the Division submitted a Report to
5 the Nevada Legislature detailing (a) the number of persons who applied for a change of
6 discharge status pursuant to the provisions of Section 16; (b) the number of applications granted
7 and denied and the reasons for the denials; (c) the amount of restitution and fees paid as a result
8 of Section 16; and (d) recommendations and conclusions concerning the desirability of extending
9 the application of the provisions of Section 16 beyond the July 1, 2008 expiration date. (See
10 Report from Bernard Curtis, Chief, Dept. of Public Safety to Lorne Malkiewich, Dir., Legislative
11 Counsel Bureau (Dec. 8, 2008), a true and correct copy of which is attached hereto as **Exhibit 1-**
12 **C**). In the Report, the Division concluded, "This regulation, with the possibility of receiving
13 additional restitution due to victims or fees due to the Division, **should be continued**." (See Ex.
14 1-C at p. 2) (emphasis added). Indeed, in practice, the Division continues to consider requests
15 for a change of status pursuant to Section 16 and provides written instructions¹ to potential
16 applicants reflecting its language.

17 Although Ken clearly fits the criteria for a change in discharge status pursuant to Section
18 16, in that his whereabouts were known at the time of his discharge from probation in 1996, he
19 did not commit a new crime, and was not involved in the commission of a violent act or an act
20 that threatened public safety, the Division wrongfully determined Ken did not qualify for
21 consideration. (See Ltr. from Cherie Konvicka, Management Analyst III to Kenneth Coley (June
22 17, 2014), a true and correct copy of which is attached hereto as **Exhibit 1-D**). Specifically, the
23

24 ¹ Upon request, P&P provided Ken with written instructions detailing the application process pursuant to Section 16.
25 Ken relied on and therefore followed those instructions. However, following the denial of his application, and
26 Ken's inquiry to the Division, the Division revised its written instructions, without notice to Ken, to newly reflect its
27 opinion that only those persons who received a dishonorable discharge due to unpaid restitution or supervision fees
28 qualify for a change in status. See "Applying to have your Dishonorable Discharge change to an Honorable
Discharge providing fiscal obligation are met" and "Change of Dishonorable Discharge to Honorable Discharge
Pursuant to SB 282, codified as NAC 213.720," true and correct copies of which are attached hereto as **Exhibits 1-F**
and **Exhibit 1-G** respectively.

1 Division noted that Ken's dishonorable discharge was the result of a failure to successfully
2 complete community service. (*See id.*).

3 As the Division's stated reasons for rejecting Ken's request did not comport with Section
4 16, Ken inquired regarding the apparent misapplication of law. (*See Exhibit 2*). In response, the
5 Division explained that Section 16 is "history" of S.B. 282, as opposed to applicable law. (*See*
6 Email from Cherie Konvicka to Paola Armeni (July 17, 2014), a true and correct copy of which
7 is attached hereto as **Exhibit 1-E**). This is quite an interesting position since the three
8 enumerated disqualifying factors in which the Division rely are only found in Section 16. So it
9 appears the Division is simply picking and choosing when Section 16 is law and when it is
10 simply "history."

11 Further, despite the clear mandate in Section 16 to disqualify only certain categories of
12 persons, it is the Division's opinion that only offenders who were dishonorably discharged for
13 unpaid supervision fees and restitution qualify for a change of status. (*See id.*) The Division
14 however is mistaken on both fronts.

15 Indeed, although Section 16 of S.B. 282 was not added to the Nevada Revised Statutes, it
16 was passed and included in the 2005 Statutes of Nevada, Chapter 476, Section 16, making it law.
17 (*See* 2005 Nev. Stat., ch. 476, § 16 at 2360 - 2361). NRS 220.170(3) states that while the
18 Nevada Revised Statutes may be cited as prima facie evidence of the law, it "may be rebutted by
19 proof that the statutes cited differ from the official Statutes of Nevada." NRS 220.170(3); *see*
20 *also Halverson v. Miller*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008). Thus, Section 16 is law,
21 as it was enacted in the official Statutes of Nevada, and the Division must follow its mandates.

22 Moreover, although Section 16, subsection 3, requires applicants who failed to make full
23 restitution or satisfy supervision fees, to make a good faith effort to do so, it in no way limits a
24 change in discharge status to only those persons with unpaid restitution and fees. (*See* S.B. 282 §
25 16). The express limitations of Section 16 are clearly delineated in subsection 2, and none of
26 those limitations applies to Ken. (*See id.*). Further, although Ken owes a financial obligation to
27 the Division of \$450.00 in supervision fees and a \$25.00 administrative assessment fee, the
28 Division did not consider Ken's proposed payment plan to satisfy the obligation. (*See* Kenneth

1 Coley's Application for Change of Discharge Per SB 282, a true and correct copy of which is
2 attached hereto as **Exhibit (1-H)**). Clearly, in perpetuating its incorrect opinion that only those
3 who were dishonorably discharged as a result of unpaid restitution and fees qualify for a change
4 in discharge status, the Division has not adopted the appropriate criteria for applicants pursuant
5 to Section 16. Instead, the Division is exercising discretion where it has none, to the detriment of
6 Ken, and potentially others. Accordingly, the Division should be ordered to lawfully apply
7 Section 16 and grant Ken's request for a change in discharge status immediately.

8 **III. LEGAL ARGUMENT**

9 **A. Propriety of Writ Relief**

10 This Court has original jurisdiction to issue writs of mandamus, prohibition and
11 certiorari. Nev. Const. Art. 6 § 4; NRS 34.160; *State of Nevada v. Eighth Judicial Dist Court*,
12 116 Nev. 127, 133, 994 P.2d 692, 696 (2000). Even in the context of writ proceedings, the Court
13 reviews questions of statutory interpretation de novo. *City of Las Vegas v. Eighth Judicial Dist.*
14 *Court ex rel Cnty. of Clark*, 124 Nev. 540, 544, 188 P.3d 55, 58 (2008).

15 "A writ of mandamus is available to compel the performance of an act which the law
16 requires as a duty resulting from an office, trust, or station, or to control an arbitrary or
17 capricious exercise of discretion." *Brewery Arts Ctr. v. State Bd. of Examiners*, 108 Nev. 1050,
18 1053, 843 P.2d 369, 372 (1992). Extraordinary relief is generally not available if there is a
19 "plain, speedy and adequate remedy in the ordinary course of law." *Id.* (citing NRS 34.170).

20 Ken submits that mandamus relief is warranted in this case because the Division has the
21 express authority to grant a change in discharge status pursuant to Section 16. However, the
22 Division has failed to properly exercise that authority in accordance with its statutory mandate.
23 Further, Ken has no other plain, speedy or adequate remedy at law to compel the Division to
24 change his probation discharge status from dishonorable to honorable.

25 **B. Ken Meets the Criteria for a Change in Discharge Status from Dishonorable to** 26 **Honorable Pursuant to Section 16.**

27 In enacting S.B. 282, Section 16, the Nevada Legislature intended to provide certain
28 persons who were dishonorably discharged from probation, like Ken, the opportunity to obtain a

1 change in discharge status. (See S.B. 282 § 16). Moreover, Lawmakers set forth specific criteria
2 to exclude those persons they did not think worthy of a change, to the inclusion of all others.
3 (See *id.* at sub. 2). As discussed previously, Section 16, subsection 2 provides:

4 2. A person who was dishonorably discharged from probation or parole
5 may not apply to change his discharge to an honorable discharge pursuant to this
6 section if his dishonorable discharge was based, in whole or in part, upon:

7 (a) The fact that he committed a new crime, other than a violation of a
8 traffic law for which he was issued a citation, during the period of his probation or
9 parole;

10 (b) The fact that his whereabouts were unknown at the time of his
11 discharge from probation or parole; or

12 (c) Any incident involving his commission of a violent act or an act that
13 threatened public safety during the period of his probation or parole.

14 (*See id.*).

15 Here however, in clear contravention of the Legislature's intent, the Division
16 acknowledges it excludes all persons from consideration for a change in discharge status, unless
17 the sole reason for the dishonorable discharge was a failure to pay restitution and/or supervision
18 fees. (See Ex. 6). Further, when that criterion is met, the Division does not only apply the three
19 delineated exclusions set forth in subsection 2² but rather includes additional subjective
20 exclusions. This policy and practice is not only wrong-headed, it is a violation of law. Pursuant
21 to Section 16, Ken qualifies as a person eligible for a change in discharge status from
22 dishonorable to honorable. Moreover, he should be provided the opportunity to satisfy his
23 outstanding financial obligation to the Division, pursuant to Section 16(3). Accordingly, the
24 Division must be forced to comply with Section 16 and grant Ken's change in discharge status
25 from dishonorable to honorable immediately.

26 ...

27 ...

28 ...

...

² (*See id.*).

1 IV. CONCLUSION

2 Based on the foregoing, Petitioner Ken respectfully requests that this Court grant his
3 Petition. He should be permitted, if not encouraged, to continue to better himself through a
4 change in discharge status and ultimately the sealing of his criminal records. Accordingly, the
5 Court should issue a writ of mandamus compelling the Division to follow the law and grant
6 Ken's request for a change of discharge status from dishonorable to honorable.

7 Dated this 5th day of February, 2015.

8 GORDON SILVER

9 

10 PAOLA M. ARMENI

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14 *Attorneys for Petitioner Kenneth Scott Coley*

In conjunction with Legal Aid Center of

15 *Southern Nevada Pro Bono Project*

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 5th day of February, 2015, she served a copy of the **Petition for Writ of Mandamus**, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Michael D. Jensen
Attorney General's Office
555 Wright Way
Carson City, Nevada 89701

Natalie Wood, Chief
Nevada Department of Public Safety
Parole and Probation
215 East Bonanza Road
Las Vegas, Nevada 89101



An employee of Gordon Silver

EXHIBIT 1

EXHIBIT 1

1 **DECL**
2 **GORDON SILVER**
3 **PAOLA M. ARMENI**
4 Nevada Bar No. 8357
5 Email: parmeni@gordonsilver.com
6 **COLLEEN E. MCCARTY**
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12 Fax: (702) 369-2666
13 *Attorneys for Petitioner Eric Mathews*
14 *In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 ERIC MATHEWS,	CASE NO.
18 19 Petitioner,	DEPT.
20 21 vs.	
22 NEVADA DIVISION OF PAROLE; DOES I-X;	
23 and ROE ENTITIES I-X, inclusive,	
24 25 Respondents.	

26 **DECLARATION OF PAOLA M. ARMENI IN SUPPORT OF**
27 **PETITION FOR WRIT OF MANDAMUS**

28 The undersigned, Paola M. Armeni, hereby declares under penalty of perjury that the following assertions are true:

1. I am an attorney licensed to practice law in the State of Nevada and a partner in the law firm of Gordon Silver, attorneys for Petitioner Eric Mathews ("Eric").

2. That I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters I believe to be true.

3. Further, I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

1 4. I make this Affidavit in support of the Petition for Writ of Mandamus.

2 5. In July of 2013, I was asked by Legal Aid of Southern Nevada if I would assist
3 Eric Mathews with sealing his records.

4 6. In the process of sealing his records, I was advised by the Clark County District
5 Attorney's office that Eric could not seal his records because he had been dishonorably
6 discharged from probation in 1996.

7 7. In response, I began to do legal research and was able to find SB 282, Section 16,
8 which allowed me to petition the Division of Parole and Probation ("Division") for a change in
9 Discharge from dishonorable to honorable.

10 8. In the beginning of 2014, I inquired of the Division, the process by which a
11 dishonorable discharge may be changed to an honorable discharge. In response, I received
12 instructions entitled "Applying to have your Dishonorable Discharge changed to an Honorable
13 Discharge providing fiscal obligations are met.," a true and correct copy of which is attached
14 hereto as **Exhibit 1-F**. I explained that I did not believe my client owed any money but the
15 Division responded that I still needed to fill out the application provided.

16 9. In accordance with the instructions, on April 23, 2014, I submitted a letter to the
17 Division along with an Application for Change of Discharge Per SB 282 on Eric's behalf,
18 requesting his discharge status be changed.

19 10. In response to my letter, on May 8, 2014, I received a phone call from Lieutenant
20 Robert Geraldo from the Division, asking me if I could provide the Division the courtesy of
21 waiting a couple weeks to work through my request. I obliged the request.

22 11. I also spoke to Lieutenant Geraldo on June 4, 2014 to get an update on the
23 matter. Thereafter, I forwarded him additional paperwork on June 5th and June 6th to assist the
24 Division in facilitating my request.

25 12. Thereafter, on or about June 12, 2014, I received an email from Lieutenant
26 Geraldo advising me that he assigned one of his employees to this project. Her name was Cherie
27 Konvicka. He advised that she would develop a procedure and a working manual to address
28 these issues and he had made the new administration aware of the issue as well. He closed the e-

1 mail by stating that either Cherie or he would be in touch next week with more information
2 regarding Eric Matthews.

3 13. On June 18, 2014, I received a response letter from the Division denying my
4 request on behalf of Eric, a true and correct copy of which is attached hereto as **Exhibit 1-D**.

5 14. Upon receipt of the letter, I noticed that the Division had provided their own
6 category, different than what was included in S.B. 282, Section 16, to exclude Eric from the
7 change in discharge. This prompted me to go to the Division's website which now contained
8 revised instructions regarding the application process for a change of discharge status, drafted
9 during my on-going discussions with the Division. A true and correct copy of the revised
10 instructions, entitled "Change of Dishonorable Discharge to Honorable Discharge Pursuant to SB
11 282, codified as NAC 213.720," is attached hereto as **Exhibit 1-G**. The instructions were
12 revised without notice to me or Eric.

13 15. After receipt of the above-referenced letter and noticing the change in the website,
14 I engaged the Division, specifically Ms. Konvicka, in discussions regarding its stated
15 interpretation of S.B. 282, Section 16, the legal basis upon which a person may receive a change
16 in discharge status, a true and correct copy of which is attached hereto as **Exhibit 1-A**. Section
17 16 is codified in NAC 213.720 – NAC 213.790, a true and correct copy of which is attached
18 hereto as **Exhibit 1-B**. Ms. Konvicka even addressed my concerns with her supervisor. He
19 refused to change the Division's position.

20 16. The Division informed me during the above-referenced discussions, that it held
21 the opinion that only those persons who owed restitution and/or supervision fees qualified for
22 reconsideration. I indicated my disagreement with the Division's interpretation of the law and
23 argued that Eric qualified pursuant to Section 16 (1) and (2). Attached hereto as **Exhibit 1-H** are
24 true and correct copies of the relevant minutes from the criminal case at issue.

25 17. Management Analyst Cherie Konvicka further memorialized the Division's
26 position in an email to me on July 17, 2014, a true and correct copy of which is attached hereto
27 as **Exhibit 1-E**.

28 18. After engaging in communications with Ms. Konvicka, I had several

1 communications with Senior Deputy Attorney General, Michael Jensen. He spoke to the
2 Division; however, the Division still maintained their position; thus prompting this Writ.

3 19. Attached hereto as **Exhibit 1-C** is a true and correct copy of a Report to the
4 Legislature pursuant to S.B. 282, Section 16, regarding the response to the change in regulation
5 that provided for reconsideration of parole and probation discharge status. It recommends the
6 Division continue to offer reconsideration.

7 I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)¹,
8 that the foregoing is true and correct.

9 Executed this 5th day of February, 2015.



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11 PAOLA M. ARMENI

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26 ¹ NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose
27 existence or truth may be established by an affidavit or other sworn declaration may be established with the same
28 effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated,
in substantially the following form;

EXHIBIT 1-A

EXHIBIT 1-A

Senate Bill No. 282-Senator Washington

CHAPTER.....

AN ACT relating to convicted persons; prohibiting a person other than a state or local government or agency thereof from operating or maintaining a facility for transitional living for released offenders without licensure by the State Board of Health; providing that each alcohol and drug abuse program operated by such a facility must be certified by the Health Division of the Department of Human Resources; providing that such facilities are facilities for the dependent; revising the definition of "halfway house for recovering alcohol and drug abusers"; requiring the Board to adopt standards and regulations governing the licensure and operation of such facilities; authorizing the Board to impose fees for the issuance and renewal of a license to operate such a facility; providing that the fact that a facility for transitional living for released offenders is located near real property which is the subject of a sale, lease or rental is not material to the transaction and is not required to be disclosed by the seller, lessor or landlord; revising the provisions governing the sealing of records of convictions pertaining to certain crimes; making various changes concerning the restoration of civil rights of certain persons; allowing certain persons who have been dishonorably discharged from probation or parole to apply, for a limited period, to the Division of Parole and Probation of the Department of Public Safety to request that their dishonorable discharge be changed to an honorable discharge; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *"Facility for transitional living for released offenders" means a residence that provides housing and a living environment for persons who have been released from prison and who require assistance with reintegration into the community, other than such a residence that is operated or maintained by a state or local government or an agency thereof. The term does not include a halfway house for recovering alcohol and drug abusers or a facility for the treatment of abuse of alcohol or drugs.*

2. *As used in this section, "person who has been released from prison" means:*

(a) *A parolee.*

(b) *A person who is participating in:*

(1) *A judicial program pursuant to NRS 209.4886 or 213.625; or*

(2) *A correctional program pursuant to NRS 209.4888 or 213.632.*

(c) *A person who is supervised by the Division of Parole and Probation of the Department of Public Safety through residential confinement pursuant to NRS 213.371 to 213.410, inclusive.*

(d) *A person who has been released from prison by expiration of his term of sentence.*

Sec. 3. *Each alcohol and drug abuse program operated or provided by a facility for transitional living for released offenders must be certified by the Health Division in accordance with the requirements set forth in chapter 458 of NRS and any regulations adopted pursuant thereto. As used in this section, "alcohol and drug abuse program" has the meaning ascribed to it in NRS 458.010.*

Sec. 4. NRS 449.001 is hereby amended to read as follows:

449.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 449.0015 to 449.019, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 449.0045 is hereby amended to read as follows:

449.0045 "Facility for the dependent" includes a facility for the treatment of abuse of alcohol or drugs, halfway house for recovering alcohol and drug abusers, *facility for transitional living for released offenders*, facility for the care of adults during the day or residential facility for groups.

Sec. 6. NRS 449.008 is hereby amended to read as follows:

449.008 "Halfway house for recovering alcohol and drug abusers" means a residence that provides housing and a living environment for *recovering* alcohol and drug abusers and is operated to facilitate their reintegration into the community, but does not provide any treatment for alcohol or drug abuse. *The term does not include a facility for transitional living for released offenders.*

Sec. 7. NRS 449.037 is hereby amended to read as follows:

449.037 1. The Board shall adopt:

(a) Licensing standards for each class of medical facility or facility for the dependent covered by NRS 449.001 to 449.240, inclusive, *and sections 2 and 3 of this act*, and for programs of hospice care.

(b) Regulations governing the licensing of such facilities and programs.

(c) Regulations governing the procedure and standards for granting an extension of the time for which a natural person may

provide certain care in his home without being considered a residential facility for groups pursuant to NRS 449.017. The regulations must require that such grants are effective only if made in writing.

(d) Regulations establishing a procedure for the indemnification by the Health Division, from the amount of any surety bond or other obligation filed or deposited by a facility for refractive laser surgery pursuant to NRS 449.068 or 449.069, of a patient of the facility who has sustained any damages as a result of the bankruptcy of or any breach of contract by the facility.

(e) Any other regulations as it deems necessary or convenient to carry out the provisions of NRS 449.001 to 449.240, inclusive ~~and~~ *sections 2 and 3 of this act.*

2. The Board shall adopt separate regulations governing the licensing and operation of:

- (a) Facilities for the care of adults during the day; and
- (b) Residential facilities for groups,

which provide care to persons with Alzheimer's disease.

3. The Board shall adopt separate regulations for:

(a) The licensure of rural hospitals which take into consideration the unique problems of operating such a facility in a rural area.

(b) The licensure of facilities for refractive laser surgery which take into consideration the unique factors of operating such a facility.

(c) The licensure of mobile units which take into consideration the unique factors of operating a facility that is not in a fixed location.

4. The Board shall require that the practices and policies of each medical facility or facility for the dependent provide adequately for the protection of the health, safety and physical, moral and mental well-being of each person accommodated in the facility.

5. The Board shall establish minimum qualifications for administrators and employees of residential facilities for groups. In establishing the qualifications, the Board shall consider the related standards set by nationally recognized organizations which accredit such facilities.

6. The Board shall adopt separate regulations regarding the assistance which may be given pursuant to NRS 453.375 and 454.213 to an ultimate user of controlled substances or dangerous drugs by employees of residential facilities for groups. The regulations must require at least the following conditions before such assistance may be given:

(a) The ultimate user's physical and mental condition is stable and is following a predictable course.

(b) The amount of the medication prescribed is at a maintenance level and does not require a daily assessment.

(c) A written plan of care by a physician or registered nurse has been established that:

(1) Addresses possession and assistance in the administration of the medication; and

(2) Includes a plan, which has been prepared under the supervision of a registered nurse or licensed pharmacist, for emergency intervention if an adverse condition results.

(d) The prescribed medication is not administered by injection or intravenously.

(e) The employee has successfully completed training and examination approved by the Health Division regarding the authorized manner of assistance.

7. The Board shall adopt separate regulations governing the licensing and operation of residential facilities for groups which provide assisted living services. The regulations must prohibit a residential facility for groups from claiming that it provides "assisted living services" unless:

(a) Before authorizing a person to move into the facility, the facility makes a full written disclosure to the person regarding what services of personalized care will be available to the person and the amount that will be charged for those services throughout the resident's stay at the facility.

(b) The residents of the facility reside in their own living units which:

(1) Contain toilet facilities and a sleeping area or bedroom; and

(2) Are shared with another occupant only upon consent of both occupants.

(c) The facility provides personalized care to the residents of the facility and the general approach to operating the facility incorporates these core principles:

(1) The facility is designed to create a residential environment that actively supports and promotes each resident's quality of life and right to privacy;

(2) The facility is committed to offering high-quality supportive services that are developed by the facility in collaboration with the resident to meet the resident's individual needs;

(3) The facility provides a variety of creative and innovative services that emphasize the particular needs of each individual resident and his personal choice of lifestyle;

(4) The operation of the facility and its interaction with its residents supports, to the maximum extent possible, each resident's

need for autonomy and the right to make decisions regarding his own life;

(5) The operation of the facility is designed to foster a social climate that allows the resident to develop and maintain personal relationships with fellow residents and with persons in the general community;

(6) The facility is designed to minimize and is operated in a manner which minimizes the need for its residents to move out of the facility as their respective physical and mental conditions change over time; and

(7) The facility is operated in such a manner as to foster a culture that provides a high-quality environment for the residents, their families, the staff, any volunteers and the community at large.

8. The Board shall, if it determines necessary, adopt regulations and requirements to ensure that each residential facility for groups and its staff are prepared to respond to an emergency, including, without limitation:

(a) The adoption of plans to respond to a natural disaster and other types of emergency situations, including, without limitation, an emergency involving fire;

(b) The adoption of plans to provide for the evacuation of a residential facility for groups in an emergency, including, without limitation, plans to ensure that nonambulatory patients may be evacuated;

(c) Educating the residents of residential facilities for groups concerning the plans adopted pursuant to paragraphs (a) and (b); and

(d) Posting the plans or a summary of the plans adopted pursuant to paragraphs (a) and (b) in a conspicuous place in each residential facility for groups.

9. *The regulations governing the licensing and operation of facilities for transitional living for released offenders must provide for the licensure of at least three different types of facilities, including, without limitation:*

(a) Facilities that only provide a housing and living environment;

(b) Facilities that provide or arrange for the provision of supportive services for residents of the facility to assist the residents with reintegration into the community, in addition to providing a housing and living environment; and

(c) Facilities that provide or arrange for the provision of alcohol and drug abuse programs, in addition to providing a housing and living environment and providing or arranging for the provision of other supportive services.

Sec. 8. NRS 449.050 is hereby amended to read as follows:

449.050 1. Except as otherwise provided in subsection 2, each application for a license must be accompanied by such fee as

may be determined by regulation of the Board. The Board may, by regulation, allow or require payment of a fee for a license in installments and may fix the amount of each payment and the date that the payment is due.

2. A facility for the care of adults during the day is exempt from the fees imposed by the Board pursuant to this section.

3. *The fee imposed by the Board for a facility for transitional living for released offenders must be based on the type of facility that is being licensed and must be calculated to produce the revenue estimated to cover the costs related to the license, but in no case may a fee for a license exceed the actual cost to the Health Division of issuing or renewing the license.*

4. *If an application for a license for a facility for transitional living for released offenders is denied, any amount of the fee paid pursuant to this section that exceeds the expenses and costs incurred by the Health Division must be refunded to the applicant.*

Sec. 9. NRS 40.770 is hereby amended to read as follows:

40.770 1. Except as otherwise provided in subsection ~~{5,}~~ 6, in any sale, lease or rental of real property, the fact that the property is or has been:

(a) The site of a homicide, suicide or death by any other cause, except a death that results from a condition of the property;

(b) The site of any crime punishable as a felony other than a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine; or

(c) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property,
is not material to the transaction.

2. In any sale, ~~lessor} lease~~ or rental of real property, the fact that a sex offender, as defined in NRS 179D.400, resides or is expected to reside in the community is not material to the transaction, and the seller, lessor or landlord or any agent of the seller, lessor or landlord does not have a duty to disclose such a fact to a buyer, lessee or tenant or any agent of a buyer, lessee or tenant.

3. *In any sale, lease or rental of real property, the fact that a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS is located near the property being sold, leased or rented is not material to the transaction.*

4. A seller, lessor or landlord or any agent of the seller, lessor or landlord is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, ~~{or} 2 or 3~~ that is not material to the transaction or

of which the seller, lessor or landlord or agent of the seller, lessor or landlord had no actual knowledge.

{4-} 5. Except as otherwise provided in an agreement between a buyer, lessee or tenant and his agent, an agent of the buyer, lessee or tenant is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, {or} 2 or 3 that is not material to the transaction or of which the agent of the buyer, lessee or tenant had no actual knowledge.

{5-} 6. For purposes of this section, the fact that the property is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine is not material to the transaction if:

(a) All materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or

(b) The property has been deemed safe for habitation by a governmental entity.

7. *As used in this section, "facility for transitional living for released offenders" has the meaning ascribed to it in section 2 of this act.*

Sec. 10. NRS 176A.850 is hereby amended to read as follows:
176A.850 1. A person who:

(a) Has fulfilled the conditions of his probation for the entire period thereof;

(b) Is recommended for earlier discharge by the Division; or

(c) Has demonstrated his fitness for honorable discharge but because of economic hardship, verified by a parole and probation officer, has been unable to make restitution as ordered by the court, may be granted an honorable discharge from probation by order of the court.

2. Any amount of restitution remaining unpaid constitutes a civil liability arising upon the date of discharge.

3. Except as otherwise provided in subsection 4, a person who has been honorably discharged from probation:

(a) Is free from the terms and conditions of his probation.

(b) Is immediately restored to the following civil rights:

(1) The right to vote; and

(2) The right to serve as a juror in a civil action.

(c) Four years after the date of his honorable discharge from probation, is restored to the right to hold office.

(d) Six years after the date of his honorable discharge from probation, is restored to the right to serve as a juror in a criminal action.

(e) If he meets the requirements of NRS 179.245, may apply to the court for the sealing of records relating to his conviction.

(f) Must be informed of the provisions of this section and NRS 179.245 in his probation papers.

(g) Is exempt from the requirements of chapter 179C of NRS, but is not exempt from the requirements of chapter 179D of NRS.

(h) Shall disclose the conviction to a gaming establishment and to the State and its agencies, departments, boards, commissions and political subdivisions, if required in an application for employment, license or other permit. As used in this paragraph, "establishment" has the meaning ascribed to it in NRS 463.0148.

(i) Except as otherwise provided in paragraph (h), need not disclose the conviction to an employer or prospective employer.

4. Except as otherwise provided in this subsection, the civil rights set forth in subsection 3 are not restored to a person honorably discharged from probation if the person has previously been convicted in this State:

(a) Of a category A felony.

(b) Of an offense that would constitute a category A felony if committed as of the date of his honorable discharge from probation.

(c) Of a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim.

(d) Of an offense involving the use of force or violence that resulted in substantial bodily harm to the victim and that would constitute a category B felony if committed as of the date of his honorable discharge from probation.

(e) Two or more times of a felony, unless a felony for which the person has been convicted arose out of the same act, transaction or occurrence as another felony, in which case the convictions for those felonies shall be deemed to constitute a single conviction for the purposes of this paragraph.

↪ A person described in this subsection may petition ~~{the court in which the person was convicted}~~ *a court of competent jurisdiction* for an order granting the restoration of his civil rights as set forth in subsection 3.

5. The prior conviction of a person who has been honorably discharged from probation may be used for purposes of impeachment. In any subsequent prosecution of the person, the prior conviction may be pleaded and proved if otherwise admissible.

6. Except for a person subject to the limitations set forth in subsection 4, upon his honorable discharge from probation, the person so discharged must be given an official document which provides:

(a) That he has received an honorable discharge from probation;

(b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his honorable discharge from probation;

(c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (c) of subsection 3; and

(d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (d) of subsection 3.

7. Subject to the limitations set forth in subsection 4, a person who has been honorably discharged from probation in this State or elsewhere and whose official documentation of his honorable discharge from probation is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been honorably discharged from probation and is eligible to be restored to the civil rights set forth in subsection 3, the court shall issue an order restoring the person to the civil rights set forth in subsection 3. A person must not be required to pay a fee to receive such an order.

8. A person who has been honorably discharged from probation in this State or elsewhere may present:

(a) Official documentation of his honorable discharge from probation, if it contains the provisions set forth in subsection 6; or

(b) A court order restoring his civil rights,
as proof that he has been restored to the civil rights set forth in subsection 3.

Sec. 11. NRS 179.245 is hereby amended to read as follows:

179.245 1. Except as otherwise provided in subsection 5 and NRS 176A.265, 179.259 and 453.3365, a person may petition the court in which he was convicted for the sealing of all records relating to a conviction of:

(a) A category A or B felony after 15 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

(b) A category C or D felony after 12 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

(c) A category E felony after ~~10~~ 7 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

(d) Any gross misdemeanor after 7 years from the date of his release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of NRS 484.379 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of his release from actual custody or from the date when he is no longer under a suspended sentence, whichever occurs later; or

(f) Any other misdemeanor after ~~{3}~~ 2 years from the date of his release from actual custody or from the date when he is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must:

(a) Be accompanied by current, verified records of the petitioner's criminal history received from:

(1) The Central Repository for Nevada Records of Criminal History; and

(2) The local law enforcement agency of the city or county in which the conviction was entered;

(b) Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

3. Upon receiving a petition pursuant to this section, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the person was convicted in a district court or justice's court, the prosecuting attorney for the county; or

(b) If the person was convicted in a municipal court, the prosecuting attorney for the city.

→ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, including, but not limited to, the Federal Bureau of Investigation, the California Bureau of Identification and Information, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

5. A person may not petition the court to seal records relating to a conviction of a crime against a child or a sexual offense.

6. If the court grants a petition for the sealing of records pursuant to this section, upon the request of the person whose

records are sealed, the court may order sealed all records of the civil proceeding in which the records were sealed.

7. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.210.

(b) "Sexual offense" means:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a felony.

(4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

(6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.

(7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

(8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(9) Incest pursuant to NRS 201.180.

(10) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

(11) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony.

(12) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony.

(13) Lewdness with a child pursuant to NRS 201.230.

(14) Sexual penetration of a dead human body pursuant to NRS 201.450.

(15) Luring a child or mentally ill person pursuant to NRS 201.560, if punishable as a felony.

(16) An attempt to commit an offense listed in subparagraphs (1) to (15), inclusive.

Sec. 12. NRS 209.511 is hereby amended to read as follows:

209.511 1. When an offender is released from prison by expiration of his term of sentence, by pardon or by parole, the Director:

(a) May furnish him with a sum of money not to exceed \$100, the amount to be based upon the offender's economic need as determined by the Director;

(b) Shall give him notice of the provisions of chapter 179C of NRS and NRS 202.360;

(c) Shall require him to sign an acknowledgment of the notice required in paragraph (b);

(d) Shall give him notice of the provisions of NRS 179.245 and the provisions of NRS 213.090, 213.155 or 213.157, as applicable;

(e) May provide him with clothing suitable for reentering society;

(f) May provide him with the cost of transportation to his place of residence anywhere within the continental United States, or to the place of his conviction; ~~and~~

(g) *May, but is not required to, release him to a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS; and*

(h) Shall require him to submit to at least one test for exposure to the human immunodeficiency virus.

2. The costs authorized in paragraphs (a), (e), (f) and ~~(g)~~ (h) of subsection 1 must be paid out of the appropriate account within the State General Fund for the use of the Department as other claims against the State are paid to the extent that the costs have not been paid in accordance with subsection 5 of NRS 209.221 and NRS 209.246.

3. *As used in this section, "facility for transitional living for released offenders" has the meaning ascribed to it in section 2 of this act.*

Sec. 13. NRS 213.155 is hereby amended to read as follows:

213.155 1. Except as otherwise provided in subsection 2, a person who receives an honorable discharge from parole pursuant to NRS 213.154:

(a) Is immediately restored to the following civil rights:

(1) The right to vote; and

(2) The right to serve as a juror in a civil action.

(b) Four years after the date of his honorable discharge from parole, is restored to the right to hold office.

(c) Six years after the date of his honorable discharge from parole, is restored to the right to serve as a juror in a criminal action.

2. Except as otherwise provided in this subsection, the civil rights set forth in subsection 1 are not restored to a person who has received an honorable discharge from parole if the person has previously been convicted in this State:

(a) Of a category A felony.

(b) Of an offense that would constitute a category A felony if committed as of the date of his honorable discharge from parole.

(c) Of a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim.

(d) Of an offense involving the use of force or violence that resulted in substantial bodily harm to the victim and that would constitute a category B felony if committed as of the date of his honorable discharge from parole.

(e) Two or more times of a felony, unless a felony for which the person has been convicted arose out of the same act, transaction or occurrence as another felony, in which case the convictions for those felonies shall be deemed to constitute a single conviction for the purposes of this paragraph.

→ A person described in this subsection may petition ~~{the court in which the person was convicted}~~ *a court of competent jurisdiction* for an order granting the restoration of his civil rights as set forth in subsection 1.

3. Except for a person subject to the limitations set forth in subsection 2, upon his honorable discharge from parole, a person so discharged must be given an official document which provides:

(a) That he has received an honorable discharge from parole;

(b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his honorable discharge from parole;

(c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (b) of subsection 1; and

(d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (c) of subsection 1.

4. Subject to the limitations set forth in subsection 2, a person who has been honorably discharged from parole in this State or elsewhere and whose official documentation of his honorable discharge from parole is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been honorably discharged from parole and is eligible to be restored to the civil rights set forth in subsection 1, the court shall issue an order restoring the person to the civil rights set forth in subsection 1. A person must not be required to pay a fee to receive such an order.

5. A person who has been honorably discharged from parole in this State or elsewhere may present:

(a) Official documentation of his honorable discharge from parole, if it contains the provisions set forth in subsection 3; or

(b) A court order restoring his civil rights,
→ as proof that he has been restored to the civil rights set forth in subsection 1.

6. The Board may adopt regulations necessary or convenient for the purposes of this section.

Sec. 14. NRS 213.157 is hereby amended to read as follows:

213.157 1. Except as otherwise provided in subsection 2, a person convicted of a felony in the State of Nevada who has served his sentence and has been released from prison:

(a) Is immediately restored to the following civil rights:

(1) The right to vote; and

(2) The right to serve as a juror in a civil action.

(b) Four years after the date of his release from prison, is restored to the right to hold office.

(c) Six years after the date of his release from prison, is restored to the right to serve as a juror in a criminal action.

2. Except as otherwise provided in this subsection, the civil rights set forth in subsection 1 are not restored to a person who has been released from prison if the person has previously been convicted in this State:

(a) Of a category A felony.

(b) Of an offense that would constitute a category A felony if committed as of the date of his release from prison.

(c) Of a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim.

(d) Of an offense involving the use of force or violence that resulted in substantial bodily harm to the victim and that would constitute a category B felony if committed as of the date of his release from prison.

(e) Two or more times of a felony, unless a felony for which the person has been convicted arose out of the same act, transaction or occurrence as another felony, in which case the convictions for those felonies shall be deemed to constitute a single conviction for the purposes of this paragraph.

↪ A person described in this subsection may petition ~~the court in which the person was convicted~~ *a court of competent jurisdiction* for an order granting the restoration of his civil rights as set forth in subsection 1.

3. Except for a person subject to the limitations set forth in subsection 2, upon his release from prison, a person so released must be given an official document which provides:

(a) That he has been released from prison;

(b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his release from prison;

(c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (b) of subsection 1; and

(d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (c) of subsection 1.

4. Subject to the limitations set forth in subsection 2, a person who has been released from prison in this State or elsewhere and whose official documentation of his release from prison is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been released from prison and is eligible to be restored to the civil rights set forth in subsection 1, the court shall issue an order restoring the person to the civil rights set forth in subsection 1. A person must not be required to pay a fee to receive such an order.

5. A person who has been released from prison in this State or elsewhere may present:

(a) Official documentation of his release from prison, if it contains the provisions set forth in subsection 3; or

(b) A court order restoring his civil rights,
as proof that he has been restored to the civil rights set forth in subsection 1.

Sec. 15. Notwithstanding the provisions of sections 1 to 9, inclusive, and 12 of this act, a person is not required to possess a license issued by the State Board of Health to operate or maintain a facility for transitional living for released offenders in this State before January 1, 2006, unless the Board establishes, by regulation, an earlier date for compliance with the amendatory provisions of sections 1 to 9, inclusive, and 12 of this act.

Sec. 16. 1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2, a person who was dishonorably discharged from probation or parole before the effective date of this section, until July 1, 2008, may apply to the Division of Parole and Probation of the Department of Public Safety, in accordance with the regulations adopted by the Division pursuant to the provisions of this section, to request that his dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole.

2. A person who was dishonorably discharged from probation or parole may not apply to change his discharge to an honorable discharge pursuant to this section if his dishonorable discharge was based, in whole or in part, upon:

(a) The fact that he committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole;

(b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole; or

(c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

3. The Division shall adopt regulations establishing guidelines and procedures to be used to carry out the provisions of this section. The regulations must include, without limitation, provisions requiring that to be granted a change of discharge pursuant to this section, if an applicant failed to make full restitution as ordered by the court or failed to pay the fees to defray the cost of his supervision as required pursuant to NRS 213.1076, the applicant must have made or must be making an effort in good faith and satisfactory progress towards paying the restitution ordered or fees owed, as determined by the Division.

4. A person whose application for a change of discharge is granted by the Division and whose discharge from probation or parole is changed to an honorable discharge from probation or parole pursuant to this section:

(a) Shall be deemed to have been issued an honorable discharge from probation or parole effective as of the date of his original dishonorable discharge from probation or parole;

(b) Is subject to, and must be restored to his civil rights in accordance with, the provisions of NRS 176A.850 or 213.155, as amended by this act; and

(c) Must be given an official document which:

(1) Provides that he has received an honorable discharge from probation or parole; and

(2) States, as applicable, the dates on which his civil rights to vote, to serve as a juror in a civil action, to hold office and to serve as a juror in a criminal action will be restored to him.

5. The Division shall, on or before January 1, 2009, submit a written report to the Director of the Legislative Counsel Bureau that includes, without limitation, the following information:

(a) The number of persons who applied for a change of discharge pursuant to this section;

(b) The number of applications that were granted or denied and the general reasons for denial of the applications;

(c) The estimated amount of restitution and fees for supervision paid as the result of the enactment of this section;

(d) Any recommendations and conclusions concerning the desirability of extending the application of the provisions of this section; and

(e) Any other information deemed appropriate by the Division.

Sec. 17. 1. This section and sections 10, 11 and 13 to 16, inclusive, of this act become effective upon passage and approval.

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2. Sections 1 to 9, inclusive, and 12 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2005, for all other purposes.

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EXHIBIT 1-B

EXHIBIT 1-B

CHANGE OF DISHONORABLE DISCHARGE TO HONORABLE DISCHARGE

NAC 213.720 Definitions. (§ 16 of ch. 476, Stats. 2005) As used in NAC 213.720 to 213.790, inclusive, unless the context otherwise requires, the words and terms defined in NAC 213.730, 213.740 and 213.750 have the meanings ascribed to them in those sections.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.730 "Applicant" defined. (§ 16 of ch. 476, Stats. 2005) "Applicant" means a person who submits an application to the Division to change his or her dishonorable discharge from probation or parole to an honorable discharge from probation or parole in accordance with the provisions of section 16 of chapter 476, Statutes of Nevada 2005.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.740 "Chief" defined. (§ 16 of ch. 476, Stats. 2005) "Chief" means the Chief Parole and Probation Officer.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.750 "Division" defined. (§ 16 of ch. 476, Stats. 2005) "Division" means the Division of Parole and Probation of the Department of Public Safety.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.760 Submission of application and supporting documentation and information; action upon receipt. (§ 16 of ch. 476, Stats. 2005)

1. To request that his or her dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole, an applicant must submit to the office of the Chief:

- (a) A completed application, in the form prescribed by the Division;
- (b) Documentation of his or her current income; and
- (c) Any other information requested by the Division.

2. Upon receipt of an application and the supporting documentation and information from an applicant, the Chief shall obtain from the Division the discharge summary pertaining to the applicant and a summary of restitution and fees for supervision paid by the applicant. If necessary, the Chief may request from the Division an audit of the payments made by the applicant.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.770 Action upon determination of eligibility of applicant; monthly payments by applicant. (§ 16 of ch. 476, Stats. 2005)

1. If the Division determines that an applicant is not eligible to change his or her dishonorable discharge to an honorable discharge, the Chief shall:

- (a) Notify the applicant, in writing, that the application has been denied and state the reasons for the denial; and
- (b) Retain copies of the application, the discharge summary, the summary of restitution and fees paid by the applicant, the written notification provided to the applicant pursuant to paragraph (a) and any other supporting documentation or information received from the applicant or considered by the Division.

2. If the Division determines that an applicant is eligible to change his or her dishonorable discharge to an honorable discharge, the Chief shall establish a schedule of payments for the applicant to make over the period for repayment established pursuant to subsection 4. Except as otherwise provided in subsection 3, an applicant must be required to pay a minimum monthly payment in an amount that is equal to four times the hourly wage earned by the applicant.

3. If the Division determines that the applicant has demonstrated an economic hardship, the applicant must be required to pay a minimum monthly payment in the amount of \$20.

4. The period for repayment for an applicant must be:

- (a) One year; or
- (b) A period equal to one-half of the time that the applicant was under the supervision of the Division,
↪ whichever is longer.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.780 Grant or denial of application. (§ 16 of ch. 476, Stats. 2005)

1. If, at the end of the period for repayment established by the Division pursuant to NAC 213.770, the Division determines that the applicant has made an effort in good faith and has made satisfactory progress towards making the required payments, the Division will submit its recommendation that the application should be granted to the court or the State Board of Parole Commissioners, whichever is applicable. Upon notification from the court or the State Board of Parole Commissioners that an application has been granted, the Division will:

- (a) Notify the applicant, in writing, that the application has been granted;
- (b) Forward to the applicant from the court or the State Board of Parole Commissioners, whichever is applicable, the official document which:
 - (1) Provides that he or she has received an honorable discharge from probation or parole; and
 - (2) States, as applicable, the dates on which his or her civil rights to vote, to serve as a juror in a civil action, to hold office and to serve as a juror in a criminal action will be restored to him or her;
- (c) Forward a copy of the official document to the Central Repository for Nevada Records of Criminal History; and
- (d) Retain a copy of the official document.

2. If, at the end of the period for repayment established by the Division pursuant to NAC 213.770, the Division determines that the applicant has not made an effort in good faith and has not made satisfactory progress towards making the required payments, the Division will:

- (a) Deny the application of the applicant; and
- (b) Notify the applicant that the application has been denied.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.790 Availability of information and forms. (§ 16 of ch. 476, Stats. 2005) The Division will make available at its offices, on its website and by mail:

- 1. A written explanation of the provisions of section 16 of chapter 476, Statutes of Nevada 2005, and NAC 213.720 to 213.790, inclusive; and
- 2. The form for an application.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

EXHIBIT 1-C

EXHIBIT 1-C

Jim Gibbons
Governor

Jearld L. Hafen
Director

Bernard W. Curtis
Chief



OFFICE OF THE CHIEF

1445 Old Hot Springs Rd.
Suite 104
Carson City, NV 89706

306
C12
Rec'd

Division of Parole and Probation

December 8, 2008

Mr. Lorne Malkiewich, Director
Legislative Council Bureau
401 S. Carson Street
Carson City, NV 89701

Director Malkiewich;

Pursuant to Senate Bill 282, Section 16, subsection 5 of the 73rd Session of the Nevada Legislature (attached), the Division of Parole and Probation respectfully submits the following report on the response to this change in the regulation.

A. The number of persons who applied for a change of discharge pursuant to this section:

Sixteen individuals either applied or inquired about the process between June 17, 2005, when the bill was enacted and July 1, 2008.

B. The number of applications that were granted or denied and the general reasons for denial of the applications:

Three applications were granted and the Dishonorable Discharges were changed to Honorable by the courts,

Six applications were denied. The reason for the denials were the Dishonorable Discharges resulted from factors *in addition to* non-payment of Restitution and/or Supervision fees, which were not addressed in the regulation change,

Six individuals inquired but did not complete the application,

One individual inquired but had already received an Honorable Discharge.

C. The estimated amount of restitution and fees for supervision paid as a result of the enactment of this section:

\$150.10 in Restitution and fees were collected and billing errors were corrected as a result of the enactment of this section.

Administrative Services • Capitol Police • Criminal Justice Assistance • Emergency Management • Homeland Security
Emergency Response Commission • State Fire Marshal • Investigations • Highway Patrol • Office of Traffic Safety • Parole and Probation
Records and Technology • Board of Parole Commissioners • Training • Office of Professional Responsibility

- D. Any recommendations and conclusions concerning desirability of extending the application of the provisions of this section:


The Division's participation in the research and preparation of necessary court paperwork has been sporadic and non-problematic. This regulation, with the possibility of receiving additional restitution due to victims or fees due to the Division, should be continued.

- E. Any other information deemed appropriate by the Division:

None.

If you have any questions or would like additional information, please contact me at (775) 684-2605.

Respectfully,



Bernard W. Curtis, Chief
Department of Public Safety,
Division of Parole and Probation

Senate Bill No. 282--Senator Washington

CHAPTER.....

AN ACT relating to convicted persons; prohibiting a person other than a state or local government or agency thereof from operating or maintaining a facility for transitional living for released offenders without licensure by the State Board of Health; providing that each alcohol and drug abuse program operated by such a facility must be certified by the Health Division of the Department of Human Resources; providing that such facilities are facilities for the dependent; revising the definition of "halfway house for recovering alcohol and drug abusers"; requiring the Board to adopt standards and regulations governing the licensure and operation of such facilities; authorizing the Board to impose fees for the issuance and renewal of a license to operate such a facility; providing that the fact that a facility for transitional living for released offenders is located near real property which is the subject of a sale, lease or rental is not material to the transaction and is not required to be disclosed by the seller, lessor or landlord; revising the provisions governing the sealing of records of convictions pertaining to certain crimes; making various changes concerning the restoration of civil rights of certain persons; allowing certain persons who have been dishonorably discharged from probation or parole to apply, for a limited period, to the Division of Parole and Probation of the Department of Public Safety to request that their dishonorable discharge be changed to an honorable discharge; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *"Facility for transitional living for released offenders" means a residence that provides housing and a living environment for persons who have been released from prison and who require assistance with reintegration into the community, other than such a residence that is operated or maintained by a state or local government or an agency thereof. The term does not include a halfway house for recovering alcohol and drug abusers or a facility for the treatment of abuse of alcohol or drugs.*

2. *As used in this section, "person who has been released from prison" means:*

(a) A parolee.

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(b) A person who is participating in:

(1) A judicial program pursuant to NRS 209.4886 or 213.625; or

(2) A correctional program pursuant to NRS 209.4888 or 213.632.

(c) A person who is supervised by the Division of Parole and

Probation of the Department of Public Safety through residential confinement pursuant to NRS 213.371 to 213.410, inclusive.

(d) A person who has been released from prison by expiration of his term of sentence.

Sec. 3. Each alcohol and drug abuse program operated or provided by a facility for transitional living for released offenders must be certified by the Health Division in accordance with the requirements set forth in chapter 458 of NRS and any regulations adopted pursuant thereto. As used in this section, "alcohol and drug abuse program" has the meaning ascribed to it in NRS 458.010.

Sec. 4. NRS 449.001 is hereby amended to read as follows:

449.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 449.0015 to 449.019, inclusive, and section 2 of this act have the meanings ascribed to them in those sections.

Sec. 5. NRS 449.0045 is hereby amended to read as follows:

449.0045 "Facility for the dependent" includes a facility for the treatment of abuse of alcohol or drugs, halfway house for recovering alcohol and drug abusers, facility for transitional living for released offenders, facility for the care of adults during the day or residential facility for groups.

Sec. 6. NRS 449.008 is hereby amended to read as follows:

449.008 "Halfway house for recovering alcohol and drug abusers" means a residence that provides housing and a living environment for recovering alcohol and drug abusers and is operated to facilitate their reintegration into the community, but does not provide any treatment for alcohol or drug abuse. The term does not include a facility for transitional living for released offenders.

Sec. 7. NRS 449.037 is hereby amended to read as follows:

449.037 1. The Board shall adopt:

(a) Licensing standards for each class of medical facility or facility for the dependent covered by NRS 449.001 to 449.240, inclusive, and sections 2 and 3 of this act, and for programs of hospice care.

(b) Regulations governing the licensing of such facilities and programs.

(c) Regulations governing the procedure and standards for granting an extension of the time for which a natural person may

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provide certain care in his home without being considered a residential facility for groups pursuant to NRS 449.017. The regulations must require that such grants are effective only if made in writing.

(d) Regulations establishing a procedure for the indemnification by the Health Division, from the amount of any surety bond or other obligation filed or deposited by a facility for refractive laser surgery pursuant to NRS 449.068 or 449.069, of a patient of the facility who has sustained any damages as a result of the bankruptcy of or any breach of contract by the facility.

(e) Any other regulations as it deems necessary or convenient to carry out the provisions of NRS 449.001 to 449.240, inclusive [.] and sections 2 and 3 of this act.

2. The Board shall adopt separate regulations governing the licensing and operation of:

(a) Facilities for the care of adults during the day; and

(b) Residential facilities for groups,

— which provide care to persons with Alzheimer's disease.

3. The Board shall adopt separate regulations for:

(a) The licensure of rural hospitals which take into consideration the unique problems of operating such a facility in a rural area.

(b) The licensure of facilities for refractive laser surgery which take into consideration the unique factors of operating such a facility.

(c) The licensure of mobile units which take into consideration the unique factors of operating a facility that is not in a fixed location.

4. The Board shall require that the practices and policies of each medical facility or facility for the dependent provide adequately for the protection of the health, safety and physical, moral and mental well-being of each person accommodated in the facility.

5. The Board shall establish minimum qualifications for administrators and employees of residential facilities for groups. In establishing the qualifications, the Board shall consider the related standards set by nationally recognized organizations which accredit such facilities.

6. The Board shall adopt separate regulations regarding the assistance which may be given pursuant to NRS 453.375 and 454.213 to an ultimate user of controlled substances or dangerous drugs by employees of residential facilities for groups. The regulations must require at least the following conditions before such assistance may be given:

(a) The ultimate user's physical and mental condition is stable and is following a predictable course.

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(b) The amount of the medication prescribed is at a maintenance level and does not require a daily assessment.

(c) A written plan of care by a physician or registered nurse has been established that:

(1) Addresses possession and assistance in the administration of the medication; and

(2) Includes a plan, which has been prepared under the supervision of a registered nurse or licensed pharmacist, for emergency intervention if an adverse condition results.

(d) The prescribed medication is not administered by injection or intravenously.

(e) The employee has successfully completed training and examination approved by the Health Division regarding the authorized manner of assistance.

7. The Board shall adopt separate regulations governing the

licensing and operation of residential facilities for groups which provide assisted living services. The regulations must prohibit a residential facility for groups from claiming that it provides "assisted living services" unless:

(a) Before authorizing a person to move into the facility, the facility makes a full written disclosure to the person regarding what services of personalized care will be available to the person and the amount that will be charged for those services throughout the resident's stay at the facility.

(b) The residents of the facility reside in their own living units which:

(1) Contain toilet facilities and a sleeping area or bedroom; and

(2) Are shared with another occupant only upon consent of both occupants.

(c) The facility provides personalized care to the residents of the facility and the general approach to operating the facility incorporates these core principles:

(1) The facility is designed to create a residential environment that actively supports and promotes each resident's quality of life and right to privacy;

(2) The facility is committed to offering high-quality supportive services that are developed by the facility in collaboration with the resident to meet the resident's individual needs;

(3) The facility provides a variety of creative and innovative services that emphasize the particular needs of each individual resident and his personal choice of lifestyle;

(4) The operation of the facility and its interaction with its residents supports, to the maximum extent possible, each resident's

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need for autonomy and the right to make decisions regarding his own life;

(5) The operation of the facility is designed to foster a social climate that allows the resident to develop and maintain personal relationships with fellow residents and with persons in the general community;

(6) The facility is designed to minimize and is operated in a manner which minimizes the need for its residents to move out of the facility as their respective physical and mental conditions change over time; and

(7) The facility is operated in such a manner as to foster a culture that provides a high-quality environment for the residents, their families, the staff, any volunteers and the community at large.

8. The Board shall, if it determines necessary, adopt regulations and requirements to ensure that each residential facility for groups and its staff are prepared to respond to an emergency, including, without limitation:

(a) The adoption of plans to respond to a natural disaster and other types of emergency situations, including, without limitation, an emergency involving fire;

(b) The adoption of plans to provide for the evacuation of a residential facility for groups in an emergency, including, without limitation, plans to ensure that nonambulatory patients may be evacuated;

(c) Educating the residents of residential facilities for groups concerning the plans adopted pursuant to paragraphs (a) and (b); and
(d) Posting the plans or a summary of the plans adopted pursuant to paragraphs (a) and (b) in a conspicuous place in each residential facility for groups.

9. The regulations governing the licensing and operation of facilities for transitional living for released offenders must provide for the licensure of at least three different types of facilities, including, without limitation:

(a) Facilities that only provide a housing and living environment;

(b) Facilities that provide or arrange for the provision of supportive services for residents of the facility to assist the residents with reintegration into the community, in addition to providing a housing and living environment; and

(c) Facilities that provide or arrange for the provision of alcohol and drug abuse programs, in addition to providing a housing and living environment and providing or arranging for the provision of other supportive services.

Sec. 8. NRS 449.050 is hereby amended to read as follows:

449.050 1. Except as otherwise provided in subsection 2, each application for a license must be accompanied by such fee as

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may be determined by regulation of the Board. The Board may, by regulation, allow or require payment of a fee for a license in installments and may fix the amount of each payment and the date that the payment is due.

2. A facility for the care of adults during the day is exempt from the fees imposed by the Board pursuant to this section.

3. *The fee imposed by the Board for a facility for transitional living for released offenders must be based on the type of facility that is being licensed and must be calculated to produce the revenue estimated to cover the costs related to the license, but in no case may a fee for a license exceed the actual cost to the Health Division of issuing or renewing the license.*

4. *If an application for a license for a facility for transitional living for released offenders is denied, any amount of the fee paid pursuant to this section that exceeds the expenses and costs incurred by the Health Division must be refunded to the applicant.*

Sec. 9. NRS 40.770 is hereby amended to read as follows:

40.770 1. Except as otherwise provided in subsection [5,] 6, in any sale, lease or rental of real property, the fact that the property is or has been:

(a) The site of a homicide, suicide or death by any other cause, except a death that results from a condition of the property;

(b) The site of any crime punishable as a felony other than a crime that involves the manufacturing of any material, compound,

mixture or preparation which contains any quantity of methamphetamine; or

(c) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property, _____ is not material to the transaction.

2. In any sale, [lessor] *lease* or rental of real property, the fact that a sex offender, as defined in NRS 179D.400, resides or is expected to reside in the community is not material to the transaction, and the seller, lessor or landlord or any agent of the seller, lessor or landlord does not have a duty to disclose such a fact to a buyer, lessee or tenant or any agent of a buyer, lessee or tenant.

3. *In any sale, lease or rental of real property, the fact that a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS is located near the property being sold, leased or rented is not material to the transaction.*

4. A seller, lessor or landlord or any agent of the seller, lessor or landlord is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, [or] 2 or 3 that is not material to the transaction or _____

of which the seller, lessor or landlord or agent of the seller, lessor or landlord had no actual knowledge.

[4.] 5. Except as otherwise provided in an agreement between a buyer, lessee or tenant and his agent, an agent of the buyer, lessee or tenant is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, [or] 2 or 3 that is not material to the transaction or of which the agent of the buyer, lessee or tenant had no actual knowledge.

[5.] 6. For purposes of this section, the fact that the property is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine is not material to the transaction if:

(a) All materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or

(b) The property has been deemed safe for habitation by a governmental entity.

7. *As used in this section, "facility for transitional living for released offenders" has the meaning ascribed to it in section 2 of this act.*

Sec. 10. NRS 176A.850 is hereby amended to read as follows:
176A.850 1. A person who:

(a) Has fulfilled the conditions of his probation for the entire period thereof;

(b) Is recommended for earlier discharge by the Division; or

(c) Has demonstrated his fitness for honorable discharge but because of economic hardship, verified by a parole and probation

officer, has been unable to make restitution as ordered by the court,
_ may be granted an honorable discharge from probation by order
of the court.

2. Any amount of restitution remaining unpaid constitutes a
civil liability arising upon the date of discharge.

3. Except as otherwise provided in subsection 4, a person who
has been honorably discharged from probation:

(a) Is free from the terms and conditions of his probation.

(b) Is immediately restored to the following civil rights:

(1) The right to vote; and

(2) The right to serve as a juror in a civil action.

(c) Four years after the date of his honorable discharge from
probation, is restored to the right to hold office.

(d) Six years after the date of his honorable discharge from
probation, is restored to the right to serve as a juror in a criminal
action.

(e) If he meets the requirements of NRS 179.245, may apply to
the court for the sealing of records relating to his conviction.

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(f) Must be informed of the provisions of this section and NRS
179.245 in his probation papers.

(g) Is exempt from the requirements of chapter 179C of NRS,
but is not exempt from the requirements of chapter 179D of NRS.

(h) Shall disclose the conviction to a gaming establishment and
to the State and its agencies, departments, boards, commissions and
political subdivisions, if required in an application for employment,
license or other permit. As used in this paragraph, "establishment"
has the meaning ascribed to it in NRS 463.0148.

(i) Except as otherwise provided in paragraph (h), need not
disclose the conviction to an employer or prospective employer.

4. Except as otherwise provided in this subsection, the civil
rights set forth in subsection 3 are not restored to a person honorably
discharged from probation if the person has previously been
convicted in this State:

(a) Of a category A felony.

(b) Of an offense that would constitute a category A felony if
committed as of the date of his honorable discharge from probation.

(c) Of a category B felony involving the use of force or violence
that resulted in substantial bodily harm to the victim.

(d) Of an offense involving the use of force or violence that
resulted in substantial bodily harm to the victim and that would
constitute a category B felony if committed as of the date of his
honorable discharge from probation.

(e) Two or more times of a felony, unless a felony for which the
person has been convicted arose out of the same act, transaction or
occurrence as another felony, in which case the convictions for
those felonies shall be deemed to constitute a single conviction for
the purposes of this paragraph.

_ A person described in this subsection may petition [the court in
which the person was convicted] *a court of competent jurisdiction*
for an order granting the restoration of his civil rights as set forth in

subsection 3.

5. The prior conviction of a person who has been honorably discharged from probation may be used for purposes of impeachment. In any subsequent prosecution of the person, the prior conviction may be pleaded and proved if otherwise admissible.

6. Except for a person subject to the limitations set forth in subsection 4, upon his honorable discharge from probation, the person so discharged must be given an official document which provides:

- (a) That he has received an honorable discharge from probation;
- (b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his honorable discharge from probation;

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- (c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (c) of subsection 3; and
- (d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (d) of subsection 3.

7. Subject to the limitations set forth in subsection 4, a person who has been honorably discharged from probation in this State or elsewhere and whose official documentation of his honorable discharge from probation is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been honorably discharged from probation and is eligible to be restored to the civil rights set forth in subsection 3, the court shall issue an order restoring the person to the civil rights set forth in subsection 3. A person must not be required to pay a fee to receive such an order.

8. A person who has been honorably discharged from probation in this State or elsewhere may present:

- (a) Official documentation of his honorable discharge from probation, if it contains the provisions set forth in subsection 6; or
- (b) A court order restoring his civil rights,
_ as proof that he has been restored to the civil rights set forth in subsection 3.

Sec. 11. NRS 179.245 is hereby amended to read as follows:

179.245 1. Except as otherwise provided in subsection 5 and NRS 176A.265, 179.259 and 453.3365, a person may petition the court in which he was convicted for the sealing of all records relating to a conviction of:

- (a) A category A or B felony after 15 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;
- (b) A category C or D felony after 12 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;
- (c) A category E felony after [10] 7 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

(d) Any gross misdemeanor after 7 years from the date of his release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of NRS 484.379 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of his release from actual custody or from the date when he is no longer under a suspended sentence, whichever occurs later; or

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(f) Any other misdemeanor after [3] 2 years from the date of his release from actual custody or from the date when he is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must:

(a) Be accompanied by current, verified records of the petitioner's criminal history received from:

(1) The Central Repository for Nevada Records of Criminal History; and

(2) The local law enforcement agency of the city or county in which the conviction was entered;

(b) Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

3. Upon receiving a petition pursuant to this section, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the person was convicted in a district court or justice's court, the prosecuting attorney for the county; or

(b) If the person was convicted in a municipal court, the prosecuting attorney for the city.

— The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, including, but not limited to, the Federal Bureau of Investigation, the California Bureau of Identification and Information, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

5. A person may not petition the court to seal records relating to a conviction of a crime against a child or a sexual offense.

6. If the court grants a petition for the sealing of records pursuant to this section, upon the request of the person whose

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records are sealed, the court may order sealed all records of the civil proceeding in which the records were sealed.

7. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.210.

(b) "Sexual offense" means:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a felony.

(4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

(6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.

(7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

(8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(9) Incest pursuant to NRS 201.180.

(10) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

(11) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony.

(12) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony.

(13) Lewdness with a child pursuant to NRS 201.230.

(14) Sexual penetration of a dead human body pursuant to NRS 201.450.

(15) Luring a child or mentally ill person pursuant to NRS 201.560, if punishable as a felony.

(16) An attempt to commit an offense listed in subparagraphs (1) to (15), inclusive.

Sec. 12. NRS 209.511 is hereby amended to read as follows:

209.511 1. When an offender is released from prison by expiration of his term of sentence, by pardon or by parole, the Director:

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- (a) May furnish him with a sum of money not to exceed \$100, the amount to be based upon the offender's economic need as determined by the Director;
- (b) Shall give him notice of the provisions of chapter 179C of NRS and NRS 202.360;
- (c) Shall require him to sign an acknowledgment of the notice required in paragraph (b);
- (d) Shall give him notice of the provisions of NRS 179.245 and the provisions of NRS 213.090, 213.155 or 213.157, as applicable;
- (e) May provide him with clothing suitable for reentering society;
- (f) May provide him with the cost of transportation to his place of residence anywhere within the continental United States, or to the place of his conviction; [and]
- (g) *May, but is not required to, release him to a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS; and*
- (h) Shall require him to submit to at least one test for exposure to the human immunodeficiency virus.

2. The costs authorized in paragraphs (a), (e), (f) and ~~[(g)]~~ (h) of subsection 1 must be paid out of the appropriate account within the State General Fund for the use of the Department as other claims against the State are paid to the extent that the costs have not been paid in accordance with subsection 5 of NRS 209.221 and NRS 209.246.

3. *As used in this section, "facility for transitional living for released offenders" has the meaning ascribed to it in section 2 of this act.*

Sec. 13. NRS 213.155 is hereby amended to read as follows:

213.155 1. Except as otherwise provided in subsection 2, a person who receives an honorable discharge from parole pursuant to NRS 213.154:

- (a) Is immediately restored to the following civil rights:
 - (1) The right to vote; and
 - (2) The right to serve as a juror in a civil action.
- (b) Four years after the date of his honorable discharge from parole, is restored to the right to hold office.
- (c) Six years after the date of his honorable discharge from parole, is restored to the right to serve as a juror in a criminal action.

2. Except as otherwise provided in this subsection, the civil rights set forth in subsection 1 are not restored to a person who has received an honorable discharge from parole if the person has previously been convicted in this State:

- (a) Of a category A felony.
- (b) Of an offense that would constitute a category A felony if committed as of the date of his honorable discharge from parole.
- (c) Of a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim.
- (d) Of an offense involving the use of force or violence that resulted in substantial bodily harm to the victim and that would

constitute a category B felony if committed as of the date of his honorable discharge from parole.

(e) Two or more times of a felony, unless a felony for which the person has been convicted arose out of the same act, transaction or occurrence as another felony, in which case the convictions for those felonies shall be deemed to constitute a single conviction for the purposes of this paragraph.

_ A person described in this subsection may petition [the court in which the person was convicted] *a court of competent jurisdiction* for an order granting the restoration of his civil rights as set forth in subsection 1.

3. Except for a person subject to the limitations set forth in subsection 2, upon his honorable discharge from parole, a person so discharged must be given an official document which provides:

(a) That he has received an honorable discharge from parole;

(b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his honorable discharge from parole;

(c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (b) of subsection 1; and

(d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (c) of subsection 1.

4. Subject to the limitations set forth in subsection 2, a person who has been honorably discharged from parole in this State or elsewhere and whose official documentation of his honorable discharge from parole is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been honorably discharged from parole and is eligible to be restored to the civil rights set forth in subsection 1, the court shall issue an order restoring the person to the civil rights set forth in subsection 1. A person must not be required to pay a fee to receive such an order.

5. A person who has been honorably discharged from parole in this State or elsewhere may present:

(a) Official documentation of his honorable discharge from parole, if it contains the provisions set forth in subsection 3; or

(b) A court order restoring his civil rights,

_ as proof that he has been restored to the civil rights set forth in subsection 1.

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6. The Board may adopt regulations necessary or convenient for the purposes of this section.

Sec. 14. NRS 213.157 is hereby amended to read as follows:

213.157 1. Except as otherwise provided in subsection 2, a person convicted of a felony in the State of Nevada who has served his sentence and has been released from prison:

(a) Is immediately restored to the following civil rights:

(1) The right to vote; and

(2) The right to serve as a juror in a civil action.

(b) Four years after the date of his release from prison, is restored to the right to hold office.

(c) Six years after the date of his release from prison, is restored to the right to serve as a juror in a criminal action.

2. Except as otherwise provided in this subsection, the civil rights set forth in subsection 1 are not restored to a person who has been released from prison if the person has previously been convicted in this State:

(a) Of a category A felony.

(b) Of an offense that would constitute a category A felony if committed as of the date of his release from prison.

(c) Of a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim.

(d) Of an offense involving the use of force or violence that resulted in substantial bodily harm to the victim and that would constitute a category B felony if committed as of the date of his release from prison.

(e) Two or more times of a felony, unless a felony for which the person has been convicted arose out of the same act, transaction or occurrence as another felony, in which case the convictions for those felonies shall be deemed to constitute a single conviction for the purposes of this paragraph.

__ A person described in this subsection may petition [the court in which the person was convicted] *a court of competent jurisdiction* for an order granting the restoration of his civil rights as set forth in subsection 1.

3. Except for a person subject to the limitations set forth in subsection 2, upon his release from prison, a person so released must be given an official document which provides:

(a) That he has been released from prison;

(b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his release from prison;

(c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (b) of subsection 1; and

- 15 -

(d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (c) of subsection 1.

4. Subject to the limitations set forth in subsection 2, a person who has been released from prison in this State or elsewhere and whose official documentation of his release from prison is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been released from prison and is eligible to be restored to the civil rights set forth in subsection 1, the court shall issue an order restoring the person to the civil rights set forth in subsection 1. A person must not be required to pay a fee to receive such an order.

5. A person who has been released from prison in this State or elsewhere may present:

- (a) Official documentation of his release from prison, if it contains the provisions set forth in subsection 3; or
- (b) A court order restoring his civil rights,
... as proof that he has been restored to the civil rights set forth in subsection 1.

Sec. 15. Notwithstanding the provisions of sections 1 to 9, inclusive, and 12 of this act, a person is not required to possess a license issued by the State Board of Health to operate or maintain a facility for transitional living for released offenders in this State before January 1, 2006, unless the Board establishes, by regulation, an earlier date for compliance with the amendatory provisions of sections 1 to 9, inclusive, and 12 of this act.

Sec. 16. 1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2, a person who was dishonorably discharged from probation or parole before the effective date of this section, until July 1, 2008, may apply to the Division of Parole and Probation of the Department of Public Safety, in accordance with the regulations adopted by the Division pursuant to the provisions of this section, to request that his dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole.

2. A person who was dishonorably discharged from probation or parole may not apply to change his discharge to an honorable discharge pursuant to this section if his dishonorable discharge was based, in whole or in part, upon:

- (a) The fact that he committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole;
- (b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole; or

- 16 -

- (c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

3. The Division shall adopt regulations establishing guidelines and procedures to be used to carry out the provisions of this section. The regulations must include, without limitation, provisions requiring that to be granted a change of discharge pursuant to this section, if an applicant failed to make full restitution as ordered by the court or failed to pay the fees to defray the cost of his supervision as required pursuant to NRS 213.1076, the applicant must have made or must be making an effort in good faith and satisfactory progress towards paying the restitution ordered or fees owed, as determined by the Division.

4. A person whose application for a change of discharge is granted by the Division and whose discharge from probation or parole is changed to an honorable discharge from probation or parole pursuant to this section:

- (a) Shall be deemed to have been issued an honorable discharge from probation or parole effective as of the date of his original dishonorable discharge from probation or parole;

(b) Is subject to, and must be restored to his civil rights in accordance with, the provisions of NRS 176A.850 or 213.155, as amended by this act; and

(c) Must be given an official document which:

(1) Provides that he has received an honorable discharge from probation or parole; and

(2) States, as applicable, the dates on which his civil rights to vote, to serve as a juror in a civil action, to hold office and to serve as a juror in a criminal action will be restored to him.

5. The Division shall, on or before January 1, 2009, submit a written report to the Director of the Legislative Counsel Bureau that includes, without limitation, the following information:

(a) The number of persons who applied for a change of discharge pursuant to this section;

(b) The number of applications that were granted or denied and the general reasons for denial of the applications;

(c) The estimated amount of restitution and fees for supervision paid as the result of the enactment of this section;

(d) Any recommendations and conclusions concerning the desirability of extending the application of the provisions of this section; and

(e) Any other information deemed appropriate by the Division.

Sec. 17. 1. This section and sections 10, 11 and 13 to 16, inclusive, of this act become effective upon passage and approval.

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2. Sections 1 to 9, inclusive, and 12 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2005, for all other purposes.

20 --- 08

EXHIBIT 1-D

EXHIBIT 1-D

Brian Sandoval
Governor



James M. Wright
Director

Natalie Wood
Chief

DIVISION OF PAROLE AND PROBATION

OFFICE OF THE CHIEF
1445 Old Hot Springs Road, Suite 104
Carson City, NV 89706
(775) 684-2653 (775) 684-2697

June 17, 2014

STACEY CONCEPCION
GORDON AND SILVER, ATTORNEYS AT LAW
3960 HOWARD HUGHES PARKWAY
NINTH FLOOR
LAS VEGAS NV 89169

Re: Kenneth Coley, Change of Dishonorable Discharge to Honorable Discharge in
CC# C137946, C125907, C137870

Dear Ms. Concepcion:

The Division has received your request to change Kenneth Coley's dishonorable discharge to an honorable discharge pursuant to SB 282, codified as NAC 213.720 through NAC 213.790 inclusive. Based on the Nevada Administrative Regulations, he does not qualify for consideration. An audit of the supervision file in C137946 and C137870 confirms the following disqualifying factor:

- ☐ He committed a new crime, other than a violation of a traffic law for which you were issued a citation during your period of probation or parole.
- ☐ His whereabouts were unknown at the time of your discharge from probation or parole.
- ☐ His committed an incident involving commission of a violent act or an act that threatened public safety during your period of probation or parole.
- ☒ He received a Dishonorable Discharges in both cases due to in part to failure to complete community service and must petition the Court or Parole Board for relief on this particular issue.

Mr. Coley also owes \$450.00 in supervision fees and a \$25.00 administrative assessment fee. Please contact the undersigned at the above referenced phone number if you have any questions. He did receive an Honorable Discharge in C125907.

Sincerely,

Cherie Konvicka

Cherie Konvicka, Management Analyst III
Nevada Parole and Probation
Department of Public Safety

Administrative Services • Capitol Police • Criminal Justice Assistance • Emergency Management • Homeland Security
Emergency Response Commission • State Fire Marshal • Investigations • Highway Patrol • Office of Traffic Safety • Parole and Probation
Records and Technology • Board of Parole Commissioners • Training • Office of Professional Responsibility

APP0056

EXHIBIT 1-E

EXHIBIT 1-E

Colleen E. McCarty

From: Paola M. Armeni
Sent: Thursday, July 17, 2014 9:57 AM
To: Stacey M. Concepcion
Subject: FW: Eric Mathews/Kenneth Coley
Attachments: SB282.pdf

From: Cherie Konvicka [mailto:ckonvicka@dps.state.nv.us]
Sent: Thursday, July 17, 2014 8:26 AM
To: Paola M. Armeni
Subject: RE: Eric Mathews/Kenneth Coley

Hi Paola: I went to the law library yesterday to do research and also read through a notebook in my office which has all the documentation from SB 282. It appears that the bill was first introduced and written to be included in NRS as a statute. Somewhere along the line, it was instead decided to pursue the process to change a dishonorable discharge to an honorable discharge to an Administrative Regulation. I am not sure why that change was made. Nevertheless, although the process started out as NRS it was amended and instead created as an NAC. The information that you pulled up is the "history" of the initial bill. The standards were not added to the NRS.

I have also attached the file stamped Regulation as it was submitted to the Legislative Counsel Bureau for inclusion in the NAC. The legislative note states specifically that the process is only for offenders who received a Dishonorable Discharge due to unpaid restitution and/or supervision fees.

The NAC stated below provides instances in which an offender would be disqualified from pursuing a change in their discharge. For example, if an offender was given a Dishonorable Discharge, and the reason stated was that he was an absconder, he is not eligible for consideration even if he does pay his outstanding fees. In cases where the offender did not complete community service, or their drug program, the Division does not believe these offenders qualify as the regulations were created only in reference to unpaid supervision fees and restitution.

My thought is that in cases where the offender was given a Dish Discharge for failure to complete a condition, they can petition the Court, and the Court can order an alternate penalty, for example, they pay a \$1,000 fine in lieu. The attorney may have to get creative, but I would think that the Courts would be open to alternative. Please let me know if you have any other questions.

Cherie Konvicka (702) 684-2653

2. A person who was dishonorably discharged from probation or parole may not apply to change his discharge to an honorable discharge pursuant to this section if his dishonorable discharge was based, in whole or in part, upon:

(a) The fact that he committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole;

(b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole; or

(c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

EXHIBIT 1-F

EXHIBIT 1-F

Applying to have your Dishonorable Discharge changed to an Honorable Discharge providing fiscal obligations are met.

NRS 213.157 has been amended by the Nevada Legislature to allow the opportunity for individuals who received a Dishonorable Discharge from supervision to apply to have it changed to an Honorable Discharge if certain criteria are met.

This application is based on the fiscal responsibilities of the individual to either the State, the Victim or in some cases, both.

The regulation itself states that if an applicant failed to make full restitution as ordered by the court or failed to pay the fees to defray the cost of his supervision as required pursuant to NRS 213.1076, the applicant must have made or must be making an effort in good faith and satisfactory progress towards paying the restitution ordered or fees owed, as determined by the Division.

A person is not eligible for this consideration if the Dishonorable Discharge was based in whole or in part, upon:

- (a) The fact that he committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole,
- (b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole; or
- (c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

If you wish to take advantage of this regulation please complete the attached application and forward it to the: Office of the Chief of Parole and Probation
1445 Old Hot Springs Road
Carson City, Nevada 89706

Your application will be reviewed and a payment schedule will be developed for your individual circumstance. The Division of Parole and Probation will contact you regarding the payment schedule and when payments will be expected.

If you have any questions regarding the regulation or your individual application, please contact Catherine Gilbert at (775) 684-2606

EXHIBIT 1-G

EXHIBIT 1-G

**CHANGE OF DISHONORABLE DISCHARGE TO HONORABLE DISCHARGE
PURSUANT SB 282, codified as NAC 213.720**

Nevada Administrative Regulations (NAC 213.720) gives an individual who receives a Dishonorable Discharge from supervision for non-payment of supervision fees and/or restitution the opportunity to satisfy their obligations "after the fact", so that they can instead receive an Honorable Discharge. A person is not eligible for consideration if their Dishonorable Discharge was based in whole or part upon:

- a) The fact that he/she committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole;
- b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole;
- c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

This process is only applicable for applicants who received a Dishonorable Discharge due to unpaid restitution or supervision fees. If an applicant received a Dishonorable Discharge due to unpaid court fines, failed drug tests, community service not completed, or any other unmet conditions, they must pursue remedy through the appropriate court or Parole Board.

APPLICANT INSTRUCTIONS

1. Complete and submit application.
2. Provide proof of current income. This can be a paycheck stub or tax return.

Mail documents to:

The Division of Parole and Probation
1445 Hot Springs Road #104
Carson City, NV 89706
Attention: Cherie Konvicka, MA III

PROCESS

After receiving application

1. The Division will review the Discharge Summary and supervision file to determine if applicant is eligible for consideration under the regulations.
2. If necessary, the Division will request an audit of payments made for restitution and supervision fees.

After determination of eligibility

1. If the Division determines the applicant is not eligible for consideration, a letter will be sent notifying the applicant that the application has been denied and the reason(s) why. The application, provided documentation and information used to make the determination of non-eligibility will be maintained by the Division for five years. There is no process to dispute the finding of non-eligibility.
2. If the Division determines the applicant is eligible for consideration, a hard file will be created and a schedule of payments will be determined and provided to the applicant. The period of repayment for the applicant must be one year, or a period equal to one-half of the time that the applicant was under the supervision of the Division, whichever is longer. If the Division determines that the applicant has demonstrated financial hardship, the applicant must be required to pay a minimum payment in the amount of \$20.00. The applicant will be informed it is their responsibility to send monthly payments; they will not receive a bill or reminder notice.
3. The applicant can also pay the outstanding restitution or supervision fees immediately.

If the applicant has made a good faith effort to pay

1. If at the end of the period for repayment established by the Division, the applicant has made satisfactory progress towards making the required payments, and/or or the applicant pays the outstanding restitution or supervision fees, the Division will submit a Discharge Request and Honorable Discharge Petition to the Court or Parole Board as applicable. The Honorable Discharge will reflect the same date of the Dishonorable Discharge, effectively "replacing" the Dishonorable Discharge.
2. When the signed petition is returned to the Division, a copy will be sent to the applicant along with an explanation of what rights have been restored to him/her.
3. A copy of the signed Petition will be sent to the Criminal History Repository.

If the applicant has not made a good faith effort to pay

1. The Division will deny the application of the applicant.
2. The Division will notify the applicant in writing that the application has been denied.

NAC 213.720 Definitions. (§ 16 of ch. 476, Stats. 2005) As used in NAC 213.720 to 213.790, inclusive, unless the context otherwise requires, the words and terms defined in NAC 213.730, 213.740 and 213.750 have the meanings ascribed to them in those sections.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.730 "Applicant" defined. (§ 16 of ch. 476, Stats. 2005) "Applicant" means a person who submits an application to the Division to change his or her dishonorable discharge from probation or parole to an honorable discharge from probation or parole in accordance with the provisions of section 16 of chapter 476, Statutes of Nevada 2005.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.740 "Chief" defined. (§ 16 of ch. 476, Stats. 2005) "Chief" means the Chief Parole and Probation Officer.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.750 "Division" defined. (§ 16 of ch. 476, Stats. 2005) "Division" means the Division of Parole and Probation of the Department of Public Safety.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.760 Submission of application and supporting documentation and information; action upon receipt. (§ 16 of ch. 476, Stats. 2005)

1. To request that his or her dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole, an applicant must submit to the office of the Chief:

- (a) A completed application, in the form prescribed by the Division;
- (b) Documentation of his or her current income; and
- (c) Any other information requested by the Division.

2. Upon receipt of an application and the supporting documentation and information from an applicant, the Chief shall obtain from the Division the discharge summary pertaining to the applicant and a summary of restitution and fees for supervision paid by the applicant. If necessary, the Chief may request from the Division an audit of the payments made by the applicant.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.770 Action upon determination of eligibility of applicant; monthly payments by applicant. (§ 16 of ch. 476, Stats. 2005)

1. If the Division determines that an applicant is not eligible to change his or her dishonorable discharge to an honorable discharge, the Chief shall:

(a) Notify the applicant, in writing, that the application has been denied and state the reasons for the denial; and

(b) Retain copies of the application, the discharge summary, the summary of restitution and fees paid by the applicant, the written notification provided to the applicant pursuant to paragraph (a) and any other supporting documentation or information received from the applicant or considered by the Division.

2. If the Division determines that an applicant is eligible to change his or her dishonorable discharge to an honorable discharge, the Chief shall establish a schedule of payments for the applicant to make over the period for repayment established pursuant to subsection 4. Except as otherwise provided in subsection 3, an applicant must be required to pay a minimum monthly payment in an amount that is equal to four times the hourly wage earned by the applicant.

3. If the Division determines that the applicant has demonstrated an economic hardship, the applicant must be required to pay a minimum monthly payment in the amount of \$20.

4. The period for repayment for an applicant must be:

- (a) One year; or
- (b) A period equal to one-half of the time that the applicant was under the supervision of the Division,

È whichever is longer.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.780 Grant or denial of application. (§ 16 of ch. 476, Stats. 2005)

1. If, at the end of the period for repayment established by the Division pursuant to NAC 213.770, the Division determines that the applicant has made an effort in good faith and has made satisfactory progress towards making the required payments, the Division will submit its recommendation that the application should be granted to the court or the State Board of Parole Commissioners, whichever is applicable. Upon notification from the court or the State Board of Parole Commissioners that an application has been granted, the Division will:

- (a) Notify the applicant, in writing, that the application has been granted;
- (b) Forward to the applicant from the court or the State Board of Parole Commissioners, whichever is applicable, the official document which:
 - (1) Provides that he or she has received an honorable discharge from probation or parole; and
 - (2) States, as applicable, the dates on which his or her civil rights to vote, to serve as a juror in a civil action, to hold office and to serve as a juror in a criminal action will be restored to him or her;
- (c) Forward a copy of the official document to the Central Repository for Nevada Records of Criminal History; and
- (d) Retain a copy of the official document.

2. If, at the end of the period for repayment established by the Division pursuant to NAC 213.770, the Division determines that the applicant has not made an effort in good faith and has not made satisfactory progress towards making the required payments, the Division will:

- (a) Deny the application of the applicant; and
- (b) Notify the applicant that the application has been denied.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.790 Availability of information and forms. (§ 16 of ch. 476, Stats. 2005) The Division will make available at its offices, on its website and by mail:

- 1. A written explanation of the provisions of section 16 of chapter 476, Statutes of Nevada 2005, and NAC 213.720 to 213.790, inclusive; and
- 2. The form for an application.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

APPLICATION FOR CHANGE OF DISCHARGE PERSUANT TO SB 282

APPLICANT'S NAME: _____ SS#: _____

DATE OF BIRTH: _____ PHONE #: _____

ADDRESS (CITY/STATE/ZIP): _____

EMAIL ADDRESS: _____

MONTHLY INCOME (Approx.)		MONTHLY EXPENSES (Approx.)	
Regular Job (+ tips)	\$	Rent/House Payment	\$
Part Time Job	\$	Utilities	\$
Spouse Income	\$	Food/Clothing	\$
Unemployment Comp.	\$	Gasoline and car repairs	\$
Workman's Comp.	\$	Car Insurance	\$
Child Support	\$	Health Insurance	\$
General Assistance	\$	Child Care	\$
Food Stamps	\$	Child Support	\$
Social Security Disability	\$	Court Fines	\$
Military Pension	\$	Salary Garnishment	\$
	\$	Medical Bills	\$
	\$	Credit Cards and loans	\$
TOTAL	\$	TOTAL	\$

Checking Account: Yes ☐ No ☐ Bank _____ Balance\$ _____

Savings Account: Yes ☐ No ☐ Bank _____ Balance\$ _____

Total Assets: (Cars, cash, property, homes, jewelry, tools, etc.) \$ _____

Total Debts: (Credit cards, medical bills, loans, legal fees, etc.) \$ _____

How much do you believe you can afford to pay monthly towards your outstanding financial obligations?: \$ _____

OR do you plan on paying your financial obligations in one payment?: _____

Please provide proof of income, disability or any other benefits with this application if requesting a monthly payment plan

The information provided above is true and correct to the best of my knowledge:

APPLICANT SIGNATURE

DATE

EXHIBIT 1-H

EXHIBIT 1-H



Paola M. Armeni, Esq.
parmeni@gordonsilver.com

May 5, 2014

VIA FACSIMILE: (775) 684-2697 and U.S. MAIL

Bernard W. Curtis, Chief
Division of Parole and Probation
Office of the Chief
1445 Old Hot Springs Road, Suite 104
Carson City, Nevada 89706

**Re: Kenneth Coley -- Request for Change of Discharge
Our File Number: 100104-083**

Dear Chief Curtis:

Please be advised that in conjunction with Legal Aid Center of Southern Nevada Pro Bono Project our law firm represents Mr. Kenneth Scott Coley, in the above-referenced matter. Mr. Coley came to our office seeking assistance with the sealing of his criminal records. After a review of his criminal history, we learned that Mr. Coley was dishonorably discharged from probation in cases C137870 and C137946 on October 11, 1999. As you are aware, a dishonorable discharge will halt any opportunity to seal Mr. Coley's criminal records. Therefore, the purpose of this letter is to request that Mr. Coley's Dishonorable Discharge from probation be changed to an Honorable Discharge pursuant to NRS 176A.850.

As the Division of Parole and Probation has already acknowledged when it adopted its regulation in support of Section 16 of Senate Bill No. 282 of the 73rd Session of Nevada Legislature, ch. 476, Statutes of Nevada 2005, at page 2360, a dishonorable discharge can be changed to an honorable discharge when certain criteria are met.

Section 16 provides in pertinent part that:¹

"1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2, a person who was dishonorably discharged from probation or parole before the effective date of this section [June 17, 2005], until July 1, 2008, may apply to the Division of Parole and Probation of the Department of Public Safety, in accordance with the regulations adopted by the Division pursuant to the provisions of this section, to request that his

¹ Attached Section 16 of Senate Bill No. 282 of the 73rd Session of Nevada Legislature, ch. 476, Statutes of Nevada 2005, at page 2360 as Exhibit 1.

3960 HOWARD HUGHES PARKWAY, NINTH FLOOR | LAS VEGAS, NEVADA 89169
T: 702.796.5555 | F: 702.869.2666
gordonsilver.com

100104-083/2283507

LAS VEGAS | PHOENIX | RENO | WASHINGTON, D.C.

APP0068

Gordon Silver

Attorneys and Counselors at Law

May 5, 2014

Page 2

dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole.

"2. A person who was dishonorably discharged from probation or parole may not apply to change his discharge to an honorable discharge pursuant to this section if his dishonorable discharge was based, in whole or in part, upon:

"(a) The fact that he committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole;

"(b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole; or

"(c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

As it applies to Mr. Coley, his discharge from probation occurred prior to July 1, 2008. Furthermore, at the time Mr. Coley was dishonorably discharged from probation, it is our belief that he did not commit a new crime nor was he involved in any incident involving a commission of a violent act or an act that threatened public safety. Finally, at the time of the discharge, it is our belief that Mr. Coley's whereabouts were known. Based on the above criteria, Mr. Coley is able to apply for the change in the status of his discharge from dishonorable to honorable.

Mr. Coley understands that pursuant to subsection 3 of this section, that if he failed to pay the fees to defray the cost of his supervision pursuant to NRS 213.1076, he must make a good faith effort toward paying the fees owed. As attached hereto as Exhibit 2 - the Application for Change of Discharge, Mr. Coley has submitted the monthly payment he is able to make at this time. Also, attached hereto as Exhibit 3, is the supporting documentation indicating that Mr. Coley is unemployed and his main source of income is social security. Please note that when Mr. Coley originally began to receive food stamps they were in the amount of \$200 as evidenced in Exhibit 3. It is my understanding that his food stamps have been decreased dramatically to the amount shown on Exhibit 2. Unfortunately, we were unable to obtain updated information on the new amount.

We appreciate you taking the time to review Mr. Coley's application and are hopeful that you will change Mr. Coley's discharge from dishonorable to honorable so as to allow him to continue with the sealing process and seal his criminal records.

Gordon Silver

Attorneys and Counselors at Law

May 5, 2014

Page 3

If you have any questions or concerns, please do not hesitate to contact me at 702-796-5555 or via e-mail at parmeni@gordonsilver.com.

Very truly yours,

GORDON SILVER


PAOLA M. ARMENI, ESQ.

PMA/smc

Enclosures: as stated above

EXHIBIT 1

EXHIBIT 1

↗ A person described in this subsection may petition ~~(the court in which the person was convicted)~~ *a court of competent jurisdiction* for an order granting the restoration of his civil rights as set forth in subsection 1.

↓2005 Statutes of Nevada, Page 2380 (Chapter 476, SB 282)↓

3. Except for a person subject to the limitations set forth in subsection 2, upon his release from prison, a person so released must be given an official document which provides:

- (a) That he has been released from prison;
- (b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his release from prison;
- (c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (b) of subsection 1; and
- (d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (c) of subsection 1.

4. Subject to the limitations set forth in subsection 2, a person who has been released from prison in this State or elsewhere and whose official documentation of his release from prison is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been released from prison and is eligible to be restored to the civil rights set forth in subsection 1, the court shall issue an order restoring the person to the civil rights set forth in subsection 1. A person must not be required to pay a fee to receive such an order.

5. A person who has been released from prison in this State or elsewhere may present:

- (a) Official documentation of his release from prison, if it contains the provisions set forth in subsection 3; or
 - (b) A court order restoring his civil rights,
- ↗ as proof that he has been restored to the civil rights set forth in subsection 1.

Sec. 15. Notwithstanding the provisions of sections 1 to 9, inclusive, and 12 of this act, a person is not required to possess a license issued by the State Board of Health to operate or maintain a facility for transitional living for released offenders in this State before January 1, 2006, unless the Board establishes, by regulation, an earlier date for compliance with the amendatory provisions of sections 1 to 9, inclusive, and 12 of this act.

Sec. 16. 1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2, a person who was dishonorably discharged from probation or parole before the effective date of this section, until July 1, 2008, may apply to the Division of Parole and Probation of the Department of Public Safety, in accordance with the regulations adopted by the Division pursuant to the provisions of this section, to request that his dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole.

2. A person who was dishonorably discharged from probation or parole may not apply to change his discharge to an honorable discharge pursuant to this section if his dishonorable discharge was based, in whole or in part, upon:

- (a) The fact that he committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole;
- (b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole; or
- (c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

↓2005 Statutes of Nevada, Page 2361 (Chapter 476, SB 282)↓

3. The Division shall adopt regulations establishing guidelines and procedures to be used to carry out the provisions of this section. The regulations must include, without limitation, provisions requiring that to be granted a change of discharge pursuant to this section, if an applicant failed to make full restitution as ordered by the court or failed to pay the fees to defray the cost of his supervision as required pursuant to NRS 213.1076, the applicant must have made or must be making an effort in good faith and satisfactory progress towards paying the restitution ordered or fees owed, as determined by the Division.

4. A person whose application for a change of discharge is granted by the Division and whose discharge from probation or parole is changed to an honorable discharge from probation or parole pursuant to this section:

- (a) Shall be deemed to have been issued an honorable discharge from probation or parole effective as of the date of his original dishonorable discharge from probation or parole;
- (b) Is subject to, and must be restored to his civil rights in accordance with, the provisions of NRS 176A.850 or 213.155, as amended by this act; and
- (c) Must be given an official document which:

- (1) Provides that he has received an honorable discharge from probation or parole; and
- (2) States, as applicable, the dates on which his civil rights to vote, to serve as a juror in a civil action, to hold office and to serve as a juror in a criminal action will be restored to him.

5. The Division shall, on or before January 1, 2009, submit a written report to the Director of the Legislative Counsel Bureau that includes, without limitation, the following information:

- (a) The number of persons who applied for a change of discharge pursuant to this section;
- (b) The number of applications that were granted or denied and the general reasons for denial of the applications;

- (c) The estimated amount of restitution and fees for supervision paid as the result of the enactment of this section;
 - (d) Any recommendations and conclusions concerning the desirability of extending the application of the provisions of this section; and
 - (e) Any other information deemed appropriate by the Division.
- Sec. 17. 1. This section and sections 10, 11 and 13 to 16, inclusive, of this act become effective upon passage and approval.
2. Sections 1 to 9, inclusive, and 12 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2005, for all other purposes.

Senate Bill No. 306-Senator Washington

CHAPTER 477

AN ACT relating to local governmental financing; authorizing under certain circumstances the pledge of certain sales and use tax proceeds and state funding for certain projects for the promotion of economic development and tourism; revising certain prerequisites to the pledge of certain sales and use tax proceeds and state funding for certain projects within a local improvement district; and providing other matters properly relating thereto.

.....
 ↓2005 Statutes of Nevada, Page 2362 (Chapter 477, SB 306)↓

projects within a local improvement district; and providing other matters properly relating thereto.

[Approved: June 17, 2005]

WHEREAS, The State Legislature recognizes the importance of economic development and tourism to the State of Nevada and the need to compete effectively with other states in the promotion of economic development and tourism; and
 WHEREAS, It is the intention of the State Legislature for the provisions of this act to be carried out for the promotion of economic development and tourism in the State of Nevada and for no other purpose; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 21 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 14, inclusive, of this act.

Sec. 2. This chapter shall be known as the *Tourism Improvement District Law*.

Sec. 3. Except as otherwise provided in sections 4 to 7, inclusive, of this act and unless the context otherwise requires, the words and terms defined in NRS 271.035 to 271.250, inclusive, and sections 4 to 7, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 4. "District" means a tourism improvement district created pursuant to section 8 of this act.

Sec. 5. "Municipality" means any county or city in this State.

Sec. 6. "Project" means:

1. With respect to a county whose population is 400,000 or more:

(a) An art project, as defined in NRS 271.037;

(b) A tourism and entertainment project, as defined in NRS 271.234; or

(c) A sports stadium which can be used for the home games of a Major League Baseball or National Football League team and for other purposes, including structures, buildings and other improvements and equipment therefor, parking facilities, and all other appurtenances necessary, useful or desirable for a Major League Baseball or National Football League stadium, including, without limitation, all types of property therefor and immediately adjacent facilities for retail sales, dining and entertainment.

2. With respect to a city in a county whose population is 400,000 or more:

(a) A project described in paragraph (a), (b) or (c) of subsection 1; or

(b) A recreational project, as defined in NRS 268.710.

3. With respect to a municipality other than a municipality described in subsection 1 or 2, any project that the municipality is authorized to acquire, improve, equip, operate and maintain pursuant to subsections 1, 2 and 4 to 10, inclusive, of NRS 244A.057 or NRS 268.730 or 271.265, as applicable.

4. Any real or personal property suitable for retail, tourism or entertainment purposes.

.....
 ↓2005 Statutes of Nevada, Page 2363 (Chapter 477, SB 306)↓

EXHIBIT 2

EXHIBIT 2

APPLICATION FOR CHANGE OF DISCHARGE PER SB 282

APPLICANT'S NAME: Kenneth ColeySOCIAL SECURITY # [REDACTED] DATE OF BIRTH: [REDACTED]ADDRESS: [REDACTED] STATE: NV ZIP: [REDACTED]HOME PHONE: [REDACTED] CELL PHONE: [REDACTED] E-MAIL: [REDACTED]

Monthly Income (approximate)		Monthly Expenses (approximate)	
Regular Job (+ tips)	\$ <u> </u>	Rent/House Payment	\$ <u>450.00</u>
Part Time Job	\$ <u> </u>	Utilities	\$ <u>included in rent</u>
Spouse's Income	\$ <u> </u>	Food/Clothing	\$ <u>150.00</u>
Social Security	\$ <u>903.00</u>	Car Payment	\$ <u> </u>
Unemployment Comp	\$ <u> </u>	Gasoline/etc.	\$ <u> </u>
Workman's Comp	\$ <u> </u>	Car Insurance	\$ <u> </u>
Child Support	\$ <u> </u>	Health Insurance	\$ <u> </u>
ADC Benefits	\$ <u> </u>	Child Care	\$ <u> </u>
Alimony	\$ <u> </u>	Child Support	\$ <u> </u>
General Assistance	\$ <u> </u>	Attorney Fees	\$ <u> </u>
Food Stamps	\$ <u>59.00</u>	Salary Garnishment	\$ <u> </u>
	\$ <u> </u>	Medical Bills	\$ <u> </u>
	\$ <u> </u>	Credit Cards	\$ <u> </u>
	\$ <u> </u>	Loans	\$ <u> </u>
	\$ <u> </u>		\$ <u> </u>
Total	\$ <u>962.00</u>	Total	\$ <u>600.00</u>

Other Assets (cars, cash, property, homes, jewelry, tools, etc.) 0Total Income: \$ 912.00Total Expenses: \$ 600.00TOTAL OTHER ASSETS: \$ Indicate how much you believe you can afford to pay monthly: \$ 120.00

The information given above is true and correct to the best of my knowledge.

SIGNATURE

(OFFICE USE ONLY)	
BN	DISCHARGE DATE
Convicted of a felony other than the above stated conviction?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> VERIFIED
Escorted at the time of discharge?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> VERIFIED
Restitution owed	PAID <input type="checkbox"/> FULL <input checked="" type="checkbox"/> VERIFIED
Supervision fees owed	PAID <input type="checkbox"/> FULL <input checked="" type="checkbox"/> VERIFIED
Honorable Discharge recommended	Honorable Discharge granted <input type="checkbox"/> Superwarrant <input type="checkbox"/>
Honorable Discharge denied	Letter sent <input type="checkbox"/>

EXHIBIT 3

EXHIBIT 3

** INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY **				
TIME RECEIVED May 1, 2014 6:09:40 PM PDT	REMOTE CSID 7023078378	DURATION 75	PAGES 2	STATUS Received
05/01/2014 18:09	7023078378	U		PAGE 01/02

Your New Benefit Amount

0614744

Kenneth S. Coley

Attn: Stacey
or
Paolai

BENEFICIARY'S NAME: KENNETH S COLEY

Your Social Security benefits will increase by 1.7 percent in 2013 because of a rise in the cost of living. You can use this letter when you need proof of your benefit amount to receive food, rent, or energy assistance; bank loans; or for other business. Saving this letter could save you the inconvenience of making a trip to a local office and waiting in line to obtain a new document.

How Much Will I Get And When?

- Your monthly amount (before deductions) is \$900.00
- The amount we deduct for Medicare medical insurance is \$0.00
(If you did not have Medicare as of Nov. 15, 2012, or if someone else pays your premium, we show \$0.00.)
- The amount we deduct for your Medicare prescription drug plan is \$0.00
(If you did not elect withholding as of Nov. 1, 2012, we show \$0.00.)
- The amount we deduct for voluntary Federal tax withholding is \$0.00
(If you did not elect voluntary tax withholding as of Nov. 15, 2012, we show \$0.00.)
- After we take any other deductions, you will receive \$900.00
on Jan. 9, 2013.

If you disagree with any of these amounts, you must write to us within 60 days from the date you receive this letter. We would be happy to review the amounts.

You may receive your benefits through direct deposit, a Direct Express® card, or an Electronic Transfer Account. If you still receive a check, please remember that you must switch to an electronic payment by March 1, 2013. For more information, please visit www.godirect.org or call 1-800-333-1795.

What If I Have Questions?

Please visit our website at www.socialsecurity.gov for more information and a variety of online services. You also can call 1-800-772-1213 and speak to a representative from 7 a.m. until 7 p.m., Monday through Friday. Recorded information and services are available 24 hours a day. Our lines are busiest early in the week, early in the month, as well as during the week between Christmas and New Year's Day; it is best to call at other times. If you are deaf or hard of hearing, call our TTY number, 1-800-325-0778. If you are outside the United States, you can contact any U.S. embassy or consulate office. Please have your Social Security claim number available when you call or visit and include it on any letter you send to Social Security. If you are inside the United States, and need assistance of any kind, you also can visit your local office.

SUITE 150
1250 S BUFFALO DR
LAS VEGAS NV

APP0077

05/01/2014 18:03 7023078378

PAGE 02/02

KENNETH SCOTT COLEY

CASE-ID: [REDACTED] PAGE NO: 02

MAXIMUM NET COUNTABLE INCOME
FOR A 1 PERSON HOUSEHOLD = \$ 931.00
THE CALCULATED FOOD STAMP BENEFITS FOR
YOUR HOUSEHOLD OF 1 FOR THIS MONTH = \$ 200.00
OVERPAYMENT RECOVERY = \$.00
NET FOOD STAMP BENEFITS = \$ 200.00



APP0078

SOLA

PAOLA M. ARMENI, ESQ.

Nevada Bar No.: 8357

Gordon Silver

3960 Howard Hughes Parkway 9th Floor

Las Vegas, Nevada 89169

Telephone (702) 796-5555

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parmeni@gordonsilver.com

Attorney for the Petitioner

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

DISTRICT COURT

CLARK COUNTY, NEVADA

Kenneth Scott Coley aka King Coley)

Plaintiff/Petitioner,)

vs.)

Nevada Department of Public Safety,)

Division of Parole and Probation;)

DOES I-X; and ROE ENTITIES)

I-X, inclusive.)

Defendant/Respondent.)

CASE NO.

DEPT.

**STATEMENT OF LEGAL AID
REPRESENTATION
(PURSUANT TO NRS 12.015)**

Party Filing Statement:

☒ Plaintiff/Petitioner

☐ Defendant/Respondent

STATEMENT

KENNETH COLEY, has qualified and has been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: December 23, 2014.

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer

Nevada Bar No.: 3918

/s/ Barbara E. Buckley

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

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Facsimile (702) 369-2666

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APP0079



CLERK OF THE COURT

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ADAM D. HONEY
Deputy Attorney General
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Public Safety Division
555 East Washington Avenue, #3900
Las Vegas, Nevada 89101
Tel: (702) 486-3573
Fax: (702) 486-3773
*Attorneys for State of Nevada, Department of Public
Safety, Division of Parole and Probation*

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH SCOTT COLEY aka KING
COLEY,

Petitioner,

v.

NEVADA DEPARTMENT OF PUBLIC
SAFETY, DIVISION OF PAROLE AND
PROBATION; DOES I-X; and ROE
ENTITIES I-X, inclusive,

Respondents.

CASE NO. 96C137946
DEPT. XXV

**RESPONDENT'S OPPOSITION TO
PETITION FOR WRIT OF MANDAMUS**

The STATE OF NEVADA, DEPARTMENT OF PUBLIC SAFETY, DIVISION OF
PAROLE AND PROBATION ("Department"), by and through its attorneys, ADAM PAUL
LAXALT, Attorney General, and ADAM D. HONEY, Deputy Attorney General, hereby submits
its opposition to Petition for Writ of Mandamus. This opposition is made and based upon the
papers and pleadings on file herein, the attached points and authorities, and any oral

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///

arguments made at hearing.

DATED this 11th day of February, 2015.

ADAM PAUL LAXALT
Nevada Attorney General

By: /s/ Adam D. Honey
ADAM D. HONEY
Deputy Attorney General
Nevada Bar No. 9588
*Attorneys for State of Nevada, Department of
Public Safety, Division of Parole and Probation*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The pending writ concerns Petitioner's attempt to have three dishonorable discharges from probation amended to honorable discharges based on an expired statute, S.B. 282 Section 16, ("Section 16") which is uncodified legislation passed in 2005. This legislation is found in the 2005 Statutes of Nevada at Chapter 476 §16 p. 2360-2361. Ex. "A", 2005 Stat. of NV, Chapter 476 §16.

Respondent respectfully asks this Court to determine whether Section 16 did in fact expire on July 1, 2008, by virtue of this date representing the deadline to apply for a change in discharge status. If it is determined that Section 16 did in fact expire on July 1, 2008, the writ must be denied and the matter dismissed.

II.

FACTS

On June 17, 2005, the 73rd Legislature passed the statute in question, S.B. 282, Section 16 ("Section 16"). Since that time the legislature has taken no further action relative to this law. Section 16 directed the Division of Parole and Probation to adopt regulations. S.B. 282 Sect. 16 (1) & (3). These regulations have been codified in the Nevada Administrative Code ("NAC") at NAC 213.720-NAC 213.790.

1 Between passage and July 1, 2008, 16 individuals applied for change in their discharge
2 status. Ex. "B", Corr. dated 12/8/08. Over the course of approximately the next six years, no
3 individual or attorney utilized Section 16 or the regulations in order to change the status of a
4 discharge from probation to the best of Respondent's knowledge.

5 In spring of 2014, Petitioner's counsel contacted Respondent and inquired into the
6 process of having three dishonorable discharges amended to honorable discharges. This
7 inquiry was one of first impression, or at least unraised in many years, to the current
8 leadership and staff at the Division of Parole and Probation. In an abundance of caution,
9 Respondent provided Petitioner the application he requested. Respondent also took the
10 affirmative step of making the same information available to the public at large through their
11 public website as Respondent believed it was required under NAC 213.790. Thereafter,
12 Respondent received and denied Petitioner's application as to two of the three cases of
13 dishonorable discharge. Ex. "C", Corr. dated 6/17/14. The application was denied because in
14 Eighth Judicial District Case # C137946 and C127870, Petitioner had been dishonorably
15 discharged for failure to complete community service and as such was determined to be
16 ineligible for a change in status. Id. The correspondence also indicated Petitioner owes \$475
17 in fees. Id. The June 17, 2014, correspondence further indicates Petitioner had already been
18 honorably discharged in Case # C125907. Id. In hindsight the application should have been
19 denied simply because the deadline to apply passed on July 1, 2008.

20 The instant Writ of Mandamus was filed by Petitioner on December 31, 2014. In
21 reviewing the Writ, S.B. 282, 2005 Statutes of Nevada, Chapter 476, Section 16, NAC
22 213.720-790, legislative history and conferring with counsel for the Legislative Counsel
23 Bureau, it is clear that Section 16 expired on July 1, 2008 as intended by the legislature.

24 This position is admittedly a change in direction from the time of Petitioner's original
25 inquiry. Nonetheless, it does not change the fact that Section 16 only allowed applications,
26 "until July 1, 2008." S.B. 282 Sect. 16(1). This change in position has been communicated to
27 Petitioner's counsel during amicable conversations and emails regarding this matter in
28 January 2015. Because of the change in position, Respondent has provided Petitioner copies

1 of the legislative history and contact information to counsel at the LCB in an attempt to resolve
2 this matter without the need for an opposition, reply or hearing on this matter.

3 III.

4 **LEGAL STANDARD**

5 Questions of statutory interpretation are reviewed de novo. *State v. Catanio*, 120 Nev.
6 1030, 1033, 102 P.3d 588, 590 (2004). When interpreting a statute, legislative intent "is the
7 controlling factor." *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983).
8 The starting point for determining legislative intent is the statute's plain meaning; when a
9 statute "is clear on its face, a court cannot go beyond the statute in determining legislative
10 intent." *Id.*; see also *Catanio*, 120 Nev. at 1033, 102 P.3d at 590 ("We must attribute the plain
11 meaning to a statute that is not ambiguous.").

12 But when "the statutory language lends itself to two or more reasonable
13 interpretations," the statute is ambiguous, and we may then look beyond the statute in
14 determining legislative intent. *Catanio*, 120 Nev. at 1033, 102 P.3d at 590. To interpret an
15 ambiguous statute, Nevada court looks to the legislative history and construe the statute in a
16 manner that is consistent with reason and public policy. *Great Basin Water Network v. State*
17 *Eng'r*, 126 Nev. —, —, 234 P.3d 912, 918 (2010); see also *Moore v. State*, 122 Nev. 27,
18 32, 126 P.3d 508, 511 (2006) (looking to legislative history to determine legislative intent
19 behind ambiguous statute); *Robert E.*, 99 Nev. at 445–48, 664 P.2d at 959–61 (looking to
20 legislative history, reason, and public policy to determine legislative intent behind ambiguous
21 statute). Nevada recognizes, "[a] fundamental rule of statutory interpretation is that the
22 unreasonableness of the result produced by one among alternative possible interpretations of
23 a statute is reason for rejecting that interpretation in favor of another that would produce a
24 reasonable result. *Int'l Game Tech. Inc. v. Sec. Jud. Dist. Ct. of NV*, 124 Nev 193, 179 P.3d
25 556 (2006) citing *Sheriff v. Smith*, 91 Nev. 729, 733, 542 P.2d 440, 443 (1975).

26 IV.

27 **ARGUMENT**

28 Petitioner's Writ should be denied for one or more of the following three reasons: 1)

1 Section 16 is expired based on the plain meaning of the statute, or at least the deadline to
2 apply passed on July 1, 2008; 2) Even if Section 16 is deemed ambiguous, the legislative
3 intent is clear and a result other than the statute having expired on July 1, 2008, would result
4 in an unreasonable result; and 3) The Petitioner is not currently eligible for a recommendation
5 for honorable discharge under Section 16 and the administering regulations because the
6 mandates of NAC 213.770 and NAC 213.780 regarding payment schedule, economic
7 hardship determinations, compliance with payment schedule or a determination that a good
8 faith effort has been made by Petitioner to fulfill his obligation have not been met.

9 **A. The statutes plain meaning demonstrates the statute expired on July 1, 2008.**

10 Section 16 (1) states,

11 "a person who was dishonorably discharged from probation or
12 parole before the effective date of this section, until July 1, 2008,
13 may apply to the Division of Parole and Probation of the Department
14 of Public Safety, in accordance to the regulations adopted by the
15 Division pursuant to the provision of this section, to request that his
16 dishonorable discharge from probation or parole be changed to an
17 honorable discharge from probation or parole."

18 The language is clear. A person who was dishonorably discharged from probation prior
19 to the date of enactment on June 17, 2005¹ could apply "until July 1, 2008," to request a
20 change in their discharge status. See Ex. "A". Any other interpretation is unreasonable.
21 There are two definite dates. The first date identifies the persons who could apply (those
22 dishonorably discharged before June 17, 2005). The second date, July 1, 2008, is the
23 deadline for application. Petitioner appears to be of the position that July 1, 2008, is the date
24 by which a person had to have been dishonorably discharged to be eligible to apply. Pet. Writ
25 at Ex. 1-H p.2. This interpretation is unreasonable as it entirely ignores the, "a person who
26 was dishonorably discharged from probation or parole before the effective date of the section"
27 language from Section 16. (Emphasis added). Petitioner's apparent interpretation results in
28 two overlapping periods of time for dishonorably discharged persons to be eligible to apply: 1)

¹ Section 17 of S.B. 282 states Section 16 becomes effective upon passage and approval, which page. 1
of Ex. "A", 2005 Statutes of Nevada, identifies as June 17, 2005.

1 Persons who were discharged before June 17, 2005, (the effective date of the statute); and 2)
2 Persons who were discharged before July 1, 2008. This result would be unreasonable and is
3 not supported by the plain language of the statute. In Section 16 the date, July 1, 2008, is not
4 preceded by the word "before". The date is preceded with the word "until", which again by its
5 plain language indicates a deadline or cutoff date.

6 In this case, Petitioner applied on May 5, 2014, which is nearly six years beyond the
7 cutoff date. See Petitioner's Writ at 3:14-15. The application must be denied because it was
8 made years after the cutoff date of July 1, 2008.

9 Additionally, Section 16 (5) requires the Division to submit a written report to the LCB
10 on or before January 1, 2009, that contains information regarding the number of people who
11 applied for a change in status, the number of applications granted or denied, the general
12 reasons for denial of the applications, the estimated amount of restitution and supervision fees
13 paid as a result of enactment of this section and "any recommendations and conclusions
14 concerning the desirability of extending the application provisions". S.B. 282 Sect. 16 (5)
15 (Emphasis added). The Division did in fact submit the report on December 8, 2008. See Ex.
16 "B".

17 The January 1, 2009, deadline for the written report to the LCB strongly supports the
18 statute expiration of July 1, 2008, as the deadline led into the 2009 legislative session where
19 the legislature could have extended the statute if they so desired. Respondent is unaware of
20 any further action taken by the legislature to extend any portion of Section 16 including the
21 July 1, 2008 date.

22 The writ should be denied as the deadline to apply passed on July 1, 2008, which in
23 essence signaled the expiration of this uncoded statute.

24 **B. The Intent of the legislature was that Section 16 expired on July 1, 2008.**

25 In the event the Court determines Section 16 is ambiguous, the law's preamble,
26 legislative history and fact that the statute was never codified demonstrate the legislative
27 intent was the application period lasted until July 1, 2008.

28 The preamble contained in the S.B. 282 and in the 2005 Statutes of Nevada indicates

1 the application period was intended to be temporary. The Preamble to S.B. 282 produced by
2 Petitioner as Exhibit 1-A, states, "... allowing certain persons who have been dishonorably
3 discharged from probation or parole to apply, for a limited period, to the Division of Parole
4 and Probation ..." S.B. 282 at page 1(Emphasis added). This same language is found in the
5 2005 Statutes of Nevada, Chapter 476 p. 2277. See Ex "A". Clearly, the intent was for the
6 application period to last for a "limited period". By the statute's language, the only date that
7 limits the application period is the deadline of July 1, 2008.

8 Legislative history from May 19, 2005 also supports the July 1, 2008, deadline in
9 Section 16. Allison Combs, Committee Policy Analyst, when discussing S.B. 445 concerning
10 restoration of civil rights stated,

11 " . . . the second would be to authorize persons dishonorably
12 discharged to apply to the Division of Parole and Probation, from
13 the date the bill is effective until July 1, 2008, to change that
14 dishonorable discharge to honorable discharge in certain
15 circumstances. If that change is made, then their civil rights are
16 restored as if the person received an honorable discharge."

17 Ex. "D", Ass. Committee on Judiciary at p. 25, 5/15/2005. (Emphasis added).

18 Furthermore, the fact that in the near decade since it was enacted, Section 16 has
19 never been codified further suggests, rather strongly, that the intent of this statute was that it
20 was temporary and ended on July 1, 2008.

21 **C. Even if Section 16 is in effect, Respondent cannot forward a recommendation**
22 **that the application be granted to the Court because the regulation mandates**
23 **under NAC 213.770 and NAC 213.780 have not been met.**

24 Petitioner concedes in his writ that he owes outstanding fees. Pet. Writ at 6:12-13 &
25 Ex. 1-H. Petitioner's itemized monthly income and expenses and indicates he can make the
26 statutory minimum payment of \$20.00 per month. Pet. Writ at Ex. 1-H. Respondent has
27 calculated fees owing in the amount of \$475.00. Ex. "B".

28 NAC 213.770(2) states that even if a person is eligible to have their status changed,
"the Chief shall establish a schedule of payments for the applicant to makes over the period of
repayment established pursuant to subsection 4. If an economic hardship is determined the
applicant must be required to pay a minimum monthly payment of \$20.00. NAC 213.770(3).

1 The repayment period must be one year or a period equal to one-half the time applicant was
2 under the supervision of the Division. NAC 213.770(4). The Division will only submit its
3 recommendation that the application should be granted to the court or the State Board of
4 Parole Commissioners if the Division determines the applicant has made an effort in good
5 faith and has made satisfactory progress towards making the required payments. NAC
6 213.780(1).

7 In this case no payment schedule has been established, no economic hardship has
8 been determined by the Division, no payments have been made and there has been no
9 determination Petitioner has made a good faith effort or made satisfactory progress towards
10 making payments. Petitioner in fact has not made any payments to date. Therefore, if the
11 Court determines that Petitioner's application was timely and should be considered, Petitioner
12 would have to comply with NAC 213.770 and 213.780 before any recommendation are made
13 by Respondent to the court.

14 V.

15 CONCLUSION

16 Respondent respectfully asks this Court to deny the writ on the basis that the deadline
17 to apply for a change in discharge status passed on July 1, 2008, or in the alternative to deny
18 the writ on the basis that Petitioner has not met the mandates of NAC 213.770 or NAC
19 213.780.

20 DATED this 11th day of February, 2015.

21
22 ADAM PAUL LAXALT
Nevada Attorney General

23
24 By: /s/ Adam D. Honey
25 ADAM D. HONEY
Deputy Attorney General
Nevada Bar No. 9588
26 *Attorneys State of Nevada, Department of*
27 *Public Safety, Division of Parole and Probation*
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the State of Nevada, Office of the
3 Attorney General, and that on the 11th day of February, 2015, I electronically filed the
4 foregoing, **RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDAMUS**, with
5 the Clerk of Court through the Wiznet System. I also served same by causing to be delivered
6 to the Department of General Services for mailing at Las Vegas, a true copy thereof,
7 addressed to:

8 Paola M. Armeni
9 Colleen E. McCarty
10 Gordon Silver
11 3960 Howard Hughes Parkway, 9th Floor
12 Las Vegas, Nevada 89169
13 *Attorneys for Petitioner*

13 /s/ Althea Zayas
14 Althea Zayas
15 An employee of:
16 **STATE OF NEVADA**
17 **OFFICE OF THE ATTORNEY GENERAL**
18
19
20
21
22
23
24
25
26
27
28

Attorney General's Office
255 E. Washington, Suite 3000
Las Vegas, NV 89101

EXHIBIT A

Senate Bill No. 252—Senators Washington and Horsford

CHAPTER 476

AN ACT relating to convicted persons; prohibiting a person other than a state or local government or agency thereof from operating or maintaining a facility for transitional living for released offenders without licensure by the State Board of Health; providing that each alcohol and drug abuse program operated by such a facility must be certified by the Health Division of the Department of Human Resources; providing that such facilities are facilities for the dependent; revising the definition of "halfway house for recovering alcohol and drug abusers"; requiring the Board to adopt standards and regulations governing the licensure and operation of such facilities; authorizing the Board to impose fees for the licensure and renewal of a license to operate such a facility; providing that the fact that a facility for transitional living for released offenders is located near real property which is the subject of a sale, lease or rental is not material to the transaction and is not required to be disclosed by the seller, lessor or landlord; revising the provisions governing the sealing of records of convictions pertaining to certain crimes; making various changes concerning the restoration of civil rights of certain persons; allowing certain persons who have been dishonorably discharged from probation or parole to apply, for a limited period, to the Division of Parole and Probation of the Department of Public Safety to request that their dishonorable discharge be changed to an honorable discharge; providing a penalty; and providing other matters properly relating thereto.

[Approved June 17, 2005]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

↓2005 Statutes of Nevada, Page 2360 (Chapter 476, SB 282)↓

3. Except for a person subject to the limitations set forth in subsection 2, upon his release from prison, a person so released must be given an official document which provides:

- (a) That he has been released from prison;
- (b) That he has been restored to his civil rights to vote and to serve as a juror in a civil action as of the date of his release from prison;
- (c) The date on which his civil right to hold office will be restored to him pursuant to paragraph (b) of subsection 1; and
- (d) The date on which his civil right to serve as a juror in a criminal action will be restored to him pursuant to paragraph (c) of subsection 1.

4. Subject to the limitations set forth in subsection 2, a person who has been released from prison in this State or elsewhere and whose official documentation of his release from prison is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his civil rights pursuant to this section. Upon verification that the person has been released from prison and is eligible to be restored to the civil rights set forth in subsection 1, the court shall issue an order restoring the person to the civil rights set forth in subsection 1. A person must not be required to pay a fee to receive such an order.

5. A person who has been released from prison in this State or elsewhere may present:

- (a) Official documentation of his release from prison, if it contains the provisions set forth in subsection 3; or
 - (b) A court order restoring his civil rights,
- as proof that he has been restored to the civil rights set forth in subsection 1.

Sec. 15. Notwithstanding the provisions of sections 1 to 9, inclusive, and 12 of this act, a person is not required to possess a license issued by the State Board of Health to operate or maintain a facility for transitional living for released offenders in this State before January 1, 2006, unless the Board establishes, by regulation, an earlier date for compliance with the amendatory provisions of sections 1 to 9, inclusive, and 12 of this act.

Sec. 16. 1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2, a person who was dishonorably discharged from probation or parole before the effective date of this section, until July 1, 2008, may apply to the Division of Parole and Probation of the Department of Public Safety, in accordance with the regulations adopted by the Division pursuant to the provisions of this section, to request that his dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole.

2. A person who was dishonorably discharged from probation or parole may not apply to change his discharge to an honorable discharge pursuant to this section if his dishonorable discharge was based, in whole or in part, upon:

- (a) The fact that he committed a new crime, other than a violation of a traffic law for which he was issued a citation, during the period of his probation or parole;
- (b) The fact that his whereabouts were unknown at the time of his discharge from probation or parole; or
- (c) Any incident involving his commission of a violent act or an act that threatened public safety during the period of his probation or parole.

↓2005 Statutes of Nevada, Page 2381 (Chapter 476, SB 282)↓

3. The Division shall adopt regulations establishing guidelines and procedures to be used to carry out the provisions of this section. The regulations must include, without limitation, provisions requiring that to be granted a change of discharge pursuant to this section, if an applicant failed to make full restitution as ordered by the court or failed to pay the fees to defray the cost of his supervision as required pursuant to NRS 213.1076, the applicant must have made or must be making an effort in good faith and satisfactory progress towards paying the restitution ordered or fees owed, as determined by the Division.

4. A person whose application for a change of discharge is granted by the Division and whose discharge from probation or parole is changed to an honorable discharge from probation or parole pursuant to this section:

- (a) Shall be deemed to have been issued an honorable discharge from probation or parole effective as of the date of his original dishonorable discharge from probation or parole;
- (b) Is subject to, and must be restored to his civil rights in accordance with, the provisions of NRS 176A.850 or 213.155, as amended by this act; and
- (c) Must be given an official document which:

- (1) Provides that he has received an honorable discharge from probation or parole; and
- (2) States, as applicable, the dates on which his civil rights to vote, to serve as a juror in a civil action, to hold office and to serve as a juror in a criminal action will be restored to him.

5. The Division shall, on or before January 1, 2009, submit a written report to the Director of the Legislative Counsel Bureau that includes, without limitation, the following information:

- (a) The number of persons who applied for a change of discharge pursuant to this section;
- (b) The number of applications that were granted or denied and the general reasons for denial of the applications;
- (c) The estimated amount of restitution and fees for supervision paid as the result of the enactment of this section;
- (d) Any recommendations and conclusions concerning the desirability of extending the application of the provisions of this section; and
- (e) Any other information deemed appropriate by the Division.

EXHIBIT B

38-08

Jim Gibbons
Governor
Arvid L. Hansen
Director
Beverly M. Cook
Chief



OFFICE OF THE CHIEF
1440 Old FM Bridge Rd.
Suite 104
Carson City, NV 89401

2004
2004
2004

Division of Parole and Probation

December 2, 2004

Mr. Loren Mufkiewicz, Director
Legislative Council Bureau
401 S. Carson Street
Carson City, NV 89701

Director Mufkiewicz:

Pursuant to Senate Bill 252, Section 16, subsection 5 of the 73rd Session of the Nevada Legislature (attached), the Division of Parole and Probation respectfully submits the following report on the response to this change in the regulation.

A. The number of persons who applied for a change of discharge pursuant to this section:

Sixteen individuals either applied or inquired about the process between June 17, 2003, when the bill was enacted and July 1, 2004.

B. The number of applications that were granted or denied and the general reasons for denial of the applications:

Three applications were granted and the Dishonorable Discharges were changed to Honorable by the courts.

Six applications were denied. The reason for the denials were the Dishonorable Discharges resulted from factors in addition to non-payment of Restitution and/or Supervision fees, which were not addressed in the regulation change.

Six individuals inquired but did not complete the application.

One individual inquired but had already received an Honorable Discharge.

C. The estimated amount of restitution and fees for supervision paid as a result of the enactment of this section:

\$150.10 in Restitution and fees were collected and billing errors were corrected as a result of the enactment of this section.

APP0093

- D. Any recommendations and conclusions concerning desirability of extending the application of the provisions of this section:

The Division's participation in the research and preparation of necessary court paperwork has been sporadic and non-problematic. This regulation, with the possibility of receiving additional restitution due to victims or fees due to the Division, should be continued.

- E. Any other information deemed appropriate by the Division:

None.

If you have any questions or would like additional information, please contact me at (775) 684-2605.

Respectfully,



Bernard W. Curtis, Chief
Department of Public Safety,
Division of Parole and Probation

EXHIBIT C

Brian Sandford
Director



James M. Wright
Manager

Nevada Wood
Chief

DIVISION OF PAROLE AND PROBATION

OFFICE OF THE CHIEF
1443 Old Hot Springs Road, Suite 104
Carson City, NV 89706
(775) 684-2653 (775) 684-2697

June 17, 2014

STACEY CONCEPCION
GORDON AND SILVER, ATTORNEYS AT LAW
3960 HOWARD HUGHES PARKWAY
NINTH FLOOR
LAS VEGAS NV 89169

Re: Kenneth Coley, Change of Dishonorable Discharge to Honorable Discharge in
CC# C137946, C135907, C137870

Dear Ms. Concepcion:

The Division has received your request to change Kenneth Coley's dishonorable discharge to an honorable discharge pursuant to SR 282, codified as NAC 213.720 through NAC 213.790 inclusive. Based on the Nevada Administrative Regulations, he does not qualify for consideration. An audit of the supervision file in C137946 and C137870 confirms the following disqualifying factor:

- _____ He committed a new crime, other than a violation of a traffic law for which you were issued a citation during your period of probation or parole.
- _____ His whereabouts were unknown at the time of your discharge from probation or parole.
- _____ He committed an incident involving commission of a violent act or an act that threatened public safety during your period of probation or parole.
- ☒ He received a Dishonorable Discharge in both cases due to in part to failure to complete community service and must petition the Court or Parole Board for relief on this particular issue.

Mr. Coley also owes \$450.00 in supervision fees and a \$25.00 administrative assessment fee. Please contact the undersigned at the above referenced phone number if you have any questions. He did receive an Honorable Discharge in C125907.

Sincerely,

Charlie Konvicka

Charlie Konvicka, Management Analyst III
Nevada Parole and Probation
Department of Public Safety

APP0096

EXHIBIT D

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
May 19, 2005**

The Committee on Judiciary was called to order at 8:25 a.m., on Thursday, May 19, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horns, Vice Chairman
Ms. Francis Allen
Mrs. Sherron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oseguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Steven Horsford, Clark County Senatorial District No. 4

Assembly Committee on Judiciary
May 19, 2005
Page 2

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel
Allison Combs, Committee Policy Analyst
Carole Snider, Committee Attaché

OTHERS PRESENT:

Cheryl Blomstrom, Legislative Advocate, representing Nevada Consumer Finance Association
Karen Dennison, Legislative Advocate, representing Semptra Generation
Richard Peel, Legislative Advocate, representing Sheet Metal Air Conditioning Contractors' National Association, National Electrical Contractors Association of Southern Nevada, and Mechanical Contractors Association of Nevada
John Slaughter, Legislative Affairs Manager, Office of the County Manager, Washoe County, Nevada
Brian Hutchins, BH Consulting LLC, Carson City, Nevada
Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada

Chairman Anderson:

[Meeting called to order. Roll called.] We have a Work Session Document. I'm not going to take them in that order. We'll start with S.B. 172.

Senate Bill 172 (1st Reprint): Revises provisions relating to sale of real property under deed of trust. (BDR 9-1029)

Allison Combs, Committee Policy Analyst:

Senate Bill 172 revises provisions relating to the sale of real property under deeds of trust. This was heard in Committee last Friday. During the hearing, there were amendments proposed by the proponents, who explained that the bill targets certain abuses in these types of sales. Due to concerns raised in the hearing, revised proposed amendments were submitted by the proponents; they are in the Work Session Document (Exhibit B).

The first change amends Section 3 in the bill. Its new language provides that all sales of real property under deed of trust must be made at auction to the highest bidder in the county in which the property, or some of it, is situated.

The order to show cause is allowed by NRS 108.2275. In particular, a natural person homeowner or a commercial owner can file a motion with the court, asking the court to find the lien to be excessive or frivolous. If they're successful in their challenge, they're entitled to their attorney's fees and costs for bringing that particular motion. If the lien is not dismissed from the property, then the owner has the right to appeal that particular decision. The new language is intended to stop situations like we had on the Venetian, where the Venetian challenged all the liens.

Assemblywoman Buckley:

I don't have a concern on the commercial aspect, only on the residential. If they appeal to the Supreme Court, does that mean that they could try to enforce the lien and force the sale, pending the outcome of the appeal for a resident?

Richard Peel:

It would not stop the underlying case from going forward and being heard before the district court. Ultimately, the Supreme Court would have to rule before the foreclosure sale occurred. That would be my interpretation of the statute.

Chairman Anderson:

Is there any more discussion on S.B. 343?

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS
SENATE BILL 343 AS AMENDED IN THE WORK SESSION
DOCUMENT.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:

We have S.B. 150 today. I'm working on language to get that to a workable position, because I'm still uncomfortable with what's there. That leaves us with two bills. Let's take up S.B. 445.

Senate Bill 445: Revises various provisions related to State Board of Pardons Commissioners. (BDR 16-659)

Allison Combs, Committee Policy Analyst:

Senate Bill 445 relates to the State Board of Pardons Commissioners and makes some changes with regard to that Board. One of the changes includes the clarification that a person who is granted a full unconditional pardon by the Board is restored to all civil rights, and the Board must give the person official documentation stating that he has been granted a pardon.

There was testimony on behalf of the State Board of Pardons Commissioners that this bill revises some of the administrative procedures of the Board and clarifies the section mentioned on the restoration of civil rights. There is a proposed amendment that was presented during the hearing, which is included in the Work Session Document (Exhibit L), along with a letter (page 3 of Exhibit L). The letter is from the State Board of Pardons, to clarify issues that came up with regard to the Board's authority to issue a conditional pardon.

The amendment relates to the restoration of civil rights and would add new language to S.B. 445 that would do a couple of things outlined on page 1. The first would be to eliminate the requirement to present a document of proof of restoration of civil rights, and the second would be to authorize persons dishonorably discharged to apply to the Division of Parole and Probation, from the date the bill is effective until July 1, 2008, to change that dishonorable discharge to an honorable discharge in certain circumstances. If that change is made, then their civil rights are restored as if the person received an honorable discharge.

The third change under (c) (page 2 of Exhibit L) would reduce the time before which the person could petition the court to have his criminal record sealed for certain offenses. For a Category E, the period is reduced from ten years to seven years after release from custody or discharge from Parole and Probation. For misdemeanors other than a battery that constitutes domestic violence or a conviction for DUI (driving under the influence), the period is reduced from three years to two years. Finally, the proposed amendment would allow a person to petition for restoration of civil rights in a court of competent jurisdiction. There were questions raised with regard to the amendment during the hearing. The first was with regard to the limitation on those who could request the change for the dishonorable discharge; someone who has committed a new crime during the period of parole and probation could not apply. There is a suggestion to exempt from that language traffic violations.

The third amendment is to clarify the date for submitting the report required concerning restoration of civil rights. The report would be required on January 1, 2009, rather than January 1, 2008. The letter addresses a concern


CLERK OF THE COURT

1 RPLY
2 GORDON SILVER
3 PAOLA M. ARMENI
4 Nevada Bar No. 8357
5 Email: parmeni@gordonsilver.com
6 COLLEEN E. MCCARTY
7 Nevada Bar No. 13186
8 Email: cmccarty@gordonsilver.com
9 3960 Howard Hughes Pkwy., 9th Floor
10 Las Vegas, Nevada 89169
11 Tel: (702) 796-5555
12 Fax: (702) 369-2666
13 Attorney for Petitioner, KENNETH SCOTT COLEY
14 In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

DISTRICT COURT

CLARK COUNTY, NEVADA

11 KENNETH SCOTT COLEY aka KING
12 COLEY,

CASE NO. 96C137946
DEPT. XXV

Petitioner,

13 vs.

14 NEVADA DEPARTMENT OF PUBLIC
15 SAFETY, DIVISION OF PAROLE AND
16 PROBATION; DOES 1-X; and ROE ENTITIES
17 1-X, inclusive,

Respondents.

19 KENNETH COLEY'S REPLY TO OPPOSITION TO PETITION FOR WRIT OF
20 MANDAMUS


21 Hearing Date: February 23, 2015
22 Hearing Time: 9:00 a.m.

23 Petitioner Kenneth Scott Coley ("Ken"), by and through his counsel, the law firm of
24 Gordon Silver in conjunction with the Legal Aid Center of Southern Nevada Pro Bono Project,
25 hereby files his Reply to Respondent's Opposition to Petition for Writ of Mandamus (the
26 "Opposition"), filed by the Respondent, the Nevada Department of Public Safety, Division of
27 Parole and Probation (the "Division").
28 ...
...

1 This Reply is supported by the following Memorandum of Points and Authorities; the
2 papers and pleadings on file herein and supporting exhibits thereto, including the Petition for
3 Writ of Mandamus (the "Petition"); and any oral argument the Court may permit at a hearing on
4 this matter.

5 Dated this 12th day of February, 2015.

6 GORDON SILVER

7 
8 PAOLA M. ARMENI
9 Nevada Bar No. 8357
10 COLLEEN E. MCCARTY
11 Nevada Bar No. 13186
12 3960 Howard Hughes Pkwy., 9th Floor
13 Las Vegas, Nevada 89169
14 Tel: (702) 796-5555
15 Attorneys for Petitioner Kenneth Scott Coley
16 In conjunction with Legal Aid Center of
17 Southern Nevada Pro Bono Project

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 I. INTRODUCTION

20 Ken put his criminal past behind him over fifteen years ago.¹ Or so he thought. Despite
21 being a prime example of someone who overcame the youthful missteps of drug use and petty
22 crimes to become a productive member of society, he still faces barriers to his ultimate success
23 because of the inability to seal his criminal record as long as any dishonorable probation
24 discharge is reflected therein. And, the only reason any dishonorable discharge is still reflected
25 in Ken's criminal record is because the Division arbitrarily and capriciously refused to consider
26 his application for a change in status pursuant to existing law and/or regulation.

27 ¹ This Honorable Court can take judicial notice of the fact that all three of the prior criminal cases referenced in the
28 instant case pleadings, i.e. Case Nos. C125907, C137870, and C137946, show Ken's last arrest occurred in 1993,
and his last open District Court case, Case No. C125907, was closed on January 7, 2000 upon an Order
Dishonorably Discharging Probationer. In its Opposition, the Division in fact references Case No. C125907 as one
where Ken was honorably discharged, which decision it regrets in hindsight, and this discrepancy is one of several
that may require an evidentiary hearing to resolve, to the extent the Court determines it is material to the instant
Petition.

1 Despite immediately providing Ken's counsel with instructions for applying to change a
2 dishonorable probation discharge to an honorable probation discharge upon inquiry in early
3 2014, and subsequently denying the application submitted by counsel on grounds other than its
4 own stated disqualifying factors, the Division now seeks to argue in its Opposition that none of
5 that matters. The Division would have this Court believe that the Petition should now be denied
6 because the probation discharge change program, which it is still making available on its website
7 as of the date of this Reply, actually ceased operation in July, 2008.² But, just in case this Court
8 is not persuaded by what the Division acknowledges is "admittedly a change in direction from
9 the time of Petitioner's original inquiry,"³ the Division even more remarkably asks, in the
10 alternative, for this Court to deny the Petition because Ken has not yet met its regulatory
11 restitution obligations, which Ken has applied to do but is precluded from doing because of the
12 Division's denial of his application.⁴

13 For all of the reasons discussed in greater detail herein, Ken respectfully submits there is
14 substantial evidence that the Division continues to this day to make available a program for
15 changing probation discharges from dishonorable to honorable, but the Division arbitrarily and
16 capriciously exercised its discretion in denying Ken his rightful opportunity to obtain this
17 change. And, as Ken has otherwise no other plain, speedy or adequate remedy at law, he
18 respectfully requests this Court grant his Petition and mandate the Division's compliance with its
19 own regulations to effectuate this change. If however, this Court has any doubt as to his
20 entitlement to such relief based on the factual assertions made by the Division in its Opposition,
21 Ken respectfully asserts that, at minimum, an evidentiary hearing is needed in order to resolve
22 the inconsistencies and outright gaps in the Division's arguments.

23 ...

24 ...

25 ...

26 ² See Opposition, at p.3:18-19.

27 ³ See Opposition, at p.3:24-25.

28 ⁴ See Opposition, at p.5:4-8.

II. STATEMENT OF FACTS

Ken incorporates by reference herein all facts set forth in his Petition. In light of the Division's change of direction reflected in its Opposition, however, Ken will briefly highlight those undisputed facts that he believes entitle him to relief.

On February 27, 2014, a representative of the law firm of Gordon Silver contacted the Division on Ken's behalf to inquire about the process for applying for a change of discharge status.⁵ The following day, the Division faxed to Gordon Silver instructions entitled "Applying to have your Dishonorable Discharge changed to an Honorable Discharge providing fiscal obligations are met," and an application entitled "Application for Change of Discharge Per SB 282."⁶

In accordance with the instructions and application, on May 5, 2014, Ken's counsel, Paola M. Armeni, Esq., submitted a letter to the Division along with the Application for Change of Discharge Per SB 282, requesting his discharge status in District Court Case Nos. C137870 and C137946 be changed from dishonorable to honorable.⁷ The application included Ken's financial information and an offer to make monthly payments to satisfy his financial obligations to the Division.⁸ In response, on May 8, 2014, Ms. Armeni received a phone call from Lt. Robert Geraldo with the Division, who requested the courtesy of a few weeks to process Ken's request.

Thereafter, in a letter dated June 17, 2014, the Division denied Ken's request for a change of discharge status citing the same reason he was dishonorably discharged in the first place, the failure to complete community service.⁹ Further, and without explanation, the letter indicates Ken received an honorable discharge in District Court Case No. C125907, however the District Court record does not reflect an honorable discharge, and the mechanism by which a change of

⁵ See ¶ 8 of the Declaration of Paola M. Armeni in Support of Petition for Writ of Mandamus (the "Armeni Decl."), attached as Exhibit 1 to the Petition and incorporated by reference herein.

⁶ See Exhibit 1-F to the Petition and incorporated by reference herein.

⁷ See Exhibit 1-H to the Petition and incorporated by reference herein.

⁸ See *id.*

⁹ See Exhibit 1-D to the Petition and incorporated by reference herein.

1 discharge status occurred, if indeed it did, is unknown to Ken.

2 Following the denial of Ken's application, a revised version of the Division's written
3 instructions for a change of discharge status appeared on its website, where it remains today.¹⁰
4 Noticing the change to the website and upon receipt of the above-referenced letter, Ms. Armeni
5 engaged the Division, specifically Cherie Konvicka, in discussions regarding its interpretation of
6 Senate Bill 282, Section 16 (hereinafter "Section 16"), codified in the Nevada Administrative
7 Code ("NAC") as NAC 213.720 – NAC 215.790. Ms. Konvicka expressed the Division's
8 opinion that Section 16 is "history" of S.B. 282, as opposed to applicable law, and that only
9 those persons who owe restitution and/or supervision fees qualify for reconsideration.¹¹ Ms.
10 Konvicka then spoke to Captain Dwight Gover at Headquarters regarding whether their office
11 should request input from the Deputy Attorney General. Ms. Konvicka was directed not to
12 request input. Further, pursuant to her conversation with Captain Gover, it was his belief that a
13 request to change a dishonorable discharge to an honorable for other unmet conditions which are
14 not disqualifying (i.e. community service, failure to complete counseling, pay court fees etc.,
15 must be pursued directly through the Court.¹²

16 After the Writ was filed, the Division, through the Deputy Attorney General, provided
17 Ms. Armeni with legislative history purporting to support the Division's position.¹³ However,
18 the legislative history provided referred to S.B. 445, which also passed during the 2005
19 legislative session; and S.B. 360, which did not pass, as opposed to the legislation at issue,
20 Section 16. Further, even if it were somehow related to Section 16, the history provided did not
21 evidence a legislative intent to restrict consideration for a change in discharge status to only
22 those persons who, for no other reason, were dishonorably discharged for a failure to pay
23 restitution and/or supervision fees.

24 ...

25 ¹⁰ See Exhibit I-G to the Petition and incorporated by reference herein.

26 ¹¹ See Exhibit I-E to the Petition and incorporated by reference herein.

27 ¹² See Exhibit 1, a true and correct copy of an email from Cherie Konvicka to Paola M. Armeni, Esq.

28 ¹³ See Exhibit 1, ¶ 18 to the Petition and incorporated by reference herein.

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III. LEGAL ARGUMENT

A. THE STATUE IS NOT CLEAR BUT RATHER VAGUE AND AMBIGUOUS

The Division suggests that Section 16 states that a person who was dishonorably discharged from probation prior to the date of enactment on June 17, 2005 could apply until July 1, 2008.¹⁴ However, that is not the plain language of the statute but rather the Division's interpretation. Instead, the plain language of the statute states that "a person who was dishonorably discharged from probation or parole before the effective date of the section, until July 1, 2008....." Just as easily as the Division interpreted the section in the way they chose it to be read, it is reasonable that this section could also be read to suggest that any person who had a dishonorable discharge from before the date of the section until July 1, 2008 could apply for the change of discharge status.

Further, despite Respondent's assertion, the language of Section 16 is anything but clear, particularly when read in conjunction with NAC 213.720 – NAC 213.790, which was not made to expire by limitation after July 1, 2008, and remains today in the administrative code. As such, it appears that pursuant to the code, persons may still apply for a change in discharge status, and indeed, the Division's conduct suggests it too followed the regulation as though it were currently in effect.

B. CHANGING KEN'S DISCHARGE FROM DISHONORABLE TO HONORABLE WOULD NOT BE AN UNREASONABLE RESULT

The Division argues that even if Section 16 is deemed ambiguous, the legislative intent is clear and a result other than the statute having expired on July 1, 2008, would result in an unreasonable result.¹⁵ Despite this argument in the introduction, the Division fails to explain what the unreasonable result would be. In contradistinction, the failure to allow a change of discharge status for Ken would be an unjust and unreasonable result. This is apparent for a number of reasons. First and foremost, the Division has continued with its own policy and procedure to entertain requests for a change in discharge. To date, the Division has an

¹⁴ See Opposition at 5:17.

¹⁵ See Opposition at 5:2-3.

1 application and instructions on its website. This is in compliance with NAC 213.790, which
2 states that the Division will make available at its offices, on its website and by mail (1) a written
3 explanation of the provisions of Section 16 of Chapter 476, Statutes of Nevada 2005, and NAC
4 213.720 – 213.790, inclusive; and (2) the form for an application. Further, the Division admits
5 that despite denying the change in discharge, that Ken's reason for the dishonorable discharge
6 was an unmet condition which was not a disqualifying (i.e. community service, failure to
7 complete counseling, pay court fees etc.) factor for the change. Lastly, the Division continues to
8 work through NAC 213.720 – NAC 213.790 which was not made with any applicable expiration
9 date which directly relates to the change of discharge.

10 It is easy to see how Ken would have relied on the current policy and procedures
11 implemented and utilized by the Division to make his request for the change in discharge. The
12 actions of the Division itself suggest that this procedure was anything but temporary.

13 **C. KEN COULD NOT COMPLY WITH THE DIRECTIVES OF THE NEVADA**
14 **ADMINISTRATIVE CODE SINCE HE WAS DEEMED INELIGIBLE FOR THE**
15 **CHANGE OF DISCHARGE**

16 Pursuant to NAC 213.770, if the Division determines that an applicant is eligible to
17 change his dishonorable discharge to honorable discharge, the Chief shall establish a schedule
18 of payments for the applicant to make over the period for repayment established in
19 subsection 4. Since, the Division determined that Ken was not eligible for the change; he was
20 never given the opportunity to make payments as allowed by the code. Ken provided his
21 financial information in his application, along with a proposed monthly payment. Because the
22 Division denied his application, Ken was never given the opportunity to make a good faith effort
23 towards paying the fees owed.

24 ...

25 ...

26 ...

27 ...

28 ...

1 D. THE DIVISION'S ACTION IN DENYING KEN'S APPLICATION
2 CONSTITUTES AN ARBITRARY AND CAPRICIOUS EXERCISE OF
3 DISCRETION AND THEREFORE THE WRIT OF MANDAMUS SHOULD BE
4 GRANTED; HOWEVER AT A MINIMUM AN EVIDENTIARY HEARING IS
5 WARRANTED

6 1. The Division's Action of Denying Ken's 2014 Application for Change of
7 Discharge Pursuant to SB 282, Which Application It Provided and Which
8 Criteria Therein Ken Can Meet, Constitutes an Arbitrary and Capricious
9 Exercise of its Discretion.

10 The Division would have this Court believe that after it established a regulation by which
11 persons could apply for a change in discharge status, followed the regulation for nearly three
12 years, and recommended in a written report to the legislature that the regulation continue, on July
13 1, 2008, all activity related to the regulation ceased, despite evidence to the contrary. Indeed,
14 Ken's experience alone suggests the Division continued to consider applications well past what it
15 argues was the expiration of Section 16 of S.B. 282 and NAC 213.720 – NAC 213.790, and that
16 it did so in an arbitrary and capricious manner.

17 It is well-settled law in Nevada that a writ of mandamus is available to compel the
18 performance of an act which the law requires as a duty resulting from an office, trust, or station,
19 or to control an arbitrary or capricious exercise of discretion. *Brewery Arts Ctr. v. State Bd.*
20 *Examiners*, 108 Nev. 1050, 1053, 843 P.2d 369, 372 (Nev. 1992); *Round Hill Gen. Improvement*
21 *Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (Nev. 1981); *Henderson v. Henderson*
22 *Auto Wrecking*, 77 Nev. 118, 359 P.2d 743 (Nev. 1961) (emphasis added) (holding the exercise
23 of discretion by a city council as an administrative board cannot be sustained in court on the
24 basis of conclusions reached by the city council in the absence of circumstances which
25 reasonably justified such conclusions.). Mandamus is an extraordinary remedy, and the decision
26 as to whether a petition will be entertained lies within the sound discretion of the court. *Id.*

27 Here, Respondent suggests the Court's analysis should begin and end on July 1, 2008, the
28 purported expiration date of Section 16 of S.B. 282. However, despite Respondent's assertion,
the language of Section 16 is anything but clear, particularly when read in conjunction with NAC
213.720 – NAC 213.790, which was not made to expire by limitation after July 1, 2008, and

1 remains today in the administrative code. As such, it appears that pursuant to the code, persons
2 may still apply for a change in discharge status, and indeed, the Division's conduct suggests it
3 too followed the regulation as though it were currently in effect.

4 For example, when a representative from Gordon Silver called to inquire about the
5 procedure to apply for a change in discharge status, she was not informed there was no such
6 procedure, but instead, was supplied with instructions and an application.¹⁶ When the Division
7 denied Ken's application, it did not indicate it no longer considered such applications, but
8 instead, in an arbitrary and capricious exercise of discretion, denied Ken's application based
9 upon a disqualifying factor not present in the code.¹⁷ And finally, when Ms. Armeni engaged the
10 Division in discussions about its decision, the Division explained Ken did not qualify for
11 consideration of a change in discharge status, because the code limited such consideration to
12 only those persons who received a dishonorable discharge for a failure to pay restitution and/or
13 supervision fees, and for no other reason.¹⁸ Indeed, the Division had multiple opportunities to
14 represent that it no longer accepted applications for a change in discharge status however, at no
15 time did it make that assertion. Such conduct suggests the Division continued to process
16 applications long after July 1, 2008, and did so in an arbitrary and capricious manner.

17 Accordingly, the Court should grant Ken's Petition for mandamus relief and force the
18 Division to grant Ken's change in discharge status from dishonorable to honorable, provided he
19 fulfills the regulatory requirements purported to be in existence at the time of his application.

20 **2. To the Extent the Court Finds Any Factual Dispute Exists as to Whether Ken**
21 **Can Meet the Division's Regulatory Requirements and Is Entitled to a**
22 **Recommendation to the Sentencing Court to Grant his Application, an**
Evidentiary Hearing is Necessary to Resolve Such Dispute.

23 As set forth herein, for more than eight months, the Division has asserted any number of
24 reasons why Ken should not be afforded the opportunity to satisfy his financial obligation to the
25 State of Nevada and subsequently receive a change in discharge status from dishonorable to

26 ¹⁶ See § 8 of Exhibit 1 of the Petition and incorporated by reference herein.

27 ¹⁷ See Exhibit 1-D of the Petition and incorporated by reference herein.

28 ¹⁸ See Exhibit 1-E of the Petition and incorporated by reference herein.

1 honorable. Indeed, depending on the day and the messenger, the Division's justifications have
2 ranged from the absurd, i.e. Section 16 of S.B. 282 is "legislative history," to the absolute, i.e.
3 S.B. 282 has expired. Notwithstanding that the Division's numerous inconsistencies and
4 admitted "change in direction" render its arguments a moving target, its conduct further suggests
5 the Division is unclear and/or confused regarding its obligations, policies and practices for
6 consideration of a change in discharge status. Accordingly, Ken requests an evidentiary hearing,
7 as needed in the alternative, to separate fact from fiction.

8 The Rules of the District Courts of the State of Nevada ("Nev. D.C.R.") provide for an
9 evidentiary hearing when the facts at issue in a pre-trial motion are in dispute. Nev. D.C.R.
10 13(6) provides in pertinent part:

11 6. Factual contentions involved in any pre-trial or post-trial motion shall be initially
12 presented and heard upon affidavits. Oral testimony may be received at the hearing with
13 the approval of the court, or the court may set the matter for a hearing at a time in the
14 future and allow oral examination of the affiants to resolve factual issues shown by the
15 affidavits to be in dispute.

16 Nev. D.C.R. 13(6).

17 Where, as here, the Division has not produced any affidavits in support of the assertions
18 contained in its Opposition, instead making representations premised on "the best of
19 Respondent's knowledge,"¹⁹ if the Court determines these assertions are material to its decision,
20 Ken respectfully requests the Court hear oral testimony to conclusively establish, at minimum,
21 the following information: (1) the actual number of applications for a change of discharge status
22 granted or denied since June 17, 2005, and the process by which they were considered; (2) the
23 specific details regarding the availability of both the instructions and application for a change of
24 discharge status, including but not limited to their placement on Division's website; and (3) any
25 and all information related to the recent revision of the instructions and application for a change
26 of discharge status, including but not limited to the decision-making process which resulted in
27 their amendment.

28 ...

¹⁹ See Opposition, at 3:4.


1 Absent this information, the Court is left with unsupported assertions and supposition
2 regarding the Division's conduct with respect to Ken's application, and perhaps others.
3 Accordingly, to the extent the Court has any doubt as to Ken's entitlement to relief based on the
4 factual assertions made by the Division in its Opposition, Ken respectfully requests an
5 evidentiary hearing to resolve the unsupported facts and inconsistencies.

6 **IV. CONCLUSION**

7 Based on the foregoing, Petitioner Ken respectfully requests that this Court grant his
8 Petition for Writ of Mandamus as to the Division of Parole and Probation's arbitrary and
9 capricious exercise of its discretion to deny his application to change all prior dishonorable
10 discharges to honorable, upon his fulfillment of all regulatory requirements existing at the time
11 of his application. In the alternative, Ken requests an evidentiary hearing to resolve any factual
12 disputes that may be impeding this Court's necessary exercise of its own discretion to control the
13 Division's arbitrary and capricious actions.

14 Dated this 12th day of February, 2015.

15 GORDON SILVER

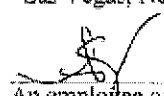
16 
17 PAOLA M. ARMENI
18 Nevada Bar No. 8357
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22 Las Vegas, Nevada 89169
23 Tel: (702) 796-5555
24 Attorneys for Petitioner Kenneth Scott Coley
25 In conjunction with Legal Aid Center of
26 Southern Nevada Pro Bono Project
27
28


CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 10th day of February, 2015, she served a copy of the **Reply to Opposition to Petition for Writ of Mandamus**, by electronic means and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Adam Honey
Attorney General's Office
555 E. Washington Avenue, #3900
Las Vegas, Nevada 89101
E-Mail: ahoney@ag.nv.gov

Natalie Wood, Chief
Nevada Department of Public Safety
Parole and Probation
215 East Bonanza Road
Las Vegas, Nevada 89101


An employee of GORDON SILVER



CLERK OF THE COURT

1 NEOJ
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10 Las Vegas, Nevada 89169
11 Tel: (702) 796-5555
12 Fax: (702) 369-2666
13 Attorney for Petitioner, KENNETH SCOTT COLEY
14 In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

DISTRICT COURT

CLARK COUNTY, NEVADA

10 KENNETH SCOTT COLEY aka KING COLEY,
11
12 Petitioner,

CASE NO. 96C137946
DEPT. XXV

13 vs.

14 NEVADA DEPARTMENT OF PUBLIC SAFETY,
15 DIVISION OF PAROLE AND PROBATION; DOES
16 I-X; and ROE ENTITIES I-X, inclusive,


Respondents.

NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that an Order Granting Petition for Writ of Mandamus, was
18 entered in the above-entitled matter on the 2nd day of April, 2015, a copy of which is attached
19 hereto.

20 Dated this 3rd day of April, 2015.

GORDON SILVER


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28 Attorneys for Petitioner Kenneth Scott Coley
In conjunction with Legal Aid Center of
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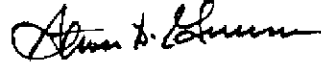
CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 3 day of April, 2015, I caused a copy of the foregoing Notice of Entry of Order, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

Adam Honey
Attorney General's Office
555 E. Washington Avenue, #3900
Las Vegas, Nevada 89101
E-Mail: ahoney@ag.nv.gov



An employee of Gordon Silver



CLERK OF THE COURT

1 ORDG
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14 *In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 KENNETH SCOTT COLEY aka KING
12 COLEY,

Petitioner,

vs.

14 NEVADA DEPARTMENT OF PUBLIC
15 SAFETY, DIVISION OF PAROLE AND
16 PROBATION; DOES I-X, and ROE ENTITIES
I-X, inclusive,

Respondents.

CASE NO. 96C137946

CONSOLIDATED CASE NO.: 96C137870

DEPT. XXV

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

Date of Hearing: February 23, 2015
Time of Hearing: 9:00 a.m.

21 On February 23, 2015, the Court heard Petitioner Kenneth Scott Coley's ("Ken") Petition
22 for Writ of Mandamus (the "Petition"). Paola M. Armeni, Esq. and Colleen E. McCarty, Esq.
23 appeared on behalf of Ken; Adam D. Honey, Esq., of the Office of the Nevada Attorney General,
24 appeared on behalf of the Nevada Department of Public Safety, Division of Parole and Probation
25 (the "Division"). The Court considered the papers filed on behalf of the parties, including the
26 Petition and the State's Opposition; and the oral argument of counsel, and good cause appearing
27 therefore,

28 ...

1 IT IS HEREBY ORDERED that the Petition for Writ of Mandamus is hereby
2 GRANTED.

3 THE COURT HEREBY FINDS as follows:

4 1. The issue presented by Ken's Petition is whether the Division acted arbitrarily and
5 capriciously in its consideration of Ken's request for a change in discharge status from
6 dishonorable¹ to honorable pursuant to the 2005 Statutes of Nevada Chapter 476, Section 16 at
7 pages 2360 - 2361 (hereinafter "Section 16") and in accordance with its regulations set forth in
8 NAC 213.720 - NAC 213.790.

9 2. The plain language of Section 16 is ambiguous. However, there would need to be
10 legislative action in order for Section 16 to have been codified or further applicable. Therefore,
11 the Court finds that the statute is not still in effect and thus the Division did not fail to discharge
12 a duty required by the statute.

13 3. However, on the basis of the uncontested facts of this case, the Division continued
14 to engage in the discretionary function of continuing this program forward beyond the date of
15 July 1, 2008 in which the statute required them to do so. Further, the Division effectuated the
16 continuation of the program pursuant to the Nevada Administrative Code (NAC 213.720 - NAC
17 213.790), which remains in effect today. And in doing so, they have acted in an arbitrary and
18 capricious manner. Namely, the Division continued to process requests for a change in discharge
19 status pursuant to Section 16 and the corresponding administrative code after July 1, 2008, and in
20 fact, granted at least two requests for a change in discharge status subsequent to Ken's
21 application, and forwarded recommendations to the respective sentencing courts.

22 4. Despite continuing to process applications for a change in discharge status, the
23 Division acted arbitrarily and capriciously in denying Ken's 2014 application on the basis of
24 disqualifying factors not found in Section 16 and NAC 213.720 - NAC 213.790.

25 5. Ken has no other plain, speedy and adequate remedy at law.

26 6. The Court encourages the Division to continue to afford persons the opportunity
27
28

¹ The District Court cases at issue are Case Nos. C137870 and C137946.

1 to request a change in discharge status from dishonorable to honorable on public policy grounds
2 as a means to recoup monies.

3 7. As the Court finds that there is no factual dispute, an evidentiary hearing is not
4 warranted.


5 IT IS HEREBY ORDERED that a writ of mandamus is awarded commanding and
6 directing the respondent Division: (1) to allow Ken to proceed forward with his original
7 application for a change in discharge status from dishonorable to honorable; (2) to afford Ken the
8 opportunity to avail himself of and complete the program, namely to satisfy his outstanding
9 financial obligation to the Division or to demonstrate a good faith effort toward making the
10 required payments; and (3) if, Ken does satisfy his financial obligation or demonstrates a good
11 faith effort to do so, the Division will make a recommendation to the Court to change his
12 discharge from dishonorable to honorable.


13 IT IS SO ORDERED this 1st day of ~~March~~^{April}, 2015.

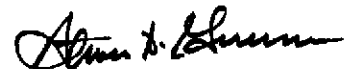
14
15 
16 DISTRICT COURT JUDGE

17 Prepared and submitted by:
18 GORDON SILVER

17 Approved as to form and content by:
18 NEVADA ATTORNEY GENERAL

19 
20 PAOLA M. ARMENI
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28 *In conjunction with Legal Aid Center of*
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19 
20 ADAM D. HONEY
21 Deputy Attorney General
22 Nevada Bar. No. 9588
23 555 E. Washington Avenue, #3900
24 Las Vegas, Nevada 89101
25 *Attorneys for Respondents*



CLERK OF THE COURT

ADAM PAUL LAXALT
Nevada Attorney General
ADAM D. HONEY
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Nevada Bar No. 9588
Public Safety Division
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*Attorneys for State of Nevada, Department of Public
Safety, Division of Parole and Probation*

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNETH SCOTT COLEY aka KING
COLEY,

Petitioner,

v.

NEVADA DEPARTMENT OF PUBLIC
SAFETY, DIVISION OF PAROLE AND
PROBATION; DOES I-X; and ROE
ENTITIES I-X, inclusive,

Respondent.

CASE NO. 96C137946
DEPT. XXV

**CONSOLIDATED WITH CASES:
95C125907-2
96C137870**

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Respondent, Nevada Department of Public Safety,
Division of Parole and Probation, hereby appeals to the Supreme Court of the State of

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1 Nevada from the Order Granting Petition for Writ of Mandamus by the Honorable Kathleen
2 Delaney on the 1st of April, 2015.

3 DATED this 20th day of April, 2015.

4 ADAM PAUL LAXALT
5 Nevada Attorney General

6
7 By: /s/ Adam D. Honey
8 ADAM D. HONEY
9 Deputy Attorney General
10 Nevada Bar No. 9588
11 Office of the Attorney General
12 Public Safety Division
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 *Attorneys for State of Nevada, Department of*
16 *Public Safety, Division of Parole and Probation*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing **NOTICE OF APPEAL** with the
3 Clerk of the Court by using the electronic filing system on the 20th day of April, 2015.

4 The following participants in this case are registered electronic filing systems users and
5 will be served electronically:

6 Paola M. Armeni (parmeni@gordonsilver.com)
7 Colleen E. McCarty (cmccarty@gordonsilver.com)
8 Gordon Silver
9 3960 Howard Hughes Parkway, 9th Floor
10 Las Vegas, Nevada 89169
11 *Attorneys for Kenneth Scott Coley*
12 *aka King Coley*

11 /s/ Althea Zayas

12 Althea Zayas

13 An employee of:

14 **STATE OF NEVADA**

15 **OFFICE OF THE ATTORNEY GENERAL**

1 TRAN
2 CASE NO. C-125907
3 DEPT. NO. 3
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 * * * * *

9 THE STATE OF NEVADA,)
10)
11 Plaintiff,)
12) REPORTER'S TRANSCRIPT
13 vs.) OF
14) WRIT OF MANDAMUS
15)
16 KENNETH COLEY,)
17)
18 Defendant.)
19 _____)

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21
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23
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25
BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: MONDAY, FEBRUARY 23, 2015

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the State: ADAM HONEY, ESQ.

3
4 For the Defendant: PAOLAM ARMENI, ESQ.
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1 LAS VEGAS, NEVADA; MONDAY, FEBRUARY 23, 2015

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Pages 1 and 2, State of Nevada vs.
6 Kenneth Scott Coley.

7 MR. HONEY: Good morning, your Honor.

8 Adam Honey with the Division of Parole and Probation.
9 I'm the Respondent in this.

10 THE COURT: This is criminal court. Stand
11 wherever you like.

12 MR. HONEY: I don't think there is a DA involved
13 in this one.

14 THE COURT: This was filed in a criminal case,
15 and obviously we have a little bit of history I would like
16 to set in the record today before we hear the argument
17 counsel may have.

18 In this particular case -- this is one of the more
19 unique matters that I have seen on the calendar, because
20 it comes to us styled as a petition for writ of mandamus,
21 but as I understand, of course, this was originally filed
22 as a civil on a case number with Judge Wiese, who then
23 determined that it was better served to be heard in a
24 criminal case.

25 At which point the Court determined that there were 3

1 criminal cases potentially at issue. Only one of which
2 was assigned to an active department. That being our
3 department. So I went ahead and inquired of the clerk's
4 office to see in regards to those that remained
5 unassigned, and those dated back to late 1999 early
6 2000.

7 The clerk's office indicated to us that it would be
8 beneficial to them to not have to go through the paperwork
9 to have to determine when to -- or how to reassign these
10 cases to see what the history would have been with them
11 had they stayed with those judges. So we went ahead and
12 consolidated all 3 matters.

13 Then subsequent to that conversation with the clerk's
14 office, I had the conversation with counsel with regard to
15 2 things. One, there's some confusion created by the fact
16 that the oldest case number C-125907, appears to have been
17 included in the briefing as a dishonorable discharge
18 matter. But I believe the State has clarified that that
19 case, in fact, was an honorable discharge. So the only
20 two cases that are actually in play, for lack of a better
21 word, for the petition would be the later two cases,
22 C-137870 and C-137946. We confirmed that in a
23 teleconference.

24 We also confirmed via the teleconference that in the
25 event the Court should determine that perhaps having this

1 matter filed in a criminal case -- respectfully, we
2 disagreed with potentially Judge Wiese on whether it makes
3 sense to be filed in a criminal case -- that if it still
4 could still be handled either way, civilly or criminally.
5 That because this court obviously chose the docket, that
6 we would be able to keep the case and hear the matter.

7 So can I get counsel to confirm those conversations
8 and that history of the case. Or did I miss anything that
9 might be relevant for today's discussion before we
10 actually get to today's discussion.

11 MR. HONEY: I think you accurately reflected our
12 prior conversation and the prior history of this case.

13 THE COURT: Ms.

14 MS. ARMENI: I agree, your Honor.

15 THE COURT: So then we have, obviously again,
16 what is styled as a petition for writ of mandamus
17 questioning how the Division of Parole and Probation
18 handled Mr. Coley's application for change of discharge
19 status from dishonorable to honorable.

20 I have, of course, read the briefings, which were --
21 appear to be unchanged from those that were filed with
22 Judge Wiese, but do give us the full picture of what
23 occurred here. I think both sides, interestingly, have
24 argued alternative theories for relief.

25 I want to see this morning with your oral argument if

1 there is anything you want to highlight or focus on, or if
2 you still want to argue alternative theories. I want to
3 get into those a little bit.

4 MS. ARMENI: Your Honor, I know you have read
5 everything, so I'll just try and hit on the highlights.

6 Obviously, the standard for writ of mandamus, one of
7 the standards is arbitering egregious abuse of discretion.
8 And that is what we're arguing here. That base on the
9 Department taking a preference versus a reasonable
10 position, as well as contrary to evidence.

11 This is why -- just to give you a little bit of
12 background. This case, for lack of a better word, is sort
13 of a mess. We contacted the division and asked for the
14 application so that we could change the dishonorable to
15 honorable discharge. We received that application with no
16 problem. Submitted the application with no problem. Then
17 I received a phone call that essentially said, you know,
18 can you give us a couple of weeks to work through this. I
19 said, no problem.

20 Unbeknownst to me and Unbeknownst to Mr. Coley, they
21 ended up changing their process. Essentially what
22 happened is Mr. Coley was denied the discharge, and the
23 reason for the denial wasn't the three disqualifying
24 factors -- that I'll get to in a minute, that are outlined
25 in Section 16 -- but for a new disqualifying factor that

1 the Department came up with on their own. And
2 interestingly enough, later on, in an e-mail exchange,
3 which I believe is attached as an exhibit to our reply,
4 the Division's position wasn't necessarily the lack of --
5 the failure to complete community service was an accurate
6 disqualifying factor, just in their position that was the
7 reason why. But they agreed it wasn't one of the three
8 factors pursuant to Section 16 that they would allow
9 that.

10 I'd submit to the Court that obviously due process
11 requires notice. And when they went and changed their
12 policy to now only supervision fees if you haven't been up
13 to speed with supervision fees, that was the one thing
14 that would disqualify you, and that would be where we'd
15 get this founded on preference rather than reasoning.

16 THE COURT: Ms. Armeni, I'm sorry to
17 interrupt.

18 Is it your perception, should the Court grant relief
19 here, is it your perception your client will have to go
20 back and pay fees, or would your client go back and
21 complete the other conditions of probation that were noted
22 as -- specifically the community service as not being
23 completed.

24 MS. ARMENI: No.

25 I think the discharge alone could be based on -- he

1 would not have to go back and do the community service. I
2 think there can be a change.

3 Now, as far as the supervision fees, there has to be
4 a good faith effort, and they'd have to work with him and
5 give him a payment plan, which I think we also submitted
6 as an exhibit where we provided that Mr. Coley was willing
7 to pay a certain amount a month. We just never got to
8 that point, because they determined that he didn't
9 qualify.

10 THE COURT: Do you concede the point though the
11 statute did in fact sunset to the extent it was
12 operational at one point in time but did in fact sunset.
13 And that this abuse of discretion argument is keyed on
14 their continued handling of what appears to be
15 applications for discharge change, or are you still
16 arguing that the statute itself is still valid.

17 MS. ARMENI: I think it's ambiguous. I think
18 you can read Section 16 to state that during a certain
19 time period that you can make the request. I understand
20 where the State is coming from. I'm thinking that it did
21 sunset. But I think that's where it gets into my position
22 that I think we all agree that the Nevada Administrative
23 Code the Division is relying on is current law.

24 If you look at that, that the NAC that determines how
25 the Division handles it is really relying on the language

1 of Section 16.

2 Section 16 is what brought about the Nevada
3 Administrative Code. So that's where the Division goes
4 when they need guidance of what's this supposed to mean.
5 I would submit to the Court the code in itself is also
6 ambiguous, and that's why the Division has to go back to
7 Section 16 for the guidance.

8 The reason I'm saying that is specifically if you
9 look at the Nevada Administrative Code that the Division
10 relies on for giving this dishonorable change in the
11 status from dishonorable to honorable, there aren't those
12 three disqualifying factors. The only place there are the
13 three disqualifying factors are found are in Section 16.

14 But the problem is the Division is picking and
15 choosing which part of Section 16 they want to rely on.
16 So to rely on the disqualifying factors, but to then say,
17 no, we're only taking the position get you can only get
18 the change and discharge, if it has to do with supervision
19 fees. And that's clearly not what the intent of Section
20 16 was. Section 16 was to deal with all people, except if
21 you were part of those disqualifying factors, but all
22 that had dishonorable discharges that wanted to change it
23 and that the intent was all people, and that's where we
24 have the disconnect here.

25 The Division now is taking the position, well, we're

1 going to take some of what Section 16 is saying, but we're
2 not going to take all of it. And they're changing it as
3 we go, because that certainly wasn't their position when
4 we initially submitted the original application.

5 If you look at NAC 213.730 specifically, that says
6 you submit in accordance with Section 16. And again,
7 there is nothing specific to supervision fees.

8 So when Mr. Coley submitted his application, we
9 submitted it based on what the code said, as well as what
10 the intent of Section 16 was, as well as the application
11 and the information.

12 Now, your Honor, their position says it's not law,
13 yet, it's still on the website. The application is still
14 available to other people to submit their request.

15 THE COURT: I noted that you stated that in the
16 reply that as of the date of the reply it was still
17 available. Have you checked again since that time.

18 I guess we'll find out from Mr. Honey, what the
19 current process is. I was just curious.

20 MS. ARMENI: The last part, your Honor, I know
21 because you have a criminal calendar, you appreciate this.
22 the Division only makes a recommendation for discharge
23 from probation. It's the Court that makes the final
24 determination on whether they are going to grant a
25 dishonorable or an honorable discharge. And here all

1 roads lead to the Court. You'll get Exhibits 1-B, 1-C,
2 and 1-D.

3 The reason we're in front of you is because the
4 Division said to us, listen. Go to the Court. You know,
5 our position is we're going to handle the supervision
6 fees. We agree that the community service isn't
7 necessarily one of the 3 delineated disqualifying factors,
8 but we believe this is probably before the Court and
9 that's why we brought it before the Court.

10 Your Honor, for that reason we'd ask you to grant the
11 writ of mandamus on the two case you have laid out
12 earlier.

13 THE COURT: I give you another opportunity after
14 I hear from Mr. Honey.

15 Mr. Honey.

16 MR. HONEY: Thank you, your Honor.

17 Our position is simply that the statute allowed
18 people to apply for a change from dishonorable to
19 honorable discharge until July 1st, 2008. Clearly
20 Mr. Coley, applying for it in 2014, is far beyond the
21 application date.

22 The confusing thing about this is --

23 THE COURT: So your position is you're taking
24 the counter position which is that it did in fact sunset
25 and there is no legal obligation to go forward.

1 MR. HONEY: It's kind of an interesting thing.

2 You're still on the books and the statute is giving a
3 period of time in which you needed to apply by. So I'm
4 not even sure -- I'm not questioning whether or not the
5 word sunset in the statute is no longer any good. It's
6 that he's applied outside the application period provided
7 by the statute.

8 THE COURT: I used the term. I didn't see that
9 necessarily in the briefings as a stand-out argument, but
10 just the idea that somehow the statute was not currently
11 affective at the time that he applied.

12 But then you have to answer the question for me,
13 because this is sort of the alternative theories, right.
14 It's not law or is no longer law, or he no longer is able
15 to apply. Or, if it is still law, he can't get the
16 benefit of it because he didn't do the requirements.

17 But how do you -- it doesn't seem to me that there is
18 any factual dispute that Ms. Armeni's affidavit sets forth
19 how she contacted the Division, how the Division provided
20 the application, how the application itself cites to --
21 the title of it talks about SB.282, and the NAC and the
22 process, by all intents and purposes, is available to the
23 public.

24 So how do we reconcile those two things.

25 MR. HONEY: What happened here is -- I think

1 this goes to -- and Ms. Armeni is calling this a mess, so
2 I don't disagree with that.

3 Nobody, as far as I know, the people from P&P that I
4 talked to -- and I qualified this in my brief and
5 Ms. Armeni pointed out the qualification. The reason I
6 qualified it, to the best of my knowledge, is literally
7 there's hundreds of people that work for P&P. I can't
8 possibly know what any one person dealt with. But the
9 people I talked to, between July 1st, 2008 and contact
10 from Ms. Armeni, nobody ever used the statute. So when
11 Ms. Armeni contacts P&P in 2014, P&P is like, what. We
12 don't know. Give us two weeks, okay.

13 I think they took the wrong position of putting it
14 back up on their website. It's been there for 6 years.
15 They put it up on their website and send her the
16 application materials. They literally had to go back and
17 like find notebooks on the statute and find application
18 materials.

19 THE COURT: I'm a little confused on one point,
20 so I'll interrupt one second and ask you to clarify.

21 I thought I read or saw an argument that the
22 application and the process was forthcoming pretty quickly
23 after you made you phone call, not weeks later after a
24 whole bunch of infrastructure was put in place.

25 MS. ARMENI: No. It was the next day, your

1 Honor. We called -- my memory is -- I'm giving you the
2 best of my memory at this point.

3 I went on the website. The application wasn't there,
4 but there was some information that put me in direct
5 contact with who I needed to call at the Division. We
6 made contact with the Division and they faxed over the
7 application form.

8 THE COURT: Thank you.

9 MR. HONEY: Okay.

10 So there you have it. But as you said, it wasn't on
11 the website. It was because of this inquiry they read the
12 Administrative Code.

13 And the last part of the Administrative Code does say
14 it needs to -- the process needs to be available on the
15 website. And the Administrative Code, unlike the 282,
16 whatever that number is --

17 THE COURT: SB.282.

18 MR. HONEY: -- it didn't have any sunset, as you
19 refers -- relies on Section 16.

20 So what I think we're getting at is basically I think
21 she agrees the statute isn't in effect. But she's saying
22 but I called and asked for the application and they sent
23 one, so therefore, they should honor they sent that.
24 That's not how the law works.

25 If there was a mistake made by P&P, in that they

1 should have realized --

2 THE COURT: Didn't they evaluate the Defendant.
3 Didn't they ultimately determine he couldn't use the
4 program.

5 MR. HONEY: That's correct.

6 THE COURT: Sort of the same conditions upon
7 which he was dishonorably discharged from what you can see
8 are the reasons why the Division said they couldn't honor
9 it this time.

10 It seems like -- I guess what I'm trying to get at --

11 MR. HONEY: It wasn't until my involvement, when
12 I received this, I wasn't involved in any of this until
13 2015. I get this. I get the writs. I'm like, I look at
14 it. I'm like this statute is kind of interesting. So I
15 do my due diligence, and that's where I find the LCB where
16 I look at the preamble that says for a limited time,
17 right. So I go back and find the legislative history that
18 I cited in my brief where it has the language for a
19 limited time you'll be able to do this.

20 That's why our position is that the plain language of
21 the statute is anybody that was honorably discharged
22 before the enactment of the statute -- the statute was
23 enacted in 2005 -- until July 1st, 2008 may apply. It was
24 a very narrow period of time. Then on January 1st, 2009,
25 six months after the deadline to apply, P&P had to send a

1 letter to the LCB telling them how did this work. Was
2 this beneficial to the State, was this beneficial to the
3 citizens of getting it changed. And they found out during
4 this 3 years period, 16 people used it, like 5 or 6 I'm
5 not sure of the number on it, that discharges were
6 granted.

7 THE COURT: Mr. Honey, in that same letter it
8 recommended that it be continued. And all the indications
9 seem to say it did.

10 MR. HONEY: That's correct.

11 What did the legislature do. Nothing. It didn't do
12 anything. That's not my client. That's not P&P. They
13 chose not to act legislatively any further.

14 There's a reason why the statute has never been
15 codified. It's because it had an ending. It had a very
16 narrow period where you could apply for the change and
17 discharge status.

18 THE COURT: I just wanted to clarify. I understand
19 that.

20 So your argument isn't that somewhere along the line
21 they changed courses and are not honoring it anymore.
22 Your argument is in light of these writs, I think my
23 client made a mistake. But you're acknowledging, right,
24 that your client made a mistake in that they provided the
25 application. They put things out there, as if this

1 program was still in place. And they evaluated this
2 Defendant and found him lacking for reasons that don't
3 seem to comport with what the qualifying factors set
4 forth.

5 Would you agree with all of that.

6 MR. HONEY: I would agree with that.

7 And in my opposition it stated that I recognize this
8 was a 180 degree changing course since the time they first
9 communicated with Ms. Armeni on behalf of Mr. Coley.

10 I also put in my brief as an alternative theory that
11 in the event that the Court determined the statute was in
12 effect and that applying in 2014 complied with Section 16,
13 that I believe that her brief asked the Court to order us
14 to change his discharge, which Ms. Armeni already today
15 stated they can't do that. It's the Court or the Parole
16 Board that changes the discharge status.

17 But there is a process to go through. And that
18 process hasn't been met yet. In part because my client
19 just flat out said, no, you don't qualify. But even if he
20 didn't qualify, he still has to have a payment plan --
21 well, it has to be determined that he can make payments.
22 He has to be put on a payment plan. The minimum payment
23 plan is \$20.00 a month. The payment plan can last one
24 year, or half the time you are on probation. Which I
25 believe in this case he had 3 years of probation --

1 through 18 months. At the end of that time P&P will
2 determine has this person made a good faith effort to make
3 their monthly payments. And if so, at that time, we'll
4 make a recommendation to the Court or the Parole Board --
5 in this case it would be the Court -- make a
6 recommendation to the Court, then when they get the order
7 back from the Court discharging him, they then provide it
8 to the person.

9 So even if the Court determines that applying 6 years
10 after my client's position now the deadline to apply is
11 that he can still got through this process, he'll have to
12 show good faith effort to make these payments for 12 to 18
13 months to make that determination he's done it in good
14 faith.

15 So the Court should be granting an honorable
16 discharge today.

17 THE COURT: Last question I think, but I
18 appreciate the legal argument you're making as this
19 statute really never became anything after 2008 and really
20 shouldn't still be available to Mr. Coley. But in light
21 of these circumstances, in light of this application for
22 Ms. Armeni on these two cases, has your client thought
23 about the benefits that could be had by making this
24 statute still be effective or at least this process
25 program still be effective in terms of recouping some

1 funds.

2 Seems to me the legislative intent of this all along
3 was we have folks out there who didn't pay, who could be
4 paying and here's an insensitive to get them to pay ad be
5 able to change their discharges. Maybe we can make some
6 money. Certainly seems like finding some money out there
7 could be beneficial.

8 Has your client had any discussions along those
9 lines.

10 MR. HONEY: We haven't had those discussions.

11 One of the problems is I'm not sure if the
12 Administrative Code on this is very solid. Because P&P's
13 position really is that, wait a second. Someone that's on
14 parole, they can blow off community service, blow off drug
15 court, blow off all of their requirements, other than
16 paying restitution, then they can come back and pay their
17 restitution. P&P doesn't -- that's not how they work.
18 That's not their mind set. Their mind set is about
19 accountability and about people fulfilling their
20 obligations and their debt to society that was ordered by
21 the Court as part of sentencing.

22 So getting to the whole thing, not just the money,
23 that's beyond what this case was about or is about and
24 where they are in their thinking in regards to that.

25 Quite frankly, all they're doing is applying the law.

1 So that is up to the legislature to push that. We sent a
2 letter, like you pointed out. We sent the letter and they
3 made a comment. In 2009 -- late December 2008, we sent
4 the letter and said it seems to be working, okay. We see
5 the benefit. It was the legislation that did nothing
6 further with it.

7 One last point. It is still up on our website. But
8 P&P is not processing any of them. They are notifying the
9 people there's pending litigation involved. They didn't
10 want to go through this thing yo-yoing back and forth. It
11 was on for 6 years.

12 THE COURT: Were there other applications.

13 MR. HONEY: There have been other applications.
14 They aren't taking any now. I believe there were two
15 people that their only short coming in their dishonorable
16 discharge was lack of restitution. Those parties instead
17 of making monthly payments, they made a flat payment to
18 pay it in full. And they did have recommendations change
19 forward. So depending on the ruling here, that might be
20 something else I may get to work on later.

21 THE COURT: I want to make sure I followed
22 you.

23 So maybe -- and in the time frame. Subsequent to
24 this case being pending here with this writ you've had
25 other applications you actually had -- your client has

1 actually processed and made recommendation to change.

2 MR. HONEY: Between the time Ms. Armeni's first
3 contact with P&P about this case in Spring of 2014, then
4 about putted it back on the website there have been two
5 instances where people have been discharged. We're
6 basically waiting too see the outcome of this.

7 THE COURT: They paid the restitution and got
8 the recommendation.

9 MR. HONEY: They did.

10 Then my involvement was after that. Obviously my
11 position is, wait a second here. Depending on the outcome
12 of this, we may have to do other legal proceedings in
13 those two matters.

14 THE COURT: So last question.

15 So from what I understand, the procedural posture in
16 the other two matters since 2014, is that the Division
17 allowed them to pay. They paid flat amounts to reimburse
18 the restituiution. And the recommendation was made to the
19 court to honorably discharge them, or they were just told
20 okay, we accept your payment but we can't do anything.

21 MR. HONEY: I haven't seen any paperwork on
22 this. I've talked to one particular person at P&P.
23 Basically it was like, yeah, two people have since went
24 through the process. I think it went through the way you
25 just described it. I haven't seen paperwork to confirm

1 that.

2 I described two different scenarios.

3 THE COURT: But they completed the process.

4 MR. HONEY: Yeah. Exactly.

5 Like I said, after the outcome of this if it's
6 determined that the statute has sunsetted, which I believe
7 it has, or otherwise there was a narrow application period
8 which applying 6 years after, it should have been rejected
9 for that reason, not because of the lack of restitution,
10 then I may have to go back on these other two and deal
11 with that.

12 THE COURT: Thank you.

13 Ms. Armeni, rebuttal.

14 MS. ARMENI: Your Honor, we agree. Obviously we
15 put in our replay the chief shall establish a schedule of
16 payment. So we understand what the Court's position was,
17 Mr. Coley has to make payments. We were ready to do that
18 as part of our original application on what our monthly
19 payment would be. So we are in agreement on that.

20 I think what you're seeing here, and I think
21 Mr. Honey has been quite forthright with the Court. This
22 position about it's not law essentially came forward and
23 we filed a writ. And what I think we're seeing here is
24 counsel for the client has one position, but the client
25 has another and they continue to go forward with it today.

1 They obviously have policies and procedures in place
2 to do this change. And that's where we're saying it's
3 arbitrary and capricious. The discretion is -- they're
4 not doing it -- they're doing it in their own manner.
5 They're not doing it based on any reasonableness. They're
6 doing it on preference.

7 Even if it sunsetted, even if Section 16 did sunset,
8 you still have the code and the code relies on Section 16.
9 That's where they get the three disqualifying factors. So
10 they're still replying the code that has not been
11 retracted by any means. They're still relying on that and
12 doing these change.

13 We just ask that Mr. Coley be treated fairly as
14 well.

15 THE COURT: Okay. Thank you.

16 We didn't really talk about the application of this
17 as a writ of mandamus, but I wanted to start my remarks
18 from there.

19 I did look at this thoroughly and try to figure out
20 how best to handle it. I do agree that it would be
21 inappropriate for this Court to just make a determination
22 that somehow an honorable discharge is available to Mr.
23 Coley in these two matters that are in play. Because the
24 issue really is he attempted to avail himself of a program
25 that appears to be available and was denied him for

1 reasons that appear to not be in keeping with what the
2 statute and code run together would require.

3 But if we step back, there are two scenarios I
4 believe where a writ of mandamus would apply. The first
5 scenario would be the failure of the Agency to discharge a
6 duty that's required by law to do.

7 I do not find that the statute is still in effect.
8 Specifically to require a legal duty on the part of the
9 Division.

10 However, the second basis upon which mandamus can be
11 applicable is to control -- I believe the language from
12 the case law that was cited was to control an arbitrary
13 capricious abuse of discretion. I believe what has
14 happened here is that the Division has continued to engage
15 in the discretionary function of continuing this program
16 forward beyond the date in which the statute required them
17 to do so. But they have, in fact, done so. And in doing
18 that they have acted in an arbitrary and capricious
19 manner.

20 I also have to find writ of mandamus to apply there
21 is no remedy in law. And the various procedures that were
22 made available to Ms. Armeni on behalf of her client for
23 changing a dishonorable discharge to honorable discharge,
24 it specifically set forth there is no plain, speedy, other
25 remedy.

1 The language -- and I noted it here and now I'm trying
2 to find it again -- indicated that there would not be any
3 appeal or that there would not be any ability to
4 challenge, if there had been a denial. So I know I saw
5 that somewhere in the documentation.

6 So I do believe there is no plain, speed, or adequate
7 remedy available to Mr. Coley. So the real issue becomes
8 what is the appropriate remedy.

9 I think in this particular circumstance that when you
10 take into consideration that the Division after what -- I
11 think the statute is ambiguous, Section 16 is ambiguous.
12 I think that's fair. You could read it either way that
13 the applications needed to be done by 2008, or that the
14 person had to have been dishonorably discharged by 2008.
15 There is some ambiguity there. But at the end of the day,
16 I think there would be legislative action in order for the
17 Section 16 to have been codified or further applicable.

18 However, as I said, the Division has undertaken to
19 write a report to the legislature that says they
20 recommended continuation of the program. It then appears
21 to have continue the program. We've got inquiry made as
22 to how to change discharge. We have an application being
23 provided that refers to the statute. All of this taking
24 place in 2014.

25 We have had an application received and reviewed.

1 Found to be lacking for what appear to be
2 non-disqualifying factors. And the representations
3 here -- and I do appreciate your candor, Mr. Honey, on the
4 part of your client that they've had other applicants that
5 they've actually processed as well. So by all accounts it
6 appearances that they are still having a program that is
7 their discretion to have. I think there's benefit, quite
8 honestly, to the State of Nevada to have this program
9 still functional, for what it's worth, for you to tell
10 your client that. That if you have individuals out there
11 who can and do come back and pay some restitution and have
12 incentive to do that by having their discharge status
13 changed, that that can only benefit the State. I hear
14 your concerns that might express that there are other
15 aspects of their conditions of probation or parole that
16 they did not complete, that that doesn't sit all that
17 well.

18 One of the things that I think bears mentioning hear
19 about Mr. Coley here is that he's stayed out of trouble
20 since 1999. He's turned his life around. He's trying to
21 do something good with his life and he can't do it because
22 he can't get this dishonorable discharge off his record,
23 and he can't get his records sealed and stuff, you know.
24 What it is, 15 years later, it's still haunting him.

25 So I think he's the perfect candidate for this type

1 of situation. I think he was arbitrary and captiously
2 denied by focusing on his failure to complete his
3 community service, which is the original discharge --
4 dishonorable discharge to begin with.

5 He should have been afforded the opportunity to
6 avail himself of the program and be given whatever program
7 guidelines there were an opportunity to make those
8 payments or do a good faith effort to make those payments.
9 And whatever else the program would entail him to do. ut
10 at this point there doesn't seem to be any dispute that
11 the program is operational, that he was denied, that he
12 needs to be given the opportunity to do the program. I
13 don't believe it would include him also having to
14 undertake community service. It would just be the
15 payment of restitution, as it currently stands, based on
16 the code and how the code codified how it intended to
17 carry out the requirements of the law at the time it was
18 active and how it continues to carry out the requirements
19 of the law, even though the statute is no longer active.

20 I also don't believe there is any evidentiary hearing
21 that needs to be set. Although the Chapter 34 provisions
22 would contemplate their essential questions of fact in
23 dispute, but here there doesn't seem to be any factual
24 dispute and that's why I asked that question of you Mr.
25 Honey.

1 The essential facts of the fact that the program is
2 still made available, whether the legal argument now is
3 that it should not have been and that it was, again,
4 denied to him for reasons other than the disqualifying
5 factors.

6 So I'm going to go ahead and grant the writ at this
7 time. I'm going to mandate that the Division allow Mr.
8 Coley to proceed with his application. Give him an
9 opportunity to avail himself of and complete the program.
10 And, if he does so, to receive the recommended request for
11 honorable discharge. At which point the Court will deal
12 with that if and when it's forthcoming from the program.

13 Again, I can only encourage the Division to consider
14 not only keeping this program alive and operational, but
15 advertising it better so perhaps we can get some more
16 money in the coffer. I appreciate the Division feels
17 otherwise, but that's my feeling in the review of this
18 matter today.

19 MR. HONEY: If I may.

20 Thank you for your ruling today. A couple of
21 clarifications.

22 You're ruling that the statute has sunset, but in
23 this situation Mr. Coley, because they provided him an
24 application and basically treated him as if the statute
25 was still in effect, that they should continue the process

1 until its end, as if it's in effect, for Mr. Mr. Coley.

2 Is that correct.

3 THE COURT: I'm not going to say it that way.
4 I'm going to say it by all the evidence in this case, the
5 Division did not take the program down at whatever point
6 it could have taken the program down.

7 It instituted the program based on the statute at the
8 time it was active. It reported on the program and it
9 intended to continue it. It did, in fact, continue it.
10 And has, in fact, continued it. And I'm encouraging it to
11 continue it. So my findings are related to the specific
12 evidence of what occurred with Mr. Coley, but I would -- I
13 would be concerned, I guess, by the Division taking the
14 tactic of, okay, let's just let Coley do this. But then
15 let's just wipe it out for everybody else.

16 I'm trying to encourage you to encourage your client,
17 as you've already gotten monies from other individuals to
18 continue to allow other individuals who might wish to
19 apply to do this. But certainly Mr. Coley, I believe has
20 been arbitrarily and capriciously denied and should be
21 given the opportunity to complete the program and get the
22 recommendation, if he's entitled to.

23 So I'm going to split the hairs that I'm not
24 suggesting to you that I find the evidence to be that
25 somehow they just -- because Ms. Armeni called, gave Mr.

1 Coley an opportunity that shouldn't have been given. But
2 by all accounts, in this circumstance, it appears that
3 this program was instituted by the Division and they
4 continued to run it, therefore, they have availed
5 themselves of an option to have the program operating,
6 they just can't arbitrarily and capriciously deny people
7 access to it.

8 MR. HONEY: Okay. Your Honor, I'm not trying to
9 comment or speak to you in order to get you to change your
10 ruling.

11 THE COURT: You're welcome to complete the
12 record.

13 MR. HONEY: I have been very forthright here
14 today. My objective here is to get to the right thing.
15 It's one of the good things of being a deputy attorney
16 general, you have to be objective as opposed to self
17 advocacy of winning for the sake of winning.

18 A couple of things. The letter they sent to the LCB
19 was required by the statute. They didn't just all of a
20 sudden decide to send this letter. The statute required
21 they send out letters.

22 Then the comment that it's been up and running this
23 entire time, it hasn't been up and running from '08 until
24 contact from Ms. Armeni. It was her contact that had them
25 put it on their website in 2014. That's why I asked the

1 question about whether or not you were ruling specifically
2 in regards to Mr. Coley.

3 As I know it they have no statutory basis to continue
4 the program at this time, because the statute does not
5 provide for it by statute. So basically what going to end
6 up happening is they're going to take it off their website
7 and anybody that applies, they will not have applied
8 between the time period that allowed for application.

9 I didn't want to get into --

10 THE COURT: Fair enough. Let me comment on what
11 you said.

12 First of all, again, the application period
13 contemplated by the statute does appear to -- again, is
14 ambiguous, but it appears that the legislative intent
15 follows the Division's argument that it was intended to
16 allow applications up through the 2008 period.

17 However, the Division certainly had within its
18 discretion -- and that's what I'm arguing -- or what I'm
19 saying today has been argued successfully is the Division
20 exercised a discretionary function to allow the program to
21 continue. That they have Nevada Administrative Code
22 provisions that effectuate the continuation of the
23 program. That that certainly is legal authority to allow
24 them to continue the program. And they did, in fact,
25 continue the program. I would honestly be concerned -- I

1 hear you are going to do what you are going to do. I was
2 one time in your shoes. With a different agency
3 obviously. But you can advise your agency one of two
4 ways. Legally I'm going to say don't do this anymore,
5 Parole and Probation, because technically a statute for
6 which these Nevada Administrative Code provisions were
7 forthcoming has ended.

8 However, you don't have to do that. And your client
9 doesn't have to do that. They have a Nevada
10 Administrative Code that's still effective. They can and
11 have operated under it. They have a whole infrastructure
12 with application and directions and instructions and all
13 of these good things. And they've gotten more money in
14 the coffer from doing it. So, yes, I am ordering them
15 -- mandating that they allow this program to be available
16 to Mr. Coley. That he have the opportunity to take
17 advantage of it. But I don't see any basis upon which it
18 needs to be taken down.

19 But again, that's going to be your good advice to
20 your client in their determination on how they are going
21 to proceed.

22 MR. HONEY: Very good. Thank you for your
23 patience.

24 THE COURT: Ms. Armeni, I'm going to direct you
25 to prepare the order of writ of mandamus on behalf of Mr.

1 Coley with those clarifications and the Court's original
2 basis for its rulings. And I'd like you to give Mr. Honey
3 an opportunity to see it before it's filed. Then we'll
4 assume that we're going to see some indication in the
5 future of whether or not Mr. Coley is going to be
6 recommended for a honorable discharge.

7 However, once this order is received, we'll close the
8 case as we'd typically do in a criminal matter and only
9 reopen it upon the filing of that recommendation.

10 MS. ARMENI: Thank you, your Honor.

11 MR. HONEY: Thank you.

12 THE COURT: Like I say, that was an interesting
13 one.

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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA DEPARTMENT OF PUBLIC
SAFETY, DIVISION OF PAROLE AND
PROBATION,

Appellant,

vs.

KENNETH SCOTT COLEY A/K/A KING
COLEY,

Respondent.

Case No.: 67864

Electronically Filed
Aug 24 2015 01:04 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

**(Appeal from the District Court's Order Granting the Petition for Writ of
Mandamus)**

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **APPELLANT'S APPENDIX** with the Clerk of the Court by using the electronic filing system on the 24th day of August, 2015.

The following participants in this case are registered electronic filing systems users and will be served electronically:

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/s/ TRACI PLOTNICK
An employee of the Office of the Attorney General