

CLERK OF THE COURT

1 NOT
2 KIRK T. KENNEDY, ESQ.
3 Nevada Bar No: 5032
4 815 S. Casino Center Blvd.
5 Las Vegas, NV 89101
6 (702) 385-5534
7 Attorney for Petitioner

Electronically Filed
Sep 28 2016 02:36 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the matter of the Petition of
11 THOMAS KNICKMEYER,
12
13 Petitioner,

Case No: A-14-711200-P
Dept. No: XXXII

14 vs.

15 STATE OF NEVADA, ex rel., EIGHTH
16 JUDICIAL DISTRICT COURT,
17
18 Respondent.

19 **NOTICE OF APPEAL**

20 NOTICE IS HEREBY GIVEN, that the Petitioner, THOMAS KNICKMEYER,
21 by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., appeals to the
22 Nevada Supreme Court from the final order and decision of the district court denying the
23 amended petition to set aside the arbitration decision or in the alternative petition for
24 judicial review, said notice of entry of order filed on August 25, 2016. See Notice and
25 Order Attached.

26 Dated this 21st day of September, 2016.

27 /s/Kirk T. Kennedy
28 KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby affirm that on this 21st day of September, 2016, I mailed via first class
U.S. Mail to the Respondent a copy of the foregoing to:

Frederick J. Perdomo
Senior Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701

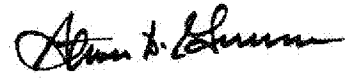
/s/Kirk T. Kennedy
Law Office of Kirk T. Kennedy

AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that the foregoing contains no social security numbers.

Dated this 21st day of September, 2016.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner


CLERK OF THE COURT

1 NEOJ
ADAM PAUL LAXALT
2 Attorney General
FREDERICK J. PERDOMO
3 Senior Deputy Attorney General
Nevada Bar No. 10714
4 Bureau of Litigation
Public Safety Division
5 100 N. Carson Street
Carson City, Nevada 89701-4717
6 Tel: (775) 684-1250
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7 Attorneys for Defendants
8

9 EIGHTH JUDICIAL DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 THOMAS KNICKMEYER,
12 Plaintiff,

Case No.: A-14-711200-P

Dept. No. XXXII

13 vs.

14 STATE OF NEVADA, et al.,

15 Defendants.

16 **NOTICE OF ENTRY OF ORDER DENYING AMENDED PETITION TO SET ASIDE**
17 **ARBITRATION DECISION, OR, IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW**

18 TO: Plaintiff, THOMAS KNICKMEYER, and his counsel of record, Kirk T. Kennedy, Esq.

19 PLEASE TAKE NOTICE that on the 23rd day of August, 2016, the above Court entered
20 its Order Denying Amended Petition to Set Aside Arbitration Decision, or, in the Alternative
21 Petition for Judicial Review. A true and correct copy of this Court's Order is attached hereto
22 as Exhibit A.

23 DATED this 25th day of August, 2016.

24 ADAM PAUL LAXALT
25 Attorney General

26 By: 

27 FREDERICK J. PERDOMO,
Senior Deputy Attorney General
Bureau of Litigation - Public Safety Division
28 Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada,
3 and that on August, 25, 2015, I caused to be served a copy of the foregoing, **NOTICE OF**
4 **ENTRY OF ORDER DENYING AMENDED PETITION TO SET ASIDE ARBITRATION**
5 **DECISION, OR, IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW**, by District
6 Court's Electronic Filing system to the following:

7 Attorney for Petitioner:
8 Kirk T. Kennedy, Esq.
9 815 S. Casino Center Blvd
10 Las Vegas, NV 89101
11 ktkennedylaw@gmail.com


12 
13 An employee of the
14 Office of the Attorney General
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EXHIBIT A

EXHIBIT A

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CLERK OF THE COURT

1 ORDR
ADAM PAUL LAXALT
2 Attorney General
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8
9 EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 In the matter of the Petition of

12 THOMAS KNICKMEYER,

13 Petitioner,

14 vs.

15 STATE OF NEVADA, ex rel., EIGHTH
16 JUDICIAL DISTRICT COURT,

17 Respondent.

CASE NO.: A-14-711200-P
DEPT. NO: 32

Hearing Date: May 20, 2016
Hearing Time: 9:00 a.m.

18 ORDER DENYING AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR,
19 IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW

20 Before this Court is Petitioner Thomas Knickmeyer's "Petitioner" Amended Petition to
21 Set Aside Arbitration Decision, or, in the alternative Petition for Judicial Review filed on
22 December 15, 2015. The matter has been fully briefed and argued.

23 I. SUMMARY OF ARGUMENT

24 Petitioner's Amended Petition to Set Aside Arbitration Decision, or, in the alternative
25 Petition for Judicial Review "Amended Petition" sought to set aside an arbitration award, which
26 denied his grievance challenging his termination from employment as an administrative
27 marshal for the Eighth Judicial District Court of the State of Nevada in and for Clark County
28 "EJDC". Relying on certain sections of a Memorandum of Understanding "MOU" between the

1 Clark County Deputy Marshals Association "CCDMA" and the EJDC and Nevada Revised
2 Statutes "NRS" Chapter 289, Petitioner argued that he was improperly denied discovery
3 related to the underlying records supporting his 1997 and 2003 disciplinary suspensions.
4 Petitioner also argued that the arbitrator exceeded the scope of his authority under the MOU
5 when he upheld Petitioner's termination without specifically finding that the punishment was
6 reasonable, considered violations of the Clark County Marshals Division Policy and Procedure
7 Manual in finding that just cause existed for termination, and referred to outside sources to
8 define the purpose for and limits of progressive discipline.

9 Respondent argued that Petitioner waived his argument that he was improperly denied
10 discovery related to the underlying records supporting his 1997 and 2003 disciplinary
11 suspensions. Respondent argued that the arbitrator's finding that termination was appropriate
12 and just satisfied the reasonableness standard provided for under the MOU. Respondent also
13 argued that the express terms of the MOU stated that violations of the Clark County Marshals
14 Division Policy and Procedure Manual could be considered in making a finding that just cause
15 existed to terminate Petitioner. Respondent further argued that consideration of outside
16 sources in determining the underlying purpose for and limits of progressive discipline was well
17 within the arbitrator's discretion under the terms of the MOU. Even though not addressed in
18 Petitioner's briefing, Respondent argued that there was more than substantial evidence to
19 support the factual and legal conclusions made by the arbitrator and that there was no
20 evidence in the record that the arbitrator manifestly disregarded the law.

21 **II. PROCEDURAL HISTORY**

22 The termination process commenced on October 23, 2013, when Petitioner received a
23 notice that Respondent was placing him on administrative leave and recommending
24 termination as a result of various forms of misconduct he engaged in on January 7 and 8,
25 2013. (OAP, Exhibit B, EJDC_ARB 0727-29).¹ The termination process was guided by the
26 MOU, which provided for a three-step grievance procedure. (*Id.* at EJDC_ARB 0687-707).

27
28 ¹ Respondent filed the administrative record in support of its Motion to Dismiss, or in the alternative,
Response to Petition to Set Aside Arbitration Award filed on February 6, 2015. Excerpts of these records
supported Petitioner's Amended Petition and Respondent's opposition to the Amended Petition.

1 Petitioner was represented by counsel for CCDMA during the first two steps of this process
2 and private counsel during the last step of this process.

3 Petitioner received a Step 1 Pre-termination meeting on November 7, 2013, before
4 Special Hearing Master Melisa De La Garza, Esq. ("Hearing Master De La Garza"). (*Id.* at
5 EJDC_ARB 0711). The meeting concluded without a resolution between Respondent and
6 Petitioner. (*Id.*). Following the meeting, Hearing Master De La Garza entered an eleven page
7 written ruling, which sustained six of the seven allegations of misconduct against Petitioner
8 and upheld Respondent's recommendation to terminate him. (*Id.* at EJDC_ARB 0708–18).
9 The EJDC's Court Administrator, Steven Grierson, adopted these findings on November 14,
10 2013, and terminated Petitioner. (*Id.* at EJDC_ARB 0681).

11 On November 18, 2013, Petitioner, through CCDMA counsel, appealed this decision
12 and requested a Step 2 Post-termination meeting. (*Id.* at EJDC_ARB 0682–83). Petitioner
13 received a Step 2 Post-termination meeting on February 5, 2014, before Bonnie Bulla ("Ms.
14 Bulla"), who was designated by Respondent to preside over the meeting. (*Id.* at EJDC_ARB
15 0719). The meeting concluded without a resolution between Respondent and Petitioner.
16 (*Id.*). After the meeting, Ms. Bulla entered an eight page written ruling, which found that
17 Respondent had just cause to terminate Petitioner. (*Id.* at EJDC_ARB 0719–26).

18 Petitioner requested that the matter be submitted to arbitration. The parties selected
19 an arbitrator under the procedures provided for in the MOU. (*Id.* at EJDC_ARB 0691). The
20 arbitration hearing was held on September 11, 2014. (OAP, Exhibit A, Arbitration Transcript,
21 EJDC_ARB 0001–0276). On November 3, 2014, the parties submitted written briefs in
22 support of their respective positions. (OAP, Exhibit C, EJDC_ARB 0752). The arbitrator
23 entered his written decision on November 24, 2014, which found that Respondent had just
24 cause to terminate Petitioner and denied Petitioner's grievance on this basis. (*Id.* at
25 EJDC_ARB 0752–65).

26 Petitioner commenced this action on December 16, 2014, by filing a Petition to Set
27 Aside Arbitration Decision "Petition." The Petition sought an order from this Court setting
28 aside the arbitration award. Respondent filed a Motion to Dismiss, or in the alternative,

1 Response to Petition to Set Aside Arbitration Decision on February 6, 2015. Petitioner filed an
2 opposition to the motion on March 2, 2015. Respondent's motion was heard and denied by
3 the court on November 9, 2015. In denying the motion, the court ordered Petitioner to file an
4 amended petition, which clarified the jurisdictional basis for judicial review. An order was
5 entered to that effect on November 16, 2015.

6 Petitioner filed the Amended Petition on December 15, 2015. Respondent filed a
7 Motion to Dismiss the Amended Petition on January 15, 2016. Petitioner filed an opposition to
8 that motion on February 3, 2016 and Respondent filed a reply brief on February 11, 2016.
9 Respondent's motion was heard on February 12, 2016, and denied by the court. An order
10 was entered to that effect on February 25, 2016. Respondent was directed to file an
11 opposition to the Amended Petition by April 15, 2016, and Petitioner was directed to file his
12 reply brief by May 5, 2016. The briefs were timely filed and the matter was heard by this Court
13 on May 20, 2016.

14 **III. LEGAL STANDARD**

15 Judicial review of an arbitration award is provided for under Article 13, Step 3(2) of the
16 MOU. This section provides as follows:

17 The arbitrator's decision will be final and binding on all parties to
18 this Agreement as long as the arbitrator does not exceed his/her
19 authority as set forth below and as long as the arbitrator performs
20 his/her functions in accordance with the case law regarding labor
arbitration, the provisions of the U.S. Uniform Arbitration Act, and
where applicable, Nevada Revised Statutes-(NRS).

21 (OAP, Exhibit B, EJDC_ARB 0691). The language of this provision provides two bases to
22 challenge an arbitration award.

23 First, this section of the MOU states that an arbitration award is final and binding "as
24 long as the arbitrator does not exceed his/her authority" under its terms. (*Id.*). This standard
25 mirrors NRS 38.241(1)(d), which states that "[u]pon motion to the court by a party to an
26 arbitral proceeding, the court shall vacate an award made in the arbitral proceeding if: . . . an
27 arbitrator exceeded his or her powers." Under this standard, "[c]ourts presume that arbitrators
28 are acting within the scope of their authority." *Health Plan of Nevada, Inc. v. Rainbow*

1 *Medical, LLC.*, 120 Nev. 689, 697, 100 P.3d 172, 178 (2004). Review for excess of authority
2 is limited and "only granted in very unusual circumstances." *Id.* at 698. The party moving to
3 vacate an arbitration award carries the burden of "demonstrating by clear and convincing
4 evidence how the arbitrator exceeded that authority." *Id.* at 697. "Absent such a showing,
5 courts will assume that the arbitrator acted within the scope of his or her authority and confirm
6 the award." *Id.*

7 Second, this section of the MOU states that the arbitrator's decision is final and binding
8 "as long as the arbitrator performs his/her functions in accordance with the case law regarding
9 labor arbitration . . ." (OAP, Exhibit B, EJDC_ARB 0691). "There are two common-law
10 grounds recognized in Nevada under which a court may review private binding arbitration
11 awards: (1) whether the award is arbitrary, capricious, or unsupported by the agreement; and
12 (2) whether the arbitrator manifestly disregarded the law." *Clark County Educ. Ass'n v. Clark*
13 *County School Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006). "[T]he arbitrary and capricious
14 standard limits a reviewing court's consideration to whether the arbitrator's findings are
15 supported by substantial evidence, while the manifest-disregard-of-the-law standard limits the
16 reviewing court's concern to whether the arbitrator consciously ignored or missed the law." *Id.*
17 at 342. Under the substantial evidence standard, "[a]n arbitrator's decision must be upheld
18 unless it is "completely irrational"" *Wichinsky v. Mosa*, 109 Nev. 84, 90, 847 P.2d 727, 731
19 (1993) (quoting *French v. Merrill Lynch, Pierce, Fenner & Smith*, 784 F.2d 902, 906 (9th Cir.
20 1986)). Under the manifest-disregard-of-the-law standard, the moving party must
21 demonstrate that the arbitrator "knowing the law and recognizing that the law required a
22 particular result, simply disregarded the law." *Clark County Educ. Ass'n*, 122 Nev. at 342.

23 The MOU also states that "[t]he Courts recognize and agree that all deputy marshals
24 will be afforded their rights as provided for in NRS Chapter 289." (OAP, Exhibit B, EJDC_ARB
25 0687). NRS 289.020 through 289.120 is the Peace Officer's Bill of Rights. Under NRS
26 289.120, "[a]ny peace officer aggrieved by an action of the employer of the peace officer in
27 violation of this chapter may, after exhausting any applicable internal grievance procedures,
28 grievance procedures negotiated pursuant to chapter 288 of NRS and other administrative

1 remedies, apply to the district court for judicial relief." This section is not specific as to the
2 means by which judicial relief should be requested or the standard governing requests for
3 judicial relief. Petitioner's right to judicial relief under NRS 289.120 only exists by virtue of the
4 MOU, as NRS 289.020 through 289.120 regulates the conduct of law enforcement agencies
5 with regard to peace officers and Respondent is not a law enforcement agency. In the
6 absence of express procedures and standards governing an application for judicial relief
7 under NRS 289.120, Petitioner is limited to the procedures and standards expressly provided
8 for under the MOU, NRS Chapter 38, and Nevada common law.

9 IV. DISCUSSION

10 A. Waiver

11 "It is well-established that arguments raised for the first time on appeal need not be
12 considered by [the] court." *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1378, 952 P.2d
13 73, 74 (1997). "A point not urged in the trial court, unless it goes to the jurisdiction of that
14 court, is deemed to have been waived and will not be considered on appeal." *Britz v.*
15 *Consolidated Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911, 915 (1971). Similarly,
16 "[a]rguments not raised before the appropriate administrative tribunal . . . cannot be raised for
17 the first time on appeal." *Carrigan v. Commission on Ethics of the State of Nevada*, 129 Adv.
18 Op. 95, 313 P.3d 880, 887, n. 6 (2013).

19 The Amended Petition argued that Petitioner was improperly denied discovery of the
20 investigative records supporting his 1997 and 2003 disciplinary suspensions. The
21 memorandums by Judge Mosley memorializing these suspensions were admitted as a joint
22 exhibit during the arbitration hearing. (OAP, Exhibit A, EJDC_ARB 0004; Exhibit B,
23 EJDC_ARB 0737-38). These memorandums were part of Petitioner's personnel file, which
24 was provided to Petitioner prior to that hearing. (OAP, Exhibit F, EJDC_ARB 0966-67).
25 Petitioner did not receive the investigative records supporting these suspensions, which were
26 maintained by the Clark County Office of Diversity "OOD." OOD is part of the executive
27 branch of Clark County. While there is a question as to whether Respondent had an
28 affirmative duty to attempt to obtain these records from OOD, this Court does not need to

1 reach a decision on this issue. Petitioner was required to make a complaint about or a
2 request for these records at some time during the administrative proceedings. Petitioner did
3 not raise this issue during the administrative proceedings, and Petitioner's arguments are
4 waived as he failed to exhaust his administrative remedies.

5 Rather than seeking to address the substance of these investigations during the
6 arbitration hearing, Petitioner argued that the 1997 and 2003 disciplinary suspensions were
7 too remote in time to constitute earlier incidents of progressive discipline. (OAP, Exhibit C,
8 EJDC_ARB 0765). Petitioner also argued that there was a lack of due process with respect to
9 the administration of these suspensions. (*Id.*). The record reflects that the process for
10 challenging Petitioner's 1997 and 2003 suspensions, if any, was different than what was
11 provided for under the MOU. (OAP, Exhibit D, EJDC_ARB 0833; Exhibit E, EJDC_ARB
12 0890-95, 902-03). There was no evidence presented at any stage of the administrative
13 proceedings that established the quality of the investigation and procedures used to discipline
14 Petitioner in 1997 and 2003. The arbitrator found Petitioner's arguments persuasive and
15 effectively struck this evidence from the record by not considering these suspensions as
16 progressive forms discipline. (OAP, Exhibit C, EJDC_ARB 0765).

17 Review of the arbitration award is confined to issues raised during that proceeding.
18 Petitioner did not preserve for judicial review discovery issues related to Respondents duty, if
19 any, to attempt to obtain the investigative records supporting Petitioner's 1997 and 2003
20 disciplinary suspensions. Rather, the record reflects that Petitioner successfully argued for
21 striking evidence of these suspensions from the record. Petitioner did not exhaust his
22 administrative remedies, and his Amended Petition must be denied on this issue.

23 **B. Statutory and Common Law Standards of Review**

24 Review of the arbitration award is confined to the standards provided for under NRS
25 38.240(1)(d) and Nevada common law. While Petitioner did not make arguments to set-aside
26 the arbitration award under Nevada common law, this Court will still consider both standards
27 of review.

28 ///

1 **1. Statutory Standard of Review**

2 Under Nevada law, the arbitrator is presumed to have acted within the scope of his
3 authority. *Health Plan of Nevada, Inc.*, 120 Nev. at 697. Petitioner carries the burden of
4 demonstrating by clear and convincing evidence that the arbitrator exceeded his authority. *Id.*
5 Absent such a showing, this Court must assume that the arbitrator acted within the scope of
6 his authority and confirm the award. *Id.* A finding that the arbitrator acted in excess of his
7 authority requires Petitioner to show that the arbitrator addressed issues "outside the scope of
8 the governing contract." *Id.*

9 Petitioner argued that the arbitrator exceeded his authority by applying an incorrect
10 standard. Specifically, Petitioner argued that the MOU required the arbitrator to make a
11 finding that Respondent's disciplinary action was reasonable in order to reach his conclusion
12 that just cause existed to terminate Petitioner. Article 13, Section 1(3) of the MOU provides
13 that "[t]he decision to uphold the disciplinary action will be based on the reasonableness of the
14 discipline imposed by the supervisor in response to the actions taken or not taken by the
15 marshal." (OAP, Exhibit B, EJDC_ARB 0688). This section also provides that "[t]he arbitrator
16 will consider the incident and the discipline in terms of severity of the action, evidence of
17 progressive discipline and appropriateness of the disciplinary action." (*Id.*). The arbitrator
18 made specific findings as to whether termination was more appropriate than progressive
19 discipline. While the arbitrator did not make an express finding that termination was
20 reasonable, the arbitrator still applied this standard as it required the same type of weighing
21 analysis he engaged in to determine that Respondent's decision to terminate Petitioner was
22 appropriate. (OAP, Exhibit C, EJDC_ARB 0762-64).

23 Petitioner also argued that the arbitrator improperly relied on prior arbitration decisions
24 and legal journals to define the purpose for and application of progressive discipline. Article
25 13, Step 3(4) of the MOU states that "[t]he arbitrator shall consider and decide only the
26 particular issues presented by the CCDMA and the County, and the decision and award shall
27 be based solely on his/her interpretation of the application of the express terms of [the MOU]."
28 (OAP, Exhibit B, EJDC_ARB 0692). Article 13, Step 3(2) of the MOU required the arbitrator to

1 perform his functions in accordance with case law regarding labor arbitration. (*Id.* at
2 EJDC_ARB 0691). Weighing the appropriateness or reasonableness of termination over
3 progressive discipline required knowledge of the underlying purpose for and the limits of
4 progressive discipline. Referring to legal treatises or articles, which are informed by labor
5 arbitration law, to interpret this express term in the MOU was well within his discretion under
6 Article 13, Step 3 of the MOU.

7 Petitioner finally argued that the arbitrator improperly considered his violations of
8 certain provisions of the Clark County Marshals Division Policy and Procedure Manual as
9 support for his findings in the arbitration award. Article 13, Section 1(3) of the MOU states
10 that "[t]he CCDMA recognizes the need for more severe initial disciplinary action in the event
11 of major violation of established rules, regulations or policies of the Courts." (*Id.* at
12 EJDC_ARB 0688) Article 13, Section 1(5) of the MOU also states that "[j]ust cause may
13 include, but not be limited to: . . . [a] violation of established departmental work rules and
14 procedures." (*Id.*). The Clark County Marshals Division Policy and Procedure Manual falls
15 within scope of "established rules, regulations, or policies of the Court" or "departmental work
16 rules and procedures" that may be considered in determining whether there was just cause to
17 terminate Petitioner.

18 Petitioner has not carried his burden to demonstrate by clear and convincing evidence
19 that the arbitrator acted outside the scope of his authority. Petitioner's challenge to the
20 arbitration award on the basis that the arbitrator exceeded his powers granted by the MOU is
21 denied.

22 **2. Common Law Standard of Review**

23 **a. Substantial Evidence**

24 Under the substantial evidence standard, an arbitration award may only be set-aside if
25 its findings are "completely irrational." *Wichinsky*, 109 Nev. at 90. While the Amended
26 Petition did not specifically address this standard of review, it disputed the arbitrator's factual
27 findings with respect to Petitioner's conduct on January 7 and 8, 2013. The arbitrator found
28 that the six allegations, which formed the factual basis for the discipline imposed

1 by Respondent, were established by a preponderance of the evidence. The allegations were
2 as follows:

- 3 1. That Petitioner said, "fuck this place" while on duty and in uniform;
- 4 2. That Petitioner while on duty and in uniform told Marshal Ellis that Director Robert
5 Bennett was going to be fired;
- 6 3. That Petitioner referred to Lieutenant Moody as a "motherfucker" and told Marshal Ellis
7 that he was going to throw Lieutenant Moody under the bus;
- 8 4. That Petitioner showed Marshal Ellis a copy of a civil lawsuit involving Lieutenant
9 Moody on his phone and told him he was going to distribute a copy of the lawsuit
10 around the courthouse;
- 11 5. That Petitioner unnecessarily scanned Ms. Litt's purse three times; and
- 12 6. That Petitioner commented to Marshal Ellis after Ms. Litt left the scanning station that,
13 "That was the bitch who complained on me."

14 (OAP, Exhibit C, EJDC_ARB 0760).

15 In addition to these factual findings, the arbitrator found that Ms. Litt was a witness to a
16 prior incident, which resulted in a disciplinary reprimand against Petitioner and that Ms. Litt
17 filed a separate complaint against Petitioner alleging that Petitioner acted inappropriately
18 toward her. (*Id.* at EJDC_ARB 0761).

19 There was more than substantial evidence in the record to establish these facts, which
20 included Marshal Ellis and Ms. Litt's testimony at the arbitration hearing and the reports and/or
21 interviews they provided during Respondent's investigation of Petitioner's conduct on January
22 7 and 8, 2013. (OAP, § III, 6:22-9:13). While these factual findings required the arbitrator to
23 weigh Marshal Ellis and Ms. Litt's credibility against Petitioner's credibility, the arbitrator's role
24 as fact finder entitled him to make these determinations in issuing the arbitration award. The
25 record from the arbitration hearing supports the factual findings made by the arbitrator, which
26 satisfies the substantial evidence standard.

27 ///

28 ///

1 **b. Manifest Disregard of the Law**

2 To establish manifest disregard for the law, Petitioner must demonstrate that the
3 arbitrator knew of a law, recognized that it required a particular result, and disregarded it.
4 *Clark County Educ. Ass'n*, 122 Nev. at 342. Because Petitioner waived arguments as to
5 whether Respondent had an affirmative duty to obtain the underlying investigative records
6 supporting his 1997 and 2003 disciplinary suspensions under Article 13 of the MOU and NRS
7 Chapter 289, Petitioner cannot establish that he notified the arbitrator of these legal issues.
8 Petitioner was provided with Respondents records pertaining to his 1997 and 2003
9 disciplinary suspensions, which is all that was required by NRS Chapter 289. The arbitrator
10 properly applied the standards of review stipulated to by the parties and provided for under the
11 MOU as well as applicable labor law. Therefore, this Court finds that there is no evidence in
12 the record that the arbitrator manifestly disregarded the law.

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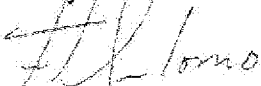
1 Accordingly,

2 **IT IS ORDERED THAT** the Amended Petition to Set Aside Arbitration Decision, or, in
3 the alternative Petition for Judicial Review is DENIED.

4
5 DATED this 4 day of ^{August}~~July~~, 2016.

6
7 
8 Senior District Court Judge

9 SUBMITTED BY:
10 ADAM PAUL LAXALT
11 Attorney General

12 
13 **FREDERICK J. PERDOMO**
14 Senior Deputy Attorney General
15 Nevada Bar No. 10714
16 Bureau of Litigation
17 Public Safety Division
18 100 N. Carson Street
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20 Tel: (775) 684-1250
21 *Attorneys for Respondent*

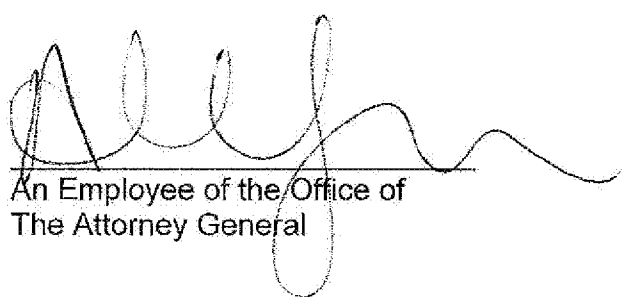
22 APPROVED AS TO FORM AND CONTENT BY:

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29 DECLINED - NO ALTERNATIVE RECEIVED AFTER 7/19/16
30 Kirk T. Kennedy, Esq. *NPO* *Submission*
31 815 S. Casino Center Blvd
32 Las Vegas, NV 89101
33 T (702) 385-5534
34 *Attorney for Petitioner*

1 **CERTIFICATE OF SERVICE**

2 I certify I am an employee of the Office of the Attorney General, State of Nevada, and
3 that on this 19th day of July, 2016, I caused to be served a copy of the foregoing **ORDER**
4 **DENYING AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR, IN THE**
5 **ALTERNATIVE PETITION FOR JUDICIAL REVIEW**, by District Court's Electronic Filing
6 system to:

7 Attorney for Petitioner:
8 Kirk T. Kennedy, Esq.
9 815 S. Casino Center Blvd
10 Las Vegas, NV 89101
11 T (702) 385-5534
12 Ktkennedylaw@gmail.com

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14 An Employee of the Office of
15 The Attorney General
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district court.

Appellant was represented by retained counsel in the district court.

6. Indicate whether the appellant is represented by appointed or retained counsel on this appeal.

Appellant is represented by retained counsel for this appeal.

7. Indicate whether the appellant was granted leave to proceed in forma pauperis and the date of entry of the district court order granting such leave.

None.

8. Indicate the date the proceedings commenced in the district court.

Petition initially filed on December 16, 2014.

9. Brief Description of Action and Result Below: Appellant filed a petition to set aside an arbitration decision. The district court denied the petition and this appeal now follows from that final judgment.

10. Previous appeals: None.

11. Appeal involving child custody or visitation: No.

12. Possibility of Settlement: No.

Dated this 21st day of September, 2016.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby affirm that on this 21st day of September, 2016, I mailed via first class
U.S. Mail to the Respondent a copy of the foregoing to:

Frederick J. Perdomo
Senior Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701

/s/Kirk T. Kennedy
Law Office of Kirk T. Kennedy

AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that the foregoing contains no social security numbers.

Dated this 21st day of September, 2016.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

DEPARTMENT UNASSIGNED
CASE SUMMARY
CASE NO. A-14-711200-P

**In the Matter of the Petition of
Thomas Knickmeyer**

§
§
§
§
§

Location: **Department Unassigned**
Judicial Officer: **Becker, Nancy**
Filed on: **12/16/2014**
Case Number History:
Cross-Reference Case Number: **A711200**

CASE INFORMATION

Case Type: **Other Civil Filings (Petition)**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-14-711200-P
Court	Department Unassigned
Date Assigned	03/18/2015
Judicial Officer	Becker, Nancy






PARTY INFORMATION

Petitioner	Knickmeyer, Thomas	<i>Lead Attorneys</i> Kennedy, Kirk T <i>Retained</i> 702-385-5534(W)
Defendant	Nevada State of	Laxalt, Adam Paul <i>Retained</i> 702-486-3420(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

12/16/2014	 Petition Filed by: Petitioner Knickmeyer, Thomas <i>Petition to Set Aside Arbitration Decision</i>	
12/16/2014	Case Opened	
01/21/2015	 Stipulation and Order Filed by: Petitioner Knickmeyer, Thomas <i>Stipulation to Continue Hearing on Petition to Set Aside Arbitration Decision and to Extend Time for the Respondent's Response and Order</i>	
02/06/2015	 Notice of Appearance Party: Defendant Nevada State of <i>Notice of Appearance</i>	
02/06/2015	 Notice of Motion Filed By: Defendant Nevada State of <i>notice of motion to dismiss or, in the alternative, response to petition to set aside arbitration decision</i>	
02/06/2015	 Motion to Dismiss Filed By: Defendant Nevada State of <i>State of Nevada Ex Re.. Eighth Judicial District Court's Motion to Dismiss of in the Alternative Response to Peition to Set Aside Arbitration Decision</i>	

DEPARTMENT UNASSIGNED
CASE SUMMARY
CASE NO. A-14-711200-P







02/26/2015	 Motion Filed By: Petitioner Knickmeyer, Thomas <i>Motion to Disqualify the Eighth Judicial District Court</i>
03/02/2015	 Opposition Filed By: Petitioner Knickmeyer, Thomas <i>Petitioner's Opposition to Respondent's Motion to Dismiss or, in the Alternative Response to Petition to Set Aside Arbitration Decision</i>
03/06/2015	 Stipulation and Order Filed by: Petitioner Knickmeyer, Thomas <i>Stipulation to stay hearing on petition to set aside arbitration decision and on respondent's motion to dismiss pending a resolution of petitioner's motion to disqualify the district court and order</i>
03/10/2015	CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Stipulation and Order notice of motion to dismiss or, in the alternative, response to petition to set aside arbitration decision</i>
03/12/2015	CANCELED Motion to Set Aside (9:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Stipulation and Order Petition to Set Aside Arbitration Decision</i>
03/17/2015	 Minute Order (9:21 AM) (Judicial Officer: Barker, David) <i>Minute Order Re: Reassignment</i>
03/25/2015	CANCELED Motion (8:30 AM) (Judicial Officer: Thompson, Charles) <i>Vacated - per Judge Petitioner's Motion to Disqualify the Eighth Judicial District Court</i>
03/31/2015	CANCELED Motion (9:00 AM) (Judicial Officer: Thompson, Charles) <i>Vacated - On in Error Motion to Disqualify the Eight Judicial District Court</i>
03/31/2015	CANCELED Motion (9:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated - On in Error Motion to Disqualify Eighth Judicial District Court</i>
07/02/2015	 Motion Filed By: Petitioner Knickmeyer, Thomas <i>Renewed Motion to Disqualify the Eighth Judicial District Court</i>
07/21/2015	 Response Filed by: Defendant Nevada State of <i>State Of Nevada Ex Rel. Eighth Judicial District Court's Response To Renewed Motion To Disqualify The Eighth Judicial District Court</i>
08/17/2015	 Motion (3:00 AM) (Judicial Officer: Becker, Nancy) <i>Renewed Motion to Disqualify the Eighth Judicial District Court</i>
08/17/2015	CANCELED Minute Order (3:20 PM) (Judicial Officer: Barker, David) <i>Vacated - On in Error</i>
09/10/2015	 Notice of Hearing Filed By: Petitioner Knickmeyer, Thomas

DEPARTMENT UNASSIGNED
CASE SUMMARY
CASE NO. A-14-711200-P

Notice of Hearing for Petition to Set Aside Arbitration Decision

10/09/2015	 Order Denying Motion Filed By: Defendant Nevada State of <i>Order Denying Petitioner's Renewed Motion to Disqualify Eighth Judicial District Court</i>
10/14/2015	 Notice of Entry of Order Filed By: Defendant Nevada State of <i>Notice of Entry of Order Denying Petitioner's Renewed Motion to Disqualify Eighth Judicial District Court</i>
11/09/2015	 Petition (9:00 AM) (Judicial Officer: Becker, Nancy) <i>Petition to Set Aside Arbitration</i>
11/16/2015	 Order Filed By: Petitioner Knickmeyer, Thomas <i>Order</i>
12/15/2015	 Amended Petition Filed By: Petitioner Knickmeyer, Thomas <i>Amended petition to set aside arbitration decision, or, in the alternative, petition for judicial review</i>
01/15/2016	 Motion to Dismiss Filed By: Defendant Nevada State of <i>State of Nevada ex rel. Eighth Judicial District Court's Motion to Dismiss Amended Petition to Set Aside Arbitration Decision, or, In the Alternative Petition for Judicial Review</i>
01/20/2016	 Notice of Hearing <i>Notice of Hearing</i>
02/03/2016	 Opposition Filed By: Petitioner Knickmeyer, Thomas <i>Petitioner's Opposition To Respondent's Motion To Dismiss Amended Petition To Set Aside Arbitration Decision Or, In The Alternative, Petition For Judicial Review</i>
02/11/2016	 Reply in Support Filed By: Defendant Nevada State of <i>Reply in Support of State of Nevada Ex Rel. Eighth Judicial District Court's Motion to Dismiss Amended Petition to Set Aside Arbitration Decision, or, in the Alternative Petition for Judicial Review</i>
02/12/2016	 Petition (9:00 AM) (Judicial Officer: Becker, Nancy) 02/12/2016, 05/20/2016 Events: 12/15/2015 Amended Petition <i>Amended petition to set aside arbitration decision, or, in the alternative, petition for judicial review</i>
02/12/2016	Motion to Dismiss (9:00 AM) (Judicial Officer: Becker, Nancy) <i>State of Nevada ex rel. Eighth Judicial District Court's Motion to Dismiss Amended Petition to Set Aside Arbitration Decision, or, In the Alternative Petition for Judicial Review</i>
02/12/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Becker, Nancy)
02/25/2016	 Order Denying Motion

DEPARTMENT UNASSIGNED
CASE SUMMARY
CASE NO. A-14-711200-P

	<p>Filed By: Petitioner Knickmeyer, Thomas <i>Order Denying Respondent's Motion to Dismiss Amended Petition to set aside Arbitration Decision, or in the Alternative Petition for Judicial Review</i></p>
04/15/2016	<p> Opposition <i>State of Nevada Ex Rel. Eighth Judicial District Court's Opposition to Amended Petition to Set Aside Arbitration Decision, or, in the Alternative Petition for Judicial Review</i></p>
05/04/2016	<p> Reply Filed by: Petitioner Knickmeyer, Thomas <i>Petitioner's Reply to Respondent's Opposition to the Amended Petition to Set Aside Arbitration Decision or, in the Alternative Petition for Judicial Review</i></p>
08/23/2016	<p> Order Denying Filed By: Petitioner Knickmeyer, Thomas <i>Order Denying Amended Petition to Set Aside Arbitration Decision or in the Alternative Petition for Judicial Review</i></p>
08/25/2016	<p> Notice of Entry of Order Filed By: Defendant Nevada State of <i>Notice of Entry of Order Denying Amended Petition to Set Aside Arbitration Decision, or, in the Alternative Petition for Judicial Review</i></p>
09/21/2016	<p> Notice of Appeal Filed By: Petitioner Knickmeyer, Thomas <i>Notice of Appeal</i></p>
09/21/2016	<p> Case Appeal Statement Filed By: Petitioner Knickmeyer, Thomas <i>Case Appeal Statement</i></p>

DATE	FINANCIAL INFORMATION
	<p>Petitioner Knickmeyer, Thomas</p> <p>Total Charges 294.00</p> <p>Total Payments and Credits 294.00</p> <p>Balance Due as of 9/23/2016 0.00</p>

DISTRICT COURT CIVIL COVER SHEET

A-14-711200-P

County, Nevada

XXXXII

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Thomas Krickmeyer

Defendant(s) (name/address/phone):

State of Nevada
ex rel Eighth Judicial
District Court

Attorney (name/address/phone):

Rick V. Kenney
815 S. Casino Center
Las Vegas NV 89101
385-5534

Attorney (name/address/phone):

Link

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

Date

Signature of initiating party or representative

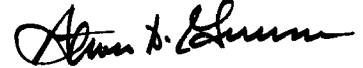
See other side for family-related case filings.

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CLERK OF THE COURT

1 ORDR
2 ADAM PAUL LAXALT
3 Attorney General
4 FREDERICK J. PERDOMO
5 Senior Deputy Attorney General
6 Nevada Bar No. 10714
7 Bureau of Litigation
8 Public Safety Division
9 100 N. Carson Street
10 Carson City, Nevada 89701-4717
11 Tel: (775) 684-1250
12 Email: fperdomo@ag.nv.gov
13 Attorneys for Respondent

8
9 EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 In the matter of the Petition of
12 THOMAS KNICKMEYER,
13 Petitioner,
14 vs.
15 STATE OF NEVADA, ex rel., EIGHTH
16 JUDICIAL DISTRICT COURT,
17 Respondent.

CASE NO.: A-14-711200-P
DEPT. NO: 32

Hearing Date: May 20, 2016
Hearing Time: 9:00 a.m.

18 **ORDER DENYING AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR,**
19 **IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW**

20 Before this Court is Petitioner Thomas Knickmeyer's "Petitioner" Amended Petition to
21 Set Aside Arbitration Decision, or, in the alternative Petition for Judicial Review filed on
22 December 15, 2015. The matter has been fully briefed and argued.

23 **I. SUMMARY OF ARGUMENT**

24 Petitioner's Amended Petition to Set Aside Arbitration Decision, or, in the alternative
25 Petition for Judicial Review "Amended Petition" sought to set aside an arbitration award, which
26 denied his grievance challenging his termination from employment as an administrative
27 marshal for the Eighth Judicial District Court of the State of Nevada in and for Clark County
28 "EJDC". Relying on certain sections of a Memorandum of Understanding "MOU" between the

Clark County Deputy Marshals Association “CCDMA” and the EJDC and Nevada Revised Statutes “NRS” Chapter 289, Petitioner argued that he was improperly denied discovery related to the underlying records supporting his 1997 and 2003 disciplinary suspensions. Petitioner also argued that the arbitrator exceeded the scope of his authority under the MOU when he upheld Petitioner’s termination without specifically finding that the punishment was reasonable, considered violations of the Clark County Marshals Division Policy and Procedure Manual in finding that just cause existed for termination, and referred to outside sources to define the purpose for and limits of progressive discipline.

Respondent argued that Petitioner waived his argument that he was improperly denied discovery related to the underlying records supporting his 1997 and 2003 disciplinary suspensions. Respondent argued that the arbitrator’s finding that termination was appropriate and just satisfied the reasonableness standard provided for under the MOU. Respondent also argued that the express terms of the MOU stated that violations of the Clark County Marshals Division Policy and Procedure Manual could be considered in making a finding that just cause existed to terminate Petitioner. Respondent further argued that consideration of outside sources in determining the underlying purpose for and limits of progressive discipline was well within the arbitrator’s discretion under the terms of the MOU. Even though not addressed in Petitioner’s briefing, Respondent argued that there was more than substantial evidence to support the factual and legal conclusions made by the arbitrator and that there was no evidence in the record that the arbitrator manifestly disregarded the law.

II. PROCEDURAL HISTORY

The termination process commenced on October 23, 2013, when Petitioner received a notice that Respondent was placing him on administrative leave and recommending termination as a result of various forms of misconduct he engaged in on January 7 and 8, 2013. (OAP, Exhibit B, EJDC_ARB 0727–29).¹ The termination process was guided by the MOU, which provided for a three-step grievance procedure. (*Id.* at EJDC_ARB 0687–707).

¹ Respondent filed the administrative record in support of its Motion to Dismiss, or in the alternative, Response to Petition to Set Aside Arbitration Award filed on February 6, 2015. Excerpts of these records supported Petitioner’s Amended Petition and Respondent’s opposition to the Amended Petition.

1 Petitioner was represented by counsel for CCDMA during the first two steps of this process
2 and private counsel during the last step of this process.

3 Petitioner received a Step 1 Pre-termination meeting on November 7, 2013, before
4 Special Hearing Master Melisa De La Garza, Esq. ("Hearing Master De La Garza"). (*Id.* at
5 EJDC_ARB 0711). The meeting concluded without a resolution between Respondent and
6 Petitioner. (*Id.*). Following the meeting, Hearing Master De La Garza entered an eleven page
7 written ruling, which sustained six of the seven allegations of misconduct against Petitioner
8 and upheld Respondent's recommendation to terminate him. (*Id.* at EJDC_ARB 0708–18).
9 The EJDC's Court Administrator, Steven Grierson, adopted these findings on November 14,
10 2013, and terminated Petitioner. (*Id.* at EJDC_ARB 0681).

11 On November 18, 2013, Petitioner, through CCDMA counsel, appealed this decision
12 and requested a Step 2 Post-termination meeting. (*Id.* at EJDC_ARB 0682–83). Petitioner
13 received a Step 2 Post-termination meeting on February 5, 2014, before Bonnie Bulla ("Ms.
14 Bulla"), who was designated by Respondent to preside over the meeting. (*Id.* at EJDC_ARB
15 0719). The meeting concluded without a resolution between Respondent and Petitioner.
16 (*Id.*). After the meeting, Ms. Bulla entered an eight page written ruling, which found that
17 Respondent had just cause to terminate Petitioner. (*Id.* at EJDC_ARB 0719–26).

18 Petitioner requested that the matter be submitted to arbitration. The parties selected
19 an arbitrator under the procedures provided for in the MOU. (*Id.* at EJDC_ARB 0691). The
20 arbitration hearing was held on September 11, 2014. (OAP, Exhibit A, Arbitration Transcript,
21 EJDC_ARB 0001–0276). On November 3, 2014, the parties submitted written briefs in
22 support of their respective positions. (OAP, Exhibit C, EJDC_ARB 0752). The arbitrator
23 entered his written decision on November 24, 2014, which found that Respondent had just
24 cause to terminate Petitioner and denied Petitioner's grievance on this basis. (*Id.* at
25 EJDC_ARB 0752–65).

26 Petitioner commenced this action on December 16, 2014, by filing a Petition to Set
27 Aside Arbitration Decision "Petition." The Petition sought an order from this Court setting
28 aside the arbitration award. Respondent filed a Motion to Dismiss, or in the alternative,

1 Response to Petition to Set Aside Arbitration Decision on February 6, 2015. Petitioner filed an
2 opposition to the motion on March 2, 2015. Respondent's motion was heard and denied by
3 the court on November 9, 2015. In denying the motion, the court ordered Petitioner to file an
4 amended petition, which clarified the jurisdictional basis for judicial review. An order was
5 entered to that effect on November 16, 2015.

6 Petitioner filed the Amended Petition on December 15, 2015. Respondent filed a
7 Motion to Dismiss the Amended Petition on January 15, 2016. Petitioner filed an opposition to
8 that motion on February 3, 2016 and Respondent filed a reply brief on February 11, 2016.
9 Respondent's motion was heard on February 12, 2016, and denied by the court. An order
10 was entered to that effect on February 25, 2016. Respondent was directed to file an
11 opposition to the Amended Petition by April 15, 2016, and Petitioner was directed to file his
12 reply brief by May 5, 2016. The briefs were timely filed and the matter was heard by this Court
13 on May 20, 2016.

14 **III. LEGAL STANDARD**

15 Judicial review of an arbitration award is provided for under Article 13, Step 3(2) of the
16 MOU. This section provides as follows:

17 The arbitrator's decision will be final and binding on all parties to
18 this Agreement as long as the arbitrator does not exceed his/her
19 authority as set forth below and as long as the arbitrator performs
20 his/her functions in accordance with the case law regarding labor
arbitration, the provisions of the U.S. Uniform Arbitration Act, and
where applicable, Nevada Revised Statutes-(NRS).

21 (OAP, Exhibit B, EJDC_ARB 0691). The language of this provision provides two bases to
22 challenge an arbitration award.

23 First, this section of the MOU states that an arbitration award is final and binding "as
24 long as the arbitrator does not exceed his/her authority" under its terms. (*Id.*). This standard
25 mirrors NRS 38.241(1)(d), which states that "[u]pon motion to the court by a party to an
26 arbitral proceeding, the court shall vacate an award made in the arbitral proceeding if: . . . an
27 arbitrator exceeded his or her powers." Under this standard, "[c]ourts presume that arbitrators
28 are acting within the scope of their authority." *Health Plan of Nevada, Inc. v. Rainbow*

1 *Medical, LLC.*, 120 Nev. 689, 697, 100 P.3d 172, 178 (2004). Review for excess of authority
2 is limited and “only granted in very unusual circumstances.” *Id.* at 698. The party moving to
3 vacate an arbitration award carries the burden of “demonstrating by clear and convincing
4 evidence how the arbitrator exceeded that authority.” *Id.* at 697. “Absent such a showing,
5 courts will assume that the arbitrator acted within the scope of his or her authority and confirm
6 the award.” *Id.*

7 Second, this section of the MOU states that the arbitrator’s decision is final and binding
8 “as long as the arbitrator performs his/her functions in accordance with the case law regarding
9 labor arbitration . . .” (OAP, Exhibit B, EJDC_ARB 0691). “There are two common-law
10 grounds recognized in Nevada under which a court may review private binding arbitration
11 awards: (1) whether the award is arbitrary, capricious, or unsupported by the agreement; and
12 (2) whether the arbitrator manifestly disregarded the law.” *Clark County Educ. Ass’n v. Clark*
13 *County School Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006). “[T]he arbitrary and capricious
14 standard limits a reviewing court’s consideration to whether the arbitrator’s findings are
15 supported by substantial evidence, while the manifest-disregard-of-the-law standard limits the
16 reviewing court’s concern to whether the arbitrator consciously ignored or missed the law.” *Id.*
17 at 342. Under the substantial evidence standard, “[a]n arbitrator’s decision must be upheld
18 unless it is “completely irrational”” *Wichinsky v. Mosa*, 109 Nev. 84, 90, 847 P.2d 727, 731
19 (1993) (quoting *French v. Merrill Lynch, Pierce, Fenner & Smith*, 784 F.2d 902, 906 (9th Cir.
20 1986)). Under the manifest-disregard-of-the-law standard, the moving party must
21 demonstrate that the arbitrator “knowing the law and recognizing that the law required a
22 particular result, simply disregarded the law.” *Clark County Educ. Ass’n*, 122 Nev. at 342.

23 The MOU also states that “[t]he Courts recognize and agree that all deputy marshals
24 will be afforded their rights as provided for in NRS Chapter 289.” (OAP, Exhibit B, EJDC_ARB
25 0687). NRS 289.020 through 289.120 is the Peace Officer’s Bill of Rights. Under NRS
26 289.120, “[a]ny peace officer aggrieved by an action of the employer of the peace officer in
27 violation of this chapter may, after exhausting any applicable internal grievance procedures,
28 grievance procedures negotiated pursuant to chapter 288 of NRS and other administrative

1 remedies, apply to the district court for judicial relief.” This section is not specific as to the
2 means by which judicial relief should be requested or the standard governing requests for
3 judicial relief. Petitioner’s right to judicial relief under NRS 289.120 only exists by virtue of the
4 MOU, as NRS 289.020 through 289.120 regulates the conduct of law enforcement agencies
5 with regard to peace officers and Respondent is not a law enforcement agency. In the
6 absence of express procedures and standards governing an application for judicial relief
7 under NRS 289.120, Petitioner is limited to the procedures and standards expressly provided
8 for under the MOU, NRS Chapter 38, and Nevada common law.

9 **IV. DISCUSSION**

10 **A. Waiver**

11 “It is well-established that arguments raised for the first time on appeal need not be
12 considered by [the] court.” *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1378, 952 P.2d
13 73, 74 (1997). “A point not urged in the trial court, unless it goes to the jurisdiction of that
14 court, is deemed to have been waived and will not be considered on appeal.” *Britz v.*
15 *Consolidated Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911, 915 (1971). Similarly,
16 “[a]rguments not raised before the appropriate administrative tribunal . . . cannot be raised for
17 the first time on appeal.” *Carrigan v. Commission on Ethics of the State of Nevada*, 129 Adv.
18 Op. 95, 313 P.3d 880, 887, n. 6 (2013).

19 The Amended Petition argued that Petitioner was improperly denied discovery of the
20 investigative records supporting his 1997 and 2003 disciplinary suspensions. The
21 memorandums by Judge Mosley memorializing these suspensions were admitted as a joint
22 exhibit during the arbitration hearing. (OAP, Exhibit A, EJDC_ARB 0004; Exhibit B,
23 EJDC_ARB 0737–38). These memorandums were part of Petitioner’s personnel file, which
24 was provided to Petitioner prior to that hearing. (OAP, Exhibit F, EJDC_ARB 0966–67).
25 Petitioner did not receive the investigative records supporting these suspensions, which were
26 maintained by the Clark County Office of Diversity “OOD.” OOD is part of the executive
27 branch of Clark County. While there is a question as to whether Respondent had an
28 affirmative duty to attempt to obtain these records from OOD, this Court does not need to

1 reach a decision on this issue. Petitioner was required to make a complaint about or a
2 request for these records at some time during the administrative proceedings. Petitioner did
3 not raise this issue during the administrative proceedings, and Petitioner's arguments are
4 waived as he failed to exhaust his administrative remedies.

5 Rather than seeking to address the substance of these investigations during the
6 arbitration hearing, Petitioner argued that the 1997 and 2003 disciplinary suspensions were
7 too remote in time to constitute earlier incidents of progressive discipline. (OAP, Exhibit C,
8 EJDC_ARB 0765). Petitioner also argued that there was a lack of due process with respect to
9 the administration of these suspensions. (*Id.*). The record reflects that the process for
10 challenging Petitioner's 1997 and 2003 suspensions, if any, was different than what was
11 provided for under the MOU. (OAP, Exhibit D, EJDC_ARB 0833; Exhibit E, EJDC_ARB
12 0890-95, 902-03). There was no evidence presented at any stage of the administrative
13 proceedings that established the quality of the investigation and procedures used to discipline
14 Petitioner in 1997 and 2003. The arbitrator found Petitioner's arguments persuasive and
15 effectively struck this evidence from the record by not considering these suspensions as
16 progressive forms discipline. (OAP, Exhibit C, EJDC_ARB 0765).

17 Review of the arbitration award is confined to issues raised during that proceeding.
18 Petitioner did not preserve for judicial review discovery issues related to Respondents duty, if
19 any, to attempt to obtain the investigative records supporting Petitioner's 1997 and 2003
20 disciplinary suspensions. Rather, the record reflects that Petitioner successfully argued for
21 striking evidence of these suspensions from the record. Petitioner did not exhaust his
22 administrative remedies, and his Amended Petition must be denied on this issue.

23 **B. Statutory and Common Law Standards of Review**

24 Review of the arbitration award is confined to the standards provided for under NRS
25 38.240(1)(d) and Nevada common law. While Petitioner did not make arguments to set-aside
26 the arbitration award under Nevada common law, this Court will still consider both standards
27 of review.

28 ///

1 **1. Statutory Standard of Review**

2 Under Nevada law, the arbitrator is presumed to have acted within the scope of his
3 authority. *Health Plan of Nevada, Inc.*, 120 Nev. at 697. Petitioner carries the burden of
4 demonstrating by clear and convincing evidence that the arbitrator exceeded his authority. *Id.*
5 Absent such a showing, this Court must assume that the arbitrator acted within the scope of
6 his authority and confirm the award. *Id.* A finding that the arbitrator acted in excess of his
7 authority requires Petitioner to show that the arbitrator addressed issues “outside the scope of
8 the governing contract.” *Id.*

9 Petitioner argued that the arbitrator exceeded his authority by applying an incorrect
10 standard. Specifically, Petitioner argued that the MOU required the arbitrator to make a
11 finding that Respondent’s disciplinary action was reasonable in order to reach his conclusion
12 that just cause existed to terminate Petitioner. Article 13, Section 1(3) of the MOU provides
13 that “[t]he decision to uphold the disciplinary action will be based on the reasonableness of the
14 discipline imposed by the supervisor in response to the actions taken or not taken by the
15 marshal.” (OAP, Exhibit B, EJDC_ARB 0688). This section also provides that “[t]he arbitrator
16 will consider the incident and the discipline in terms of severity of the action, evidence of
17 progressive discipline and appropriateness of the disciplinary action.” (*Id.*). The arbitrator
18 made specific findings as to whether termination was more appropriate than progressive
19 discipline. While the arbitrator did not make an express finding that termination was
20 reasonable, the arbitrator still applied this standard as it required the same type of weighing
21 analysis he engaged in to determine that Respondent’s decision to terminate Petitioner was
22 appropriate. (OAP, Exhibit C, EJDC_ARB 0762–64).

23 Petitioner also argued that the arbitrator improperly relied on prior arbitration decisions
24 and legal journals to define the purpose for and application of progressive discipline. Article
25 13, Step 3(4) of the MOU states that “[t]he arbitrator shall consider and decide only the
26 particular issues presented by the CCDMA and the County, and the decision and award shall
27 be based solely on his/her interpretation of the application of the express terms of [the MOU].”
28 (OAP, Exhibit B, EJDC_ARB 0692). Article 13, Step 3(2) of the MOU required the arbitrator to

1 perform his functions in accordance with case law regarding labor arbitration. (*Id.* at
2 EJDC_ARB 0691). Weighing the appropriateness or reasonableness of termination over
3 progressive discipline required knowledge of the underlying purpose for and the limits of
4 progressive discipline. Referring to legal treatises or articles, which are informed by labor
5 arbitration law, to interpret this express term in the MOU was well within his discretion under
6 Article 13, Step 3 of the MOU.

7 Petitioner finally argued that the arbitrator improperly considered his violations of
8 certain provisions of the Clark County Marshals Division Policy and Procedure Manual as
9 support for his findings in the arbitration award. Article 13, Section 1(3) of the MOU states
10 that “[t]he CCDMA recognizes the need for more severe initial disciplinary action in the event
11 of major violation of established rules, regulations or policies of the Courts.” (*Id.* at
12 EJDC_ARB 0688) Article 13, Section 1(5) of the MOU also states that “[j]ust cause may
13 include, but not be limited to: . . . [a] violation of established departmental work rules and
14 procedures.” (*Id.*). The Clark County Marshals Division Policy and Procedure Manual falls
15 within scope of “established rules, regulations, or policies of the Court” or “departmental work
16 rules and procedures” that may be considered in determining whether there was just cause to
17 terminate Petitioner.

18 Petitioner has not carried his burden to demonstrate by clear and convincing evidence
19 that the arbitrator acted outside the scope of his authority. Petitioner’s challenge to the
20 arbitration award on the basis that the arbitrator exceeded his powers granted by the MOU is
21 denied.

22 **2. Common Law Standard of Review**

23 **a. Substantial Evidence**

24 Under the substantial evidence standard, an arbitration award may only be set-aside if
25 its findings are “completely irrational.” *Wichinsky*, 109 Nev. at 90. While the Amended
26 Petition did not specifically address this standard of review, it disputed the arbitrator’s factual
27 findings with respect to Petitioner’s conduct on January 7 and 8, 2013. The arbitrator found
28 that the six allegations, which formed the factual basis for the discipline imposed

1 by Respondent, were established by a preponderance of the evidence. The allegations were
2 as follows:

- 3 1. That Petitioner said, “fuck this place” while on duty and in uniform;
- 4 2. That Petitioner while on duty and in uniform told Marshal Ellis that Director Robert
5 Bennett was going to be fired;
- 6 3. That Petitioner referred to Lieutenant Moody as a “motherfucker” and told Marshal Ellis
7 that he was going to throw Lieutenant Moody under the bus;
- 8 4. That Petitioner showed Marshal Ellis a copy of a civil lawsuit involving Lieutenant
9 Moody on his phone and told him he was going to distribute a copy of the lawsuit
10 around the courthouse;
- 11 5. That Petitioner unnecessarily scanned Ms. Litt’s purse three times; and
- 12 6. That Petitioner commented to Marshal Ellis after Ms. Litt left the scanning station that,
13 “That was the bitch who complained on me.”

14 (OAP, Exhibit C, EJDC_ARB 0760).

15 In addition to these factual findings, the arbitrator found that Ms. Litt was a witness to a
16 prior incident, which resulted in a disciplinary reprimand against Petitioner and that Ms. Litt
17 filed a separate complaint against Petitioner alleging that Petitioner acted inappropriately
18 toward her. (*Id.* at EJDC_ARB 0761).

19 There was more than substantial evidence in the record to establish these facts, which
20 included Marshal Ellis and Ms. Litt’s testimony at the arbitration hearing and the reports and/or
21 interviews they provided during Respondent’s investigation of Petitioner’s conduct on January
22 7 and 8, 2013. (OAP, § III, 6:22–9:13). While these factual findings required the arbitrator to
23 weigh Marshal Ellis and Ms. Litt’s credibility against Petitioner’s credibility, the arbitrator’s role
24 as fact finder entitled him to make these determinations in issuing the arbitration award. The
25 record from the arbitration hearing supports the factual findings made by the arbitrator, which
26 satisfies the substantial evidence standard.

27 ///

28 ///

b. Manifest Disregard of the Law

To establish manifest disregard for the law, Petitioner must demonstrate that the arbitrator knew of a law, recognized that it required a particular result, and disregarded it. *Clark County Educ. Ass'n*, 122 Nev. at 342. Because Petitioner waived arguments as to whether Respondent had an affirmative duty to obtain the underlying investigative records supporting his 1997 and 2003 disciplinary suspensions under Article 13 of the MOU and NRS Chapter 289, Petitioner cannot establish that he notified the arbitrator of these legal issues. Petitioner was provided with Respondents records pertaining to his 1997 and 2003 disciplinary suspensions, which is all that was required by NRS Chapter 289. The arbitrator properly applied the standards of review stipulated to by the parties and provided for under the MOU as well as applicable labor law. Therefore, this Court finds that there is no evidence in the record that the arbitrator manifestly disregarded the law.

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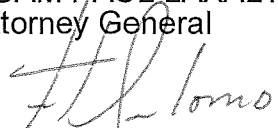
1 Accordingly,

2 **IT IS ORDERED THAT** the Amended Petition to Set Aside Arbitration Decision, or, in
3 the alternative Petition for Judicial Review is DENIED.

4
5 DATED this 4 day of ^{August} ~~July~~, 2016.

6
7 
8 Senior District Court Judge

9 SUBMITTED BY:
10 ADAM PAUL LAXALT
11 Attorney General

12 
13 FREDERICK J. PERDOMO
14 Senior Deputy Attorney General
15 Nevada Bar No. 10714
16 Bureau of Litigation
17 Public Safety Division
18 100 N. Carson Street
19 Carson City, Nevada 89701-4717
20 Tel: (775) 684-1250
21 Attorneys for Respondent

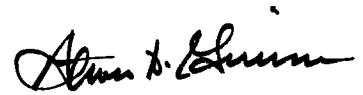
22 APPROVED AS TO FORM AND CONTENT BY:

23 DECLINED - NO ALTERNATIVE RECEIVED AFTER 7/19/16
24 Kirk T. Kennedy, Esq. ^{NAO} ^{Submission}
25 815 S. Casino Center Blvd
26 Las Vegas, NV 89101
27 T (702) 385-5534
28 Attorney for Petitioner

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An Employee of the Office of
The Attorney General



CLERK OF THE COURT

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Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THOMAS KNICKMEYER,
Plaintiff,

Case No.: A-14-711200-P

Dept. No. XXXII

vs.

STATE OF NEVADA, et al.,
Defendants.

**NOTICE OF ENTRY OF ORDER DENYING AMENDED PETITION TO SET ASIDE
ARBITRATION DECISION, OR, IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW**

TO: Plaintiff, THOMAS KNICKMEYER, and his counsel of record, Kirk T. Kennedy, Esq.

PLEASE TAKE NOTICE that on the 23rd day of August, 2016, the above Court entered its Order Denying Amended Petition to Set Aside Arbitration Decision, or, in the Alternative Petition for Judicial Review. A true and correct copy of this Court's Order is attached hereto as Exhibit A.

DATED this 25th day of August, 2016.

ADAM PAUL LAXALT
Attorney General

By: _____

FREDERICK J. PERDOMO,
Senior Deputy Attorney General
Bureau of Litigation - Public Safety Division
Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada,
3 and that on August, 25, 2015, I caused to be served a copy of the foregoing, **NOTICE OF**
4 **ENTRY OF ORDER DENYING AMENDED PETITION TO SET ASIDE ARBITRATION**
5 **DECISION, OR, IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW**, by District
6 Court's Electronic Filing system to the following:

7 Attorney for Petitioner:
8 Kirk T. Kennedy, Esq.
9 815 S. Casino Center Blvd
10 Las Vegas, NV 89101
11 ktkennedylaw@gmail.com


12 
13 _____
14 An employee of the
15 Office of the Attorney General
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EXHIBIT A

EXHIBIT A

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CLERK OF THE COURT

1 ORDR
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13 Attorneys for Respondent

8
9 EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 In the matter of the Petition of
12 THOMAS KNICKMEYER,
13 Petitioner,
14 vs.
15 STATE OF NEVADA, ex rel., EIGHTH
16 JUDICIAL DISTRICT COURT,
17 Respondent.

CASE NO.: A-14-711200-P
DEPT. NO: 32

Hearing Date: May 20, 2016
Hearing Time: 9:00 a.m.

18 **ORDER DENYING AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR,**
19 **IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW**

20 Before this Court is Petitioner Thomas Knickmeyer's "Petitioner" Amended Petition to
21 Set Aside Arbitration Decision, or, in the alternative Petition for Judicial Review filed on
22 December 15, 2015. The matter has been fully briefed and argued.

23 **I. SUMMARY OF ARGUMENT**

24 Petitioner's Amended Petition to Set Aside Arbitration Decision, or, in the alternative
25 Petition for Judicial Review "Amended Petition" sought to set aside an arbitration award, which
26 denied his grievance challenging his termination from employment as an administrative
27 marshal for the Eighth Judicial District Court of the State of Nevada in and for Clark County
28 "EJDC". Relying on certain sections of a Memorandum of Understanding "MOU" between the

Clark County Deputy Marshals Association "CCDMA" and the EJDC and Nevada Revised Statutes "NRS" Chapter 289, Petitioner argued that he was improperly denied discovery related to the underlying records supporting his 1997 and 2003 disciplinary suspensions. Petitioner also argued that the arbitrator exceeded the scope of his authority under the MOU when he upheld Petitioner's termination without specifically finding that the punishment was reasonable, considered violations of the Clark County Marshals Division Policy and Procedure Manual in finding that just cause existed for termination, and referred to outside sources to define the purpose for and limits of progressive discipline.

Respondent argued that Petitioner waived his argument that he was improperly denied discovery related to the underlying records supporting his 1997 and 2003 disciplinary suspensions. Respondent argued that the arbitrator's finding that termination was appropriate and just satisfied the reasonableness standard provided for under the MOU. Respondent also argued that the express terms of the MOU stated that violations of the Clark County Marshals Division Policy and Procedure Manual could be considered in making a finding that just cause existed to terminate Petitioner. Respondent further argued that consideration of outside sources in determining the underlying purpose for and limits of progressive discipline was well within the arbitrator's discretion under the terms of the MOU. Even though not addressed in Petitioner's briefing, Respondent argued that there was more than substantial evidence to support the factual and legal conclusions made by the arbitrator and that there was no evidence in the record that the arbitrator manifestly disregarded the law.

II. PROCEDURAL HISTORY

The termination process commenced on October 23, 2013, when Petitioner received a notice that Respondent was placing him on administrative leave and recommending termination as a result of various forms of misconduct he engaged in on January 7 and 8, 2013. (OAP, Exhibit B, EJDC_ARB 0727-29).¹ The termination process was guided by the MOU, which provided for a three-step grievance procedure. (*Id.* at EJDC_ARB 0687-707).

¹ Respondent filed the administrative record in support of its Motion to Dismiss, or in the alternative, Response to Petition to Set Aside Arbitration Award filed on February 6, 2015. Excerpts of these records supported Petitioner's Amended Petition and Respondent's opposition to the Amended Petition.

1 Petitioner was represented by counsel for CCDMA during the first two steps of this process
2 and private counsel during the last step of this process.

3 Petitioner received a Step 1 Pre-termination meeting on November 7, 2013, before
4 Special Hearing Master Melisa De La Garza, Esq. ("Hearing Master De La Garza"). (*Id.* at
5 EJDC_ARB 0711). The meeting concluded without a resolution between Respondent and
6 Petitioner. (*Id.*). Following the meeting, Hearing Master De La Garza entered an eleven page
7 written ruling, which sustained six of the seven allegations of misconduct against Petitioner
8 and upheld Respondent's recommendation to terminate him. (*Id.* at EJDC_ARB 0708–18).
9 The EJDC's Court Administrator, Steven Grierson, adopted these findings on November 14,
10 2013, and terminated Petitioner. (*Id.* at EJDC_ARB 0681).

11 On November 18, 2013, Petitioner, through CCDMA counsel, appealed this decision
12 and requested a Step 2 Post-termination meeting. (*Id.* at EJDC_ARB 0682–83). Petitioner
13 received a Step 2 Post-termination meeting on February 5, 2014, before Bonnie Bulla ("Ms.
14 Bulla"), who was designated by Respondent to preside over the meeting. (*Id.* at EJDC_ARB
15 0719). The meeting concluded without a resolution between Respondent and Petitioner.
16 (*Id.*). After the meeting, Ms. Bulla entered an eight page written ruling, which found that
17 Respondent had just cause to terminate Petitioner. (*Id.* at EJDC_ARB 0719–26).

18 Petitioner requested that the matter be submitted to arbitration. The parties selected
19 an arbitrator under the procedures provided for in the MOU. (*Id.* at EJDC_ARB 0691). The
20 arbitration hearing was held on September 11, 2014. (OAP, Exhibit A, Arbitration Transcript,
21 EJDC_ARB 0001–0276). On November 3, 2014, the parties submitted written briefs in
22 support of their respective positions. (OAP, Exhibit C, EJDC_ARB 0752). The arbitrator
23 entered his written decision on November 24, 2014, which found that Respondent had just
24 cause to terminate Petitioner and denied Petitioner's grievance on this basis. (*Id.* at
25 EJDC_ARB 0752–65).

26 Petitioner commenced this action on December 16, 2014, by filing a Petition to Set
27 Aside Arbitration Decision "Petition." The Petition sought an order from this Court setting
28 aside the arbitration award. Respondent filed a Motion to Dismiss, or in the alternative,

1 Response to Petition to Set Aside Arbitration Decision on February 6, 2015. Petitioner filed an
2 opposition to the motion on March 2, 2015. Respondent's motion was heard and denied by
3 the court on November 9, 2015. In denying the motion, the court ordered Petitioner to file an
4 amended petition, which clarified the jurisdictional basis for judicial review. An order was
5 entered to that effect on November 16, 2015.

6 Petitioner filed the Amended Petition on December 15, 2015. Respondent filed a
7 Motion to Dismiss the Amended Petition on January 15, 2016. Petitioner filed an opposition to
8 that motion on February 3, 2016 and Respondent filed a reply brief on February 11, 2016.
9 Respondent's motion was heard on February 12, 2016, and denied by the court. An order
10 was entered to that effect on February 25, 2016. Respondent was directed to file an
11 opposition to the Amended Petition by April 15, 2016, and Petitioner was directed to file his
12 reply brief by May 5, 2016. The briefs were timely filed and the matter was heard by this Court
13 on May 20, 2016.

14 **III. LEGAL STANDARD**

15 Judicial review of an arbitration award is provided for under Article 13, Step 3(2) of the
16 MOU. This section provides as follows:

17 The arbitrator's decision will be final and binding on all parties to
18 this Agreement as long as the arbitrator does not exceed his/her
19 authority as set forth below and as long as the arbitrator performs
20 his/her functions in accordance with the case law regarding labor
arbitration, the provisions of the U.S. Uniform Arbitration Act, and
where applicable, Nevada Revised Statutes-(NRS).

21 (OAP, Exhibit B, EJDC_ARB 0691). The language of this provision provides two bases to
22 challenge an arbitration award.

23 First, this section of the MOU states that an arbitration award is final and binding "as
24 long as the arbitrator does not exceed his/her authority" under its terms. (*Id.*). This standard
25 mirrors NRS 38.241(1)(d), which states that "[u]pon motion to the court by a party to an
26 arbitral proceeding, the court shall vacate an award made in the arbitral proceeding if: . . . an
27 arbitrator exceeded his or her powers." Under this standard, "[c]ourts presume that arbitrators
28 are acting within the scope of their authority." *Health Plan of Nevada, Inc. v. Rainbow*

1 *Medical, LLC.*, 120 Nev. 689, 697, 100 P.3d 172, 178 (2004). Review for excess of authority
2 is limited and “only granted in very unusual circumstances.” *Id.* at 698. The party moving to
3 vacate an arbitration award carries the burden of “demonstrating by clear and convincing
4 evidence how the arbitrator exceeded that authority.” *Id.* at 697. “Absent such a showing,
5 courts will assume that the arbitrator acted within the scope of his or her authority and confirm
6 the award.” *Id.*

7 Second, this section of the MOU states that the arbitrator’s decision is final and binding
8 “as long as the arbitrator performs his/her functions in accordance with the case law regarding
9 labor arbitration . . .” (OAP, Exhibit B, EJDC_ARB 0691). “There are two common-law
10 grounds recognized in Nevada under which a court may review private binding arbitration
11 awards: (1) whether the award is arbitrary, capricious, or unsupported by the agreement; and
12 (2) whether the arbitrator manifestly disregarded the law.” *Clark County Educ. Ass’n v. Clark*
13 *County School Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006). “[T]he arbitrary and capricious
14 standard limits a reviewing court’s consideration to whether the arbitrator’s findings are
15 supported by substantial evidence, while the manifest-disregard-of-the-law standard limits the
16 reviewing court’s concern to whether the arbitrator consciously ignored or missed the law.” *Id.*
17 at 342. Under the substantial evidence standard, “[a]n arbitrator’s decision must be upheld
18 unless it is “completely irrational”” *Wichinsky v. Mosa*, 109 Nev. 84, 90, 847 P.2d 727, 731
19 (1993) (quoting *French v. Merrill Lynch, Pierce, Fenner & Smith*, 784 F.2d 902, 906 (9th Cir.
20 1986)). Under the manifest-disregard-of-the-law standard, the moving party must
21 demonstrate that the arbitrator “knowing the law and recognizing that the law required a
22 particular result, simply disregarded the law.” *Clark County Educ. Ass’n*, 122 Nev. at 342.

23 The MOU also states that “[t]he Courts recognize and agree that all deputy marshals
24 will be afforded their rights as provided for in NRS Chapter 289.” (OAP, Exhibit B, EJDC_ARB
25 0687). NRS 289.020 through 289.120 is the Peace Officer’s Bill of Rights. Under NRS
26 289.120, “[a]ny peace officer aggrieved by an action of the employer of the peace officer in
27 violation of this chapter may, after exhausting any applicable internal grievance procedures,
28 grievance procedures negotiated pursuant to chapter 288 of NRS and other administrative

1 remedies, apply to the district court for judicial relief.” This section is not specific as to the
2 means by which judicial relief should be requested or the standard governing requests for
3 judicial relief. Petitioner’s right to judicial relief under NRS 289.120 only exists by virtue of the
4 MOU, as NRS 289.020 through 289.120 regulates the conduct of law enforcement agencies
5 with regard to peace officers and Respondent is not a law enforcement agency. In the
6 absence of express procedures and standards governing an application for judicial relief
7 under NRS 289.120, Petitioner is limited to the procedures and standards expressly provided
8 for under the MOU, NRS Chapter 38, and Nevada common law.

9 **IV. DISCUSSION**

10 **A. Waiver**

11 “It is well-established that arguments raised for the first time on appeal need not be
12 considered by [the] court.” *Diamond Enterprises, Inc. v. Lau*, 113 Nev. 1376, 1378, 952 P.2d
13 73, 74 (1997). “A point not urged in the trial court, unless it goes to the jurisdiction of that
14 court, is deemed to have been waived and will not be considered on appeal.” *Britz v.*
15 *Consolidated Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911, 915 (1971). Similarly,
16 “[a]rguments not raised before the appropriate administrative tribunal . . . cannot be raised for
17 the first time on appeal.” *Carrigan v. Commission on Ethics of the State of Nevada*, 129 Adv.
18 Op. 95, 313 P.3d 880, 887, n. 6 (2013).

19 The Amended Petition argued that Petitioner was improperly denied discovery of the
20 investigative records supporting his 1997 and 2003 disciplinary suspensions. The
21 memorandums by Judge Mosley memorializing these suspensions were admitted as a joint
22 exhibit during the arbitration hearing. (OAP, Exhibit A, EJDC_ARB 0004; Exhibit B,
23 EJDC_ARB 0737–38). These memorandums were part of Petitioner’s personnel file, which
24 was provided to Petitioner prior to that hearing. (OAP, Exhibit F, EJDC_ARB 0966–67).
25 Petitioner did not receive the investigative records supporting these suspensions, which were
26 maintained by the Clark County Office of Diversity “OOD.” OOD is part of the executive
27 branch of Clark County. While there is a question as to whether Respondent had an
28 affirmative duty to attempt to obtain these records from OOD, this Court does not need to

1 reach a decision on this issue. Petitioner was required to make a complaint about or a
2 request for these records at some time during the administrative proceedings. Petitioner did
3 not raise this issue during the administrative proceedings, and Petitioner's arguments are
4 waived as he failed to exhaust his administrative remedies.

5 Rather than seeking to address the substance of these investigations during the
6 arbitration hearing, Petitioner argued that the 1997 and 2003 disciplinary suspensions were
7 too remote in time to constitute earlier incidents of progressive discipline. (OAP, Exhibit C,
8 EJDC_ARB 0765). Petitioner also argued that there was a lack of due process with respect to
9 the administration of these suspensions. (*Id.*). The record reflects that the process for
10 challenging Petitioner's 1997 and 2003 suspensions, if any, was different than what was
11 provided for under the MOU. (OAP, Exhibit D, EJDC_ARB 0833; Exhibit E, EJDC_ARB
12 0890-95, 902-03). There was no evidence presented at any stage of the administrative
13 proceedings that established the quality of the investigation and procedures used to discipline
14 Petitioner in 1997 and 2003. The arbitrator found Petitioner's arguments persuasive and
15 effectively struck this evidence from the record by not considering these suspensions as
16 progressive forms discipline. (OAP, Exhibit C, EJDC_ARB 0765).

17 Review of the arbitration award is confined to issues raised during that proceeding.
18 Petitioner did not preserve for judicial review discovery issues related to Respondents duty, if
19 any, to attempt to obtain the investigative records supporting Petitioner's 1997 and 2003
20 disciplinary suspensions. Rather, the record reflects that Petitioner successfully argued for
21 striking evidence of these suspensions from the record. Petitioner did not exhaust his
22 administrative remedies, and his Amended Petition must be denied on this issue.

23 **B. Statutory and Common Law Standards of Review**

24 Review of the arbitration award is confined to the standards provided for under NRS
25 38.240(1)(d) and Nevada common law. While Petitioner did not make arguments to set-aside
26 the arbitration award under Nevada common law, this Court will still consider both standards
27 of review.

28 ///

1 **1. Statutory Standard of Review**

2 Under Nevada law, the arbitrator is presumed to have acted within the scope of his
3 authority. *Health Plan of Nevada, Inc.*, 120 Nev. at 697. Petitioner carries the burden of
4 demonstrating by clear and convincing evidence that the arbitrator exceeded his authority. *Id.*
5 Absent such a showing, this Court must assume that the arbitrator acted within the scope of
6 his authority and confirm the award. *Id.* A finding that the arbitrator acted in excess of his
7 authority requires Petitioner to show that the arbitrator addressed issues “outside the scope of
8 the governing contract.” *Id.*

9 Petitioner argued that the arbitrator exceeded his authority by applying an incorrect
10 standard. Specifically, Petitioner argued that the MOU required the arbitrator to make a
11 finding that Respondent’s disciplinary action was reasonable in order to reach his conclusion
12 that just cause existed to terminate Petitioner. Article 13, Section 1(3) of the MOU provides
13 that “[t]he decision to uphold the disciplinary action will be based on the reasonableness of the
14 discipline imposed by the supervisor in response to the actions taken or not taken by the
15 marshal.” (OAP, Exhibit B, EJDC_ARB 0688). This section also provides that “[t]he arbitrator
16 will consider the incident and the discipline in terms of severity of the action, evidence of
17 progressive discipline and appropriateness of the disciplinary action.” (*Id.*). The arbitrator
18 made specific findings as to whether termination was more appropriate than progressive
19 discipline. While the arbitrator did not make an express finding that termination was
20 reasonable, the arbitrator still applied this standard as it required the same type of weighing
21 analysis he engaged in to determine that Respondent’s decision to terminate Petitioner was
22 appropriate. (OAP, Exhibit C, EJDC_ARB 0762–64).

23 Petitioner also argued that the arbitrator improperly relied on prior arbitration decisions
24 and legal journals to define the purpose for and application of progressive discipline. Article
25 13, Step 3(4) of the MOU states that “[t]he arbitrator shall consider and decide only the
26 particular issues presented by the CCDMA and the County, and the decision and award shall
27 be based solely on his/her interpretation of the application of the express terms of [the MOU].”
28 (OAP, Exhibit B, EJDC_ARB 0692). Article 13, Step 3(2) of the MOU required the arbitrator to

1 perform his functions in accordance with case law regarding labor arbitration. (*Id.* at
2 EJDC_ARB 0691). Weighing the appropriateness or reasonableness of termination over
3 progressive discipline required knowledge of the underlying purpose for and the limits of
4 progressive discipline. Referring to legal treatises or articles, which are informed by labor
5 arbitration law, to interpret this express term in the MOU was well within his discretion under
6 Article 13, Step 3 of the MOU.

7 Petitioner finally argued that the arbitrator improperly considered his violations of
8 certain provisions of the Clark County Marshals Division Policy and Procedure Manual as
9 support for his findings in the arbitration award. Article 13, Section 1(3) of the MOU states
10 that “[t]he CCDMA recognizes the need for more severe initial disciplinary action in the event
11 of major violation of established rules, regulations or policies of the Courts.” (*Id.* at
12 EJDC_ARB 0688) Article 13, Section 1(5) of the MOU also states that “[j]ust cause may
13 include, but not be limited to: . . . [a] violation of established departmental work rules and
14 procedures.” (*Id.*). The Clark County Marshals Division Policy and Procedure Manual falls
15 within scope of “established rules, regulations, or policies of the Court” or “departmental work
16 rules and procedures” that may be considered in determining whether there was just cause to
17 terminate Petitioner.

18 Petitioner has not carried his burden to demonstrate by clear and convincing evidence
19 that the arbitrator acted outside the scope of his authority. Petitioner’s challenge to the
20 arbitration award on the basis that the arbitrator exceeded his powers granted by the MOU is
21 denied.

22 **2. Common Law Standard of Review**

23 **a. Substantial Evidence**

24 Under the substantial evidence standard, an arbitration award may only be set-aside if
25 its findings are “completely irrational.” *Wichinsky*, 109 Nev. at 90. While the Amended
26 Petition did not specifically address this standard of review, it disputed the arbitrator’s factual
27 findings with respect to Petitioner’s conduct on January 7 and 8, 2013. The arbitrator found
28 that the six allegations, which formed the factual basis for the discipline imposed

1 by Respondent, were established by a preponderance of the evidence. The allegations were
2 as follows:

- 3 1. That Petitioner said, "fuck this place" while on duty and in uniform;
- 4 2. That Petitioner while on duty and in uniform told Marshal Ellis that Director Robert
5 Bennett was going to be fired;
- 6 3. That Petitioner referred to Lieutenant Moody as a "motherfucker" and told Marshal Ellis
7 that he was going to throw Lieutenant Moody under the bus;
- 8 4. That Petitioner showed Marshal Ellis a copy of a civil lawsuit involving Lieutenant
9 Moody on his phone and told him he was going to distribute a copy of the lawsuit
10 around the courthouse;
- 11 5. That Petitioner unnecessarily scanned Ms. Litt's purse three times; and
- 12 6. That Petitioner commented to Marshal Ellis after Ms. Litt left the scanning station that,
13 "That was the bitch who complained on me."

14 (OAP, Exhibit C, EJDC_ARB 0760).

15 In addition to these factual findings, the arbitrator found that Ms. Litt was a witness to a
16 prior incident, which resulted in a disciplinary reprimand against Petitioner and that Ms. Litt
17 filed a separate complaint against Petitioner alleging that Petitioner acted inappropriately
18 toward her. (*Id.* at EJDC_ARB 0761).

19 There was more than substantial evidence in the record to establish these facts, which
20 included Marshal Ellis and Ms. Litt's testimony at the arbitration hearing and the reports and/or
21 interviews they provided during Respondent's investigation of Petitioner's conduct on January
22 7 and 8, 2013. (OAP, § III, 6:22–9:13). While these factual findings required the arbitrator to
23 weigh Marshal Ellis and Ms. Litt's credibility against Petitioner's credibility, the arbitrator's role
24 as fact finder entitled him to make these determinations in issuing the arbitration award. The
25 record from the arbitration hearing supports the factual findings made by the arbitrator, which
26 satisfies the substantial evidence standard.

27 ///

28 ///

1 **b. Manifest Disregard of the Law**

2 To establish manifest disregard for the law, Petitioner must demonstrate that the
3 arbitrator knew of a law, recognized that it required a particular result, and disregarded it.
4 *Clark County Educ. Ass'n*, 122 Nev. at 342. Because Petitioner waived arguments as to
5 whether Respondent had an affirmative duty to obtain the underlying investigative records
6 supporting his 1997 and 2003 disciplinary suspensions under Article 13 of the MOU and NRS
7 Chapter 289, Petitioner cannot establish that he notified the arbitrator of these legal issues.
8 Petitioner was provided with Respondents records pertaining to his 1997 and 2003
9 disciplinary suspensions, which is all that was required by NRS Chapter 289. The arbitrator
10 properly applied the standards of review stipulated to by the parties and provided for under the
11 MOU as well as applicable labor law. Therefore, this Court finds that there is no evidence in
12 the record that the arbitrator manifestly disregarded the law.

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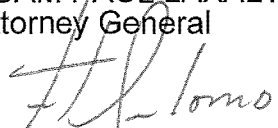
1 Accordingly,

2 **IT IS ORDERED THAT** the Amended Petition to Set Aside Arbitration Decision, or, in
3 the alternative Petition for Judicial Review is DENIED.

4
5 DATED this 4 day of ^{August} July, 2016.

6
7 
8 Senior District Court Judge

9 SUBMITTED BY:
10 ADAM PAUL LAXALT
11 Attorney General

12 
13 FREDERICK J. PERDOMO
14 Senior Deputy Attorney General
15 Nevada Bar No. 10714
16 Bureau of Litigation
17 Public Safety Division
18 100 N. Carson Street
19 Carson City, Nevada 89701-4717
20 Tel: (775) 684-1250
21 Attorneys for Respondent

22 APPROVED AS TO FORM AND CONTENT BY:

23 DECLINED - NO ALTERNATIVE RECEIVED AFTER 7/19/16
24 Kirk T. Kennedy, Esq. NAO Submission
25 815 S. Casino Center Blvd
26 Las Vegas, NV 89101
27 T (702) 385-5534
28 Attorney for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

March 17, 2015

A-14-711200-P	In the Matter of the Petition of Thomas Knickmeyer
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March 17, 2015	9:21 AM	Minute Order
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HEARD BY: Barker, David **COURTROOM:**

COURT CLERK: April Watkins

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petitioner has moved to disqualify the Eighth Judicial District Court from hearing and deciding his Petition to Set Aside Arbitration Decision. The Court takes judicial notice that Petitioner is a former employee and his wife is a current employee of the Eighth Judicial District Court, which is the Respondent in this matter, and finds sufficient grounds in this particular situation for the case to be reassigned. The Court FINDS that reassignment of the case to a senior judge is appropriate because senior judges are assigned by the Nevada Supreme Court, which administers the Senior Judge Program through the Administrative Office of the Courts.

Therefore, pursuant to EDCR 1.30(b)(15) and 1.60(a), which allow the Chief Judge to reassign cases, it is hereby ORDERED that this entire case be reassigned to the Senior Judge Department for assignment to a senior judge of the Nevada Supreme Court s choosing. Petitioner s Motion to Disqualify the Eighth Judicial District Court is MOOT and hereby ordered OFF CALENDAR.

CLERK'S NOTE: A copy of this minute order was e-mailed to the following counsel: Kirk T. Kennedy, Esq., (ktkennedy@gmail.com), Frederick J. Perdomo, Esq., (fperdomo@ag.nv.gov) and Ileen Spoor, Judicial Executive Assistant to the Senior Judge Department). aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

August 17, 2015

A-14-711200-P	In the Matter of the Petition of Thomas Knickmeyer
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August 17, 2015	3:00 AM	Motion
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HEARD BY: Becker, Nancy	COURTROOM:
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COURT CLERK: Keri Cromer

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- On July 2, 2015, Petitioner Thomas Knickmeyer filed a document entitled Renewed Motion to Disqualify Eighth Judicial District Court. Respondent State of Nevada filed a response to the motion on July 21, 2015. The motion was set for decision, without argument, on August 15, 2015, a non-judicial day. The matter was re-scheduled for August 17, 2015.

The motion asserts that as the Eighth Judicial District Court is the respondent party, it cannot hear the underlying petition and therefore the matter must be transferred to another judicial district. The motion also asserts that a Senior Judge cannot hear the matter, because the Senior Judges are a department of the Eighth Judicial District Court and they are employed by the Eighth Judicial District Court.

The District Court System of the State of Nevada is created by Article 6, Sections 5 and 6 of the Nevada Constitution. They are not separate legal entities, but are subdivisions of the Nevada Judiciary whose jurisdiction is set by the Nevada Constitution and whose boundaries are set by the Nevada Legislature. Unless otherwise set by statute, the costs of maintaining the District Court System are born by the counties encompassed by the boundaries established by the Legislature. Only the salaries of the district judges themselves are a state expense.

The District Court System has administrative as well as judicial duties. However, all functions of the

system are carried out under the direction of the elected judges from a particular judicial district. A district court is a jurisdiction subdivision of the State Judiciary. It has no separate legal status. In the instant case, pursuant to procedures established by the district judges of the Eighth Judicial District Court, Petitioner was terminated from his employment as a Marshall.

Petitioner originally filed a motion to disqualify the Eighth Judicial District Court on February 26, 2015. At that time, his Petition had been randomly assigned to Department 32, the Honorable Rob Bare. The Motion was forwarded to the Chief Judge, the Honorable David Barker. The Chief Judge noted that while Judge Bare had no knowledge of any of the underlying facts and was not involved in any disciplinary action involving Petitioner, because the matter involved procedures established by the Eighth Judicial District Judges, it would be better if the matter was assigned to the Senior Judge Program and entered a minute order to that effect on March 16, 2015. The motion to disqualify was then denied as moot.

The Senior District Judge Program is a service of the Nevada Supreme Court. Retired district judges, who are eligible, apply for a Commission from the Court on an annual basis. All assignments are made by the Nevada Supreme Court, payments are administered by the Administrative Office of the Courts and the Senior District Judges are employees of the State of Nevada, not individual district courts.

On March 16, 2015, by Order of the Nevada Supreme Court, Senior District Judge Nancy A. Becker was assigned to the case. Over three months later, Petitioner filed his renewed motion to disqualify the Eighth Judicial District Court.

The motion specifically states there are no grounds for disqualifying Senior Judge Becker either under NRS 1.235 or the Nevada Canons of Judicial Conduct. Rather the motion notes that at some point in the past, Senior Judge Becker served as an elected district judge primarily assigned to the Eighth Judicial District. (District Judges are State judges and have authority to sit in any district court in the State). It also inaccurately states that the Senior Judge Program is department of the Eighth Judicial Court and that Judge Becker is an employee of that Court. It also states that this is not a preemptory challenge under SCR 48.1, presumably because the time for filing such a challenge, if applicable, had long passed. The sole basis for the motion is the idea that as the Eighth Judicial District Court is the judicial subdivision of the respondent State of Nevada, somehow, the entire case should be transferred to another judicial district.

The motion confuses grounds for disqualification of a member of the judiciary with jurisdiction. It is more like a motion for change of venue. There is no basis for transferring the case to a different judicial district. Chief Judge Barker already recognized that to avoid any appearance of impropriety, none of the sitting judges in the Eighth Judicial District Court should preside over the case. There is no basis for assigning the case to another Senior Judge.

First Senior Judge Becker served as a district judge from 1989 to 1998. This is over ten years before the disciplinary issue at question. There are no allegations that Judge Becker was every involved

with or has any knowledge of any disciplinary actions taken against Petitioner and in fact, she has not. From 1998 to 2006, Judge Becker served on the Nevada Supreme Court and from 2006 to 2012, she served as a Chief Deputy District Attorney. Other than interacting with Petitioner when he served as Judge Donald Mosley's marshal and she appeared in front of Judge Mosley, she has had no contact with Petitioner.

As there is no basis for transferring the case to another judicial district and no grounds have been raised seeking to disqualify Judge Becker personally (as opposed to the erroneous assumption she is an employee of the Eighth Judicial District Court), the Motion to Disqualify the Eighth Judicial District Court is DENIED. The Attorney General's Office shall prepare the appropriate order.

CLERK'S NOTE: The above minute order has been distributed via facsimile to Frederick J. Perdomo, Esq. (775-684-1275) and Kirk T. Kenndey, Esq. (702-385-1869)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

November 09, 2015

A-14-711200-P In the Matter of the Petition of
Thomas Knickmeyer

November 09, 2015 9:00 AM Petition

HEARD BY: Becker, Nancy

COURTROOM: RJC Courtroom 10C

COURT CLERK: Shelley Boyle

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Kennedy, Kirk T	Attorney
	Knickmeyer, Thomas	Petitioner
	Perdomo, Frederick J.	Attorney

JOURNAL ENTRIES

- Mr. Andre Moses Esq. also present on behalf Deft.

Court noted Petitioner's Motion to Set Aside Arbitration should in-fact be either a Petition if Judicial Review of NRS 287.120 Applies or a Petition Challenging the Arbitration if the Uniform Arbitration Act applies; also Deft. filed a Motion to Dismiss on behalf of the Eighth Judicial Court stating the Court does not have jurisdiction to review the arbitration decision. Court further noted it reviewed the Motion and Opposition. Following extensive argument and colloquy regarding NRS 289, Article 13, the Court not being a law enforcement agency and its jurisdiction, the rights of the Petitioner under the Statute, the ambiguity of the contract, and the implications of untimely argument, COURT ORDERED, Motion to Dismiss DENIED; Petitioner to file an Amendment to the Petition by 12/18/15, Deft's. response due by 1/15/16. Colloquy regarding filing Motions and scheduling.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

February 12, 2016

A-14-711200-P In the Matter of the Petition of
Thomas Knickmeyer

February 12, 2016 9:00 AM All Pending Motions

HEARD BY: Becker, Nancy **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kennedy, Kirk T Attorney
 Knickmeyer, Thomas Petitioner
 Perdomo, Frederick J. Attorney

JOURNAL ENTRIES

- AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR, IN THE ALTERNATIVE, PETITION FOR JUDICIAL REVIEW...STATE OF NEVADA EX REL. EIGHTH JUDICIAL DISTRICT COURT'S MOTION TO DISMISS AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR, IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW

Also present: Andres Moses, Esq. on behalf of Clark County Courts

Court provided the parties with its preliminary thoughts, and directed counsel to address the relation back doctrine, as well as what would have to be in the instant Petition to make it jurisdictionally appropriate, in their arguments. Mr. Perdomo argued in support of the Motion to Dismiss Amended Petition, stating that the original Petition did not make any mention of NRS 38.241 or its grounds for dismissal; therefore, since the Petition was not done within ninety days, it was waived under Nevada case law. Mr. Kennedy argued in opposition, stating that the original Petition was filed to analyze what did, or did not, occur during arbitration; therefore, there was relation back to the original Petition, due to the very nature of the Petition and the arguments contained therein. COURT ORDERED the Motion to Dismiss Amended Petition DENIED, FINDING that NRS 289.120 conferred

jurisdiction on the Court. Additionally, the Court FOUND that the ninety day rule had not been violated, as there was enough notice in the original Petition that the proceedings were to be a challenge of the arbitrator's decision under NRS Chapter 13(2); therefore, the Amended Petition was filed timely, as it related back to the original. Mr. Kennedy to prepare the Order.

Colloquy regarding a briefing schedule. COURT ORDERED a BRIEFING SCHEDULE on the Amended Petition to Set Aside Arbitration Decision, or, in the Alternative, Petition for Judicial Review SET as follows: Substantive Opposition DUE BY April 15, 2016; Response DUE BY May 5, 2016. COURT FURTHER ORDERED the Amended Petition CONTINUED for arguments.

5/20/16 9:00 AM AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR, IN THE ALTERNATIVE, PETITION FOR JUDICIAL REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)**COURT MINUTES****May 20, 2016**

A-14-711200-P In the Matter of the Petition of
Thomas Knickmeyer

May 20, 2016 9:00 AM Petition

HEARD BY: Becker, Nancy **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kennedy, Kirk T Attorney
 Knickmeyer, Thomas Petitioner
 Perdomo, Frederick J. Attorney

JOURNAL ENTRIES

- Also present: Andres Moses, Esq. on behalf of Clark County Courts.

Mr. Kennedy argued in support of the Petition, stating that the Arbitrator ignored a mandate of Article 13 by failing to address the reasonableness of the disciplinary action taken against Petitioner; therefore, the Arbitrator's decision should be set aside as arbitrary and capricious pursuant to NRS 38. Additionally, Mr. Kennedy argued that Petitioner was not provided with the necessary information regarding his previous disciplinary actions, said previous disciplinary actions having been utilized as a basis for bypassing all forms of progressive discipline. Mr. Perdomo argued in opposition, stating that the Arbitrator's decision was based upon the language in the contract, and there was no evidence to support the assertion that the Arbitrator acted outside of the contract. Regarding Petitioner's prior disciplinary actions, Mr. Perdomo argued that Petitioner never indicated he wished to review the prior actions, except to state that said actions were remote, and should not be considered. Furthermore, Mr. Perdomo stated that Petitioner had a procedural avenue to obtain the prior disciplinary actions from the Office of Diversity, or to request that the Court obtain them, and he never availed himself of either remedy. COURT ORDERED Petition DENIED, FINDING the

following: (1) it was clear that the Office of Diversity (OOD) was part of the Executive branch of Clark County, not part of the Eighth Judicial District Court; (2) in the Petitioner's prior 1997 and 2003 disciplinary actions, the Court used the OOD to conduct investigations, and based upon the results of those investigations, Judge Mosley issued two disciplines; (3) the memorandums of the actual disciplines were in the Eighth Judicial District Court's file, and those memorandums were what the Eighth Judicial District Court utilized as evidence in investigating the 2013 complaints against the Petitioner; (4) the evidence being used by the Eighth Judicial District Court was provided, the personnel file was complied with, and the Eighth Judicial District Court did not violate the statute with regard to its file and the information it was relying upon in considering the complaints and discipline; (5) if Petitioner considered the failure to obtain the records of his prior disciplinary actions from the OOD to be a violation of the Memorandum of Understanding (MOU), and of the Court's contractual agreement to apply Chapter 289 to the MOU in its dealings with the Marshals, then it was the requirement of the Petitioner to make a specific request and a complaint during the proceedings to obtain the OOD documents; (6) no request to obtain the OOD documents was made by the Petitioner during Step 1 or Step 2, nor was any such request made during meetings with counsel; (7) no request to obtain the OOD documents was made to the Arbitrator during the arbitration proceedings; therefore the Petitioner failed to exhaust his administrative remedies, and any complaints regarding a failure to obtain the OOD documents were waived; (8) the Petitioner had the opportunity to address what was contained in the memorandums in the Eighth Judicial District Court's file, and commented that he chose not to argue with Judge Mosley; (9) the memorandums were a part of the Court's consideration regarding termination, in terms of why progressive discipline was not warranted, and progressive discipline was; (10) the memorandums were also considered at Step 1 by Hearing Master De La Garza; (11) during Step 2, the record indicated that Hearing Master Bulla did not consider the memorandums, and struck them from consideration; (12) Step 3 Arbitration was a de novo proceeding with an Evidentiary Hearing, where arguments were made that the memorandums should not be considered; (13) Arbitrator Maclean found the arguments persuasive and chose not to consider the memorandums, which would indicate that the memorandums were stricken in terms of evidence; (14) there was more than enough evidence to support Arbitrator Maclean's factual determinations that the comments as they related to Supervisor Moody, and other persons in the Marshal's chain of command were true, as related by Officer Ellis; (15) the Arbitrator was entitled to weigh credibility, wherein he found that the statements as alleged had been made, that the incident regarding Ms. Litt had occurred, and the actions taken by Petitioner were retaliatory in nature; (16) both orally and in his written findings, the Arbitrator goes toward what standard the Arbitrator must use; (17) under Article 13 the Arbitrator must consider the incident and the discipline in terms of the severity of the action, evidence of progressive discipline, and appropriateness of the disciplinary action, which the Arbitrator did; (18) the Arbitrator noted that for the purposes of determining the severity of the actions of the Petitioner, and the appropriateness of the disciplinary actions, he had the 2012 incident involving Ms. Litt, including her testimony, as well as the testimony of Officer Ellis; (19) the 2012 disciplinary action, although it did not appear to be finalized, was considered in determining the appropriateness of the disciplinary action in the 2013 incident, at which time it was found that there was just cause for Petitioner's termination; (20) once the Arbitrator found just cause, the question then was whether termination was reasonable in response to the actions, which required a weighing of whether or not the other

forms of potential discipline listed in the MOU should have been imposed; (21) although the Arbitrator never uses the word "reasonableness", it was clear that the Arbitrator engaged in that weighing process, and determined that termination was appropriate, reasonable, and warranted due to the chain of command issues, as well as the Arbitrator's belief that Petitioner was using his position to engage in a vendetta against Ms. Litt due to her complaints about Petitioner's conduct; (22) the Arbitrator did not exceed the scope of the agreement, nor was there anything arbitrary or capricious about his decision; (23) the Arbitrator's decision was in accordance with the MOU and the provisions of Chapter 38; (24) the record did not support a violation of NRS 289, and there was substantial evidence to support the Arbitrator's decision; (25) there was no evidence that the arbitrator manifestly disregarded the law; and (26) the OOD was not required to automatically turn over the documents regarding Petitioner's prior disciplinary actions, nor were they a law enforcement agency under NRS 289.040. Mr. Perdomo to prepare the Order, including Findings of Fact and Conclusions of Law, and forward it to Mr. Kennedy for approval as to form and content; if the parties were unable to agree on the language in the Order, a Proposed Order could be submitted to the Court with comments from counsel, and the Court would make a decision.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

KIRK T. KENNEDY, ESQ.
815 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

DATE: September 23, 2016
CASE: A-14-711200-P

RE CASE: THOMAS KNICKMEYER vs. STATE OF NEVADA, EX REL.; EIGHTH JUDICIAL DISTRICT COURT

NOTICE OF APPEAL FILED: September 21, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR, IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF ORDER DENYING AMENDED PETITION TO SET ASIDE ARBITRATION DECISION, OR, IN THE ALTERNATIVE PETITION FOR JUDICIAL REVIEW; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

IN THE MATTER OF THE PETITION OF
THOMAS KNICKMEYER

Case No: A-14-711200-P

Dept No: Unassigned

THOMAS KNICKMEYER,

Petitioner(s),

vs.

STATE OF NEVADA, EX REL.; EIGHTH
JUDICIAL DISTRICT COURT,

Respondent(s),

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 23 day of September 2016.

Steven D. Grierson, Clerk of the Court

Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk