

- 1 5. That Mr. Knickmeyer engaged in conduct unbecoming of an employee when he
2 told Deputy Marshal Ellis that he was going to distribute a copy of the lawsuit
3 involving Lieutenant Moody throughout the courthouse;
4 6. That Mr. Knickmeyer referred to Ms. Litt as a "bitch" and unnecessarily and
5 inappropriately rescanned her purse, which did not contain any suspicious
6 items; and
7 7. That Mr. Knickmeyer was negligent in his duties when he engaged in
8 inappropriate, unnecessary unprofessional conduct that distracted and
9 prevented him and co-worker from performing their official duties.

10 *Id.* at EJDC_ARB 0753-0754.

11 On October 23, 2013, Mr. Knickmeyer received a notice placing him on administrative
12 leave pending his termination from employment. (Exhibit B, Arbitration Joint Exhibit 4,
13 EJDC_ARB 0727-0729) In that Notice, Mr. Knickmeyer was informed that his recommended
14 termination was based on the aforementioned allegations, that his disciplinary history
15 reflected a written reprimand on May 20, 2013, and two prior suspensions without pay; that he
16 was currently the subject of an investigation into a third-party complaint of sex, race, and
17 religious misconduct; and that his Step 1 Pre-termination was scheduled for November 7,
18 2013. *Id.* at 0727-0729.

19 The process to terminate Mr. Knickmeyer was guided by the MOU between the
20 CCDMA and the EJDC. (Exhibit B, Arbitration Joint Exhibit 1, EJDC_ARB 0687-0707) The
21 MOU provided for a three step grievance procedure, which involved a Step 1 Pre-termination
22 meeting, a Step 2 Post-termination meeting, and Step 3 Arbitration hearing. *Id.* at
23 EJDC_ARB 0701-0703.

24 Mr. Knickmeyer's Step 1 Pre-termination meeting occurred on November 7, 2013
25 before Hearing Master De La Garza. (Exhibit C, Arbitration Award, EJDC_ARB 0754) During
26 the meeting, the EJDC and Mr. Knickmeyer, both individually and through his counsel, were
27 permitted to state their positions. *Id.* With respect to the disciplinary actions in 1997 and
28 2003, Mr. Knickmeyer's counsel briefly argued that the suspensions were incurred a long time

1 ago and implied that they should not be consider as part of this disciplinary matter. (Exhibit
2 D, Pre-termination Meeting Transcript, EJDC_ARB 0830) Mr. Knickmeyer also informed
3 Hearing Master De La Garza that the disciplinary suspensions were related to sexual
4 harassment, that he did not agree with them, and that he could not appeal them since he was
5 an at-will employee. *Id.* at EJDC_ARB 0833 (Mr. Knickmeyer is improperly identified as Mr.
6 Levine in the transcript). The meeting concluded without the parties resolving their dispute,
7 and Hearing Master De La Garza entered a written ruling that sustained the first six of the
8 seven allegations of misconduct, and concluded that the findings warranted termination.
9 (Exhibit C, Arbitration Award, EJDC_ARB 0754) These findings were adopted by the EJDC
10 on November 14, 2013 and Mr. Knickmeyer was terminated on that day. *Id.*

11 Mr. Knickmeyer's counsel appealed the decision on November 18, 2013, and
12 requested a Step 2 Post-termination meeting. (Exhibit B, Arbitration EMP. Exhibit 6,
13 EJDC_ARB 0682-0683) Mr. Knickmeyer received a Step 2 Post-termination meeting on
14 February 5, 2014, before Ms. Bulla. (Exhibit C, Arbitration Award, EJDC_ARB 0754) During
15 the meeting, the EJDC and Mr. Knickmeyer were provided opportunities to state their case for
16 and against termination. (See generally, Exhibit E, Post-termination Meeting Transcript,
17 EJDC_ARB 0850-0965) With respect to Mr. Knickmeyer's suspensions in 1997 and 2003,
18 Mr. Knickmeyer's counsel argued that Ms. Bulla could not consider the suspensions in 1997
19 and 2003 since there was no right to challenge discipline prior to the 2007 MOU, which
20 imposed a "just cause" standard for discipline. *Id.* at EJDC_ARB 0890-0895, 0902-0903. Mr.
21 Knickmeyer's counsel further stated that the investigation related to Mr. Knickmeyer's prior
22 suspensions were conducted by the Clark County Office of Diversity, which according to Mr.
23 Knickmeyer's counsel had a policy of not releasing these investigations. *Id.* at EJDC_ARB
24 0912-0913. Based on this representation, Mr. Knickmeyer's counsel also argued that Ms.
25 Bulla could not consider evidence of Mr. Knickmeyer's past disciplinary suspensions because
26 Mr. Knickmeyer was denied his right to review the investigative file under NRS 289.085. *Id.* at
27 EJDC_ARB 0913-0914. Once again, a resolution was not reached by the parties during the
28 meeting and Ms. Bulla entered a written decision which found that the totality of Mr.

1 Knickmeyer's conduct on January 8, 2013, warranted termination. (Exhibit B, Arbitration Joint
2 Exhibit 3, EJDC_ARB 0719, Exhibit C, Arbitration Award, EJDC_ARB 0754) Notably, Ms.
3 Bulla agreed with Mr. Knickmeyer's position related to his prior disciplinary suspensions and
4 did not consider either suspension in her ruling. (See generally, Exhibit B, Arbitration Joint
5 Exhibit 3, EJDC_ARB 0719-0726) On this point, Ms. Bulla specifically stated

6 [Mr.] Knickmeyer engaged in conduct warranting discipline on
7 several occasions before January 8, 2013. While I affirm the
8 Special Hearing Master De La Garza's finding in this regard, the
conduct that I believe independently upholds the termination
without progressive discipline occurred on January 8, 2013.

9 *Id.* at EJDC_ARB 0721.

10 Thereafter, Mr. Knickmeyer requested arbitration under Step 3 of the termination
11 process. The arbitration hearing was held on September 11, 2014 before Arbitrator
12 MacLean. (Exhibit C, Arbitration Award, EJDC_ARB 0752) During the arbitration hearing,
13 both parties were provided an opportunity to present evidence in favor of their case. The
14 EJDC presented testimony from Deputy Marshal Ellis, Sergeant Newsome, Edward May, and
15 Ms. Litt. (Exhibit A, Arbitration Transcript, 0001-0181) Mr. Knickmeyer presented his own
16 testimony in his defense. *Id.* at 0182-0237. The parties admitted nine joint exhibits, and the
17 EJDC admitted eight additional exhibits. (Exhibit A, Arbitration Transcript, EJDC_ARB 0004-
18 0005, *See generally*, Exhibit B, Arbitration Exhibits, 0277-0751) Both parties admitted as a
19 joint exhibit the written decisions by Judge Mosley regarding Mr. Knickmeyer's "Prior
20 Suspension/Disciplinary Issues, July 17, 1997 and July 14, 2003." (Exhibit A, Arbitration
21 Transcript, EJDC_ARB 0004, Exhibit B, Arbitration Joint Exhibit 5, EJDC_ARB 0737-0738)

22 The issue before the arbitrator was: "Did the [EJDC] have just cause to terminate Mr.
23 Knickmeyer? If not, what [was] the appropriate remedy?" (Exhibit C, Arbitration Award,
24 EJDC_ARB 0753) Based on the testimony and exhibits, the arbitrator found that all six
25 allegations against Mr. Knickmeyer were established by a preponderance of the evidence. *Id.*
26 at EJDC_ARB 0759. Arbitrator MacLean also found that Mr. Knickmeyer's conduct warranted
27 termination. Specifically, Arbitrator MacLean found that Mr. Knickmeyer's statements to
28 Deputy Marshal Ellis on January 7, 2013, alone would have warranted progressive discipline

1 in the form of a written reprimand on the first offense. *Id.* at EJDC_ARB 0763-0764.
2 However, Arbitrator MacLean found that Mr. Knickmeyer's conduct crossed the line when he
3 showed Deputy Marshal Ellis a copy of a civil lawsuit against Lieutenant Moody, stated that
4 Lieutenant Moody falsified his application, and indicated that he was going to circulate the
5 lawsuit. *Id.* at EJDC_ARB 0764. With respect to these actions, Arbitrator MacLean found the
6 following:

7 This behavior constitutes the undermining of supervisory authority,
8 a serious offense in any work place but totally unacceptable when
9 done by peace officers charged with the safety and security of a
10 government building. The armed marshals must be prepared to
11 respond to a threat as a cohesive and effective team, and this
12 means that there must be a functioning and respected chain of
13 command. Any effort to undermine this command structure can
14 only be seen as serious misconduct warranting severe discipline.

15 *Id.*

16 In addition, Arbitrator MacLean found that Mr. Knickmeyer's most serious offense
17 involved his behavior at the monitor on January 8, 2013, with respect to the rescanning of Ms.
18 Litt's purse. *Id.* In particular, Arbitrator MacLean found that "[Mr. Knickmeyer's] conduct in
19 unnecessarily rescanning Litt's purse was retaliatory and constituted harassment." *Id.*

20 Arbitrator MacLean further found that:

21 The hearing officer in the second hearing found that [Mr.
22 Knickmeyer's] behavior in this regard constituted harassment and
23 would alone, without consideration of previous discipline, justify
24 termination. The Arbitrator agrees. [Mr. Knickmeyer's] willingness
25 to misuse his position as a peace officer to get even with or
26 retaliate against Litt for filing a complaint against him distracted
27 him from his duties and could easily have jeopardized the safety
28 and security of the building and the people in it. This misconduct
is sufficiently egregious, in the Arbitrator's view, to warrant
termination in and of itself.

29 *Id.*

30 Mr. Knickmeyer argued that his 1997 and 2003 suspensions were too remote in time to
31 constitute earlier incidents of progressive discipline. *Id.* at EJDC_ARB 0765. Arbitrator
32 MacLean agreed with Mr. Knickmeyer's position. *Id.* Mr. Knickmeyer's further argued that
33 there was a lack of due process with respect to the administration of these suspensions,
34 which was also an argument that was well taken. *Id.* Regardless, Arbitrator MacLean stated

1 that the discussion as to whether Mr. Knickmeyer's prior disciplinary suspensions constituted
2 progressive discipline was somewhat moot since Mr. Knickmeyer's retaliatory conduct toward
3 Ms. Lill was sufficient on the first offense to warrant discharge. *Id.* Arbitrator MacLean found
4 that there was just cause to terminate Mr. Knickmeyer and denied his grievance. *Id.*

5 **IV. ARGUMENT**

6 **A. This Court Does Not have Jurisdiction over Mr. Knickmeyer's Petition to
7 Set Aside the Arbitration Decision.**

8 **1. The Peace Officer's Bill of Rights does not apply to the EJDC since
9 it is not a law enforcement agency.**

10 Mr. Knickmeyer brings this Petition under NRS 289.120 which provides, in pertinent
11 part, that:

12 [a]ny peace officer aggrieved by an action of the employer of the
13 peace officer in violation of this chapter may, after exhausting any
14 applicable internal grievance procedures, grievance procedures
15 negotiated pursuant to chapter 288 of NRS, and other
16 administrative remedies, apply to the district court for judicial relief.

17 The Peace Officer's Bill of Rights is created under NRS 289.020 through NRS
18 289.120. These statutes define the obligations of a law enforcement agency with respect to
19 the rights of its peace officers. In his Petition, Mr. Knickmeyer claims that he was denied
20 peace officer rights under NRS §§ 289.040, 289.057, 289.060, and 289.080. However, these
21 rights specifically apply to law enforcement agencies. For example, NRS 289.040(4) provides
22 that

23 [a] peace officer must be given a copy of any comment or
24 document that is placed in an administrative file of the peace
25 officer maintained by the law enforcement agency.

26 NRS 289.040(4)

27 Likewise, NRS 289.057 governs investigations by a law enforcement agency against
28 peace officers and provides, in part, that after the conclusion of an investigation that causes a
law enforcement agency to impose punitive action against a peace officer, the peace officer
or his representative may, except as otherwise prohibited by federal or state law, review any
administrative or investigative file maintained by the law enforcement agency relating to the
investigation, including any recordings, notes, transcripts of interviews and documents. NRS

1 289.057(3)(a). NRS §§ 289.060 and 289.080 similarly speak in terms of rights of peace
2 officers and obligations of law enforcement agencies in disciplinary proceedings.

3 Mr. Knickmeyer's Petition does not provide any legal authority or argument that the
4 EJDC is considered a law enforcement agency under NRS Chapter 289. Instead, Mr.
5 Knickmeyer states that this Court has jurisdiction to hear his Petition under NRS 289.120 and
6 *Ruiz v. City of North Las Vegas*, 255 P.3d 216 (2011). The holding that Mr. Knickmeyer relies
7 on does not establish jurisdiction under NRS Chapter 289 with respect to the EJDC. The *Ruiz*
8 Court held that Officer Ruiz had standing under NRS 289.120 to file a petition seeking judicial
9 review under NRS 289.120 of an arbitration award even though he was not a party to the
10 arbitration proceeding. *Id.* at 222. Here, Mr. Knickmeyer was a party to the arbitration
11 proceeding and is a peace officer; however, the issue before this Court is whether Mr.
12 Knickmeyer may enforce any of the rights conferred under the Peace Officer's Bill of Rights
13 against the EJDC. Accordingly, the holding in *Ruiz* is inapposite to the jurisdictional issue
14 before this Court.

15 To exercise jurisdiction over this Petition, this Court must stretch the definition of law
16 enforcement agency beyond its plain meaning. Matters of statutory construction are
17 questions of law for the court. *Diamond v. Swick*, 117 Nev. 671, 674, 28 P.3d 1087, 1089
18 (2001). "If the plain meaning of a statute is clear on its face, then [a court] will not go beyond
19 the language of the statute to determine its meaning." *Rosequist v. Int'l Ass'n of Firefighters*,
20 118 Nev. 444, 448, 49 P.3d 651, 652 (2002) (reversed on other grounds) (citing *Robert E. v.*
21 *Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983)). Only when a statute is
22 "susceptible to more than one natural and honest interpretation, it is ambiguous, and the plain
23 meaning rule has no application." *State, Dept. of Business and Indus., Office of Labor Com'r*
24 *v. Granite Const. Co.*, 118 Nev. 83, 87, 40 P.3d 423, 426 (2002) (citing *Randono v. CUNA*
25 *Mutual Ins. Group*, 106 Nev. 371, 374, 793 P.2d 1324, 1326 (1990)).

26 None of the courts created under the Nevada Constitution are law enforcement
27 agencies. Article 6 of the Nevada Constitution vests the judicial power of this State in a court
28 system that is comprised of a Supreme Court, an appellate court, district courts, and justices

1 of the peace. Nev. Const., Art. 6, § 1.

2 'Judicial Power' is the capability or potential capacity to exercise a
3 judicial function. That is, 'Judicial Power' is the authority to hear
4 and determine justiciable controversies. Judicial power includes
the authority to enforce any valid judgment, decree, or order.

5 *Galloway v. Truesdell*, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967).

6 As defined above, no part of the judicial power rests in the ability to enforce the law.
7 There is no plain interpretation of the term law enforcement agency, which would encompass
8 the functions served by the EJDC and its District Court Judges, administration, employees,
9 and marshals. The MOU further confirms this point since it purports to grant marshals NRS
10 Chapter 289 rights, which would not be necessary if these rights existed under the statute
11 itself. (Arbitration Joint Exhibit 1, EJDC_ARB 0687, Article 13, Introduction, § 1) Accordingly,
12 the EJDC was not required by statute to afford Mr. Knickmeyer any of the Peace Officer's Bill
13 of Rights directly under NRS Chapter 289 since it is not a law enforcement agency.

14 **2. Applying the Peace Officer's Bill of Rights to the EJDC violates the**
15 **separation of powers doctrine.**

16 The Nevada Supreme Court has long recognized that the judiciary is a coequal branch
17 of government with the inherent power to protect itself and to administer its own affairs. *City*
18 *of Sparks v. Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1128 (2013) (citing
19 *City of N. Las Vegas ex rel. Arndt v. Daines*, 92 Nev. 292, 294, 550 P.2d 399, 400 (1976)).
20 The inherent power of the judiciary stems from two sources: "the separation of powers
21 doctrine; and the power inherent in a court by virtue of its sheer existence." *Id.* (citing
22 *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1218, 14 P.3d 1275,
23 1279 (2000)). "The division of powers is probably the most important single principle of
24 government declaring and guaranteeing the liberties of the people." *Galloway*, 83 Nev. at 18.
25 Accordingly, constitutionally-based structural protections cannot be waived regardless of the
26 degree of assent or acquiescence among the branches of government. *Comm'n on Ethics v.*
27 *Hardy*, 125 Nev. 285, 299, 212 P.3d 1098, 1108 (2009). Each Department possesses
28 inherent and incidental powers, also known as ministerial functions, to implement and

1 accomplish their basic function. *Galloway*, 83 Nev. at 21. Through their ministerial functions,
2 the three Departments become a co-ordinated and interdependent system of government. *Id.*
3 Nevertheless, "[w]hile the Departments become a co-ordinated, efficient system under such a
4 process, yet each Department must maintain its separate autonomy." *Id.* In that regard, the
5 *Galloway* Court found that:

6 It is in the area of inherent ministerial powers and functions that
7 prohibited encroachments upon basic powers of a Department
8 most frequently occur. All Departments must be constantly alert to
9 prevent such prohibited encroachments lest our foundational
system of governmental division of powers be eroded. To permit
even one seemingly harmless prohibited encroachment and adopt
an indifferent attitude could lead to very destructive results.

10 *Galloway*, 83 Nev. at 22.

11 The EJDC is part of Nevada's constitutionally created court system vested with the
12 constitutional judicial power and inherent powers necessary to administrate its own
13 procedures and to manage its own affairs so as to not become a subordinate branch of
14 government. In that regard, the Nevada Supreme Court recently expounded the inherent
15 authority of courts to manage their employees, including marshals, in *City of Sparks*, stating
16 that:

17 It would be impossible for the Municipal Court to exist and fulfill
18 this role without employees to manage the docket, process
19 paperwork, provide administrative assistance, and monitor
20 compliance with its orders, among many other ministerial duties.
Furthermore, the Municipal Court must be able to exercise control
over the employees who perform these tasks in order to ensure
that the appropriated candidates are chosen for the jobs, the tasks
are performed in a satisfactory manner, and proper sanctions and
rewards are available when necessary.

21
22 *City of Sparks*, 302 P.3d at 1129 (internal citations omitted).

23 From both a practical and statutory standpoint, there can be no real question that
24 deputy marshals perform a critical function in the judicial system that is clearly "inherent or
25 incidental" to the EJDC's capacity to perform its constitutional functions. Naturally, as a result
26 of this relationship, the EJDC, and its judges, possess direct supervisory control and authority
27 over judicial and administrative marshals. NRS 3.310 provides that judges of the individual
28 courts appoint their own deputy marshals, or judicial marshals, who serve "at the pleasure of

1 the judge he or she serves." NRS 3.310(1). Additionally, EDCR 1.30 specifically provides
2 that the Chief Judge exercises general supervision over all administrative court personnel that
3 are not assigned to a particular judge, which would include administrative marshals. EDCR
4 1.30(12). If this Court exercises jurisdiction over Mr. Knickmeyer's Petition, and more
5 specifically if this Court finds that Mr. Knickmeyer possesses the rights conferred by the
6 Peace Officer's Bill of Rights, the implication of such a decision would be that the judicial
7 marshals will not completely serve at the pleasure of the judge he or she serves and the Chief
8 Judge will not possess complete discretion to exercise general supervisory authority over
9 administrative marshals. Such a decision would permit an encroachment on the inherent
10 ministerial powers and functions of the EJDC, and more generally the Nevada Judiciary,
11 which the separation of powers doctrine prohibits. Accordingly, this Court cannot exercise
12 jurisdiction over Mr. Knickmeyer's Petition under NRS 289.120.

13 **3. This Court cannot review contractual claims under the MOU as part**
14 **of a petition brought under NRS 289.120.**

15 Because NRS Chapter 289 cannot constitutionally apply to the EJDC, Mr. Knickmeyer
16 may only seek to apply the provisions of NRS Chapter 289 contractually by virtue of the MOU
17 between the EJDC and the CCDMA. "Labor arbitration is a product of contract, and
18 therefore, its legal basis depends entirely upon the particular contracts of particular parties."
19 *City of Reno v. IAFF, Local 731*, 130 Nev. Adv. Op. 100, 340 P.3d 589, 593 (2014) (quoting
20 *Port Huron Area Sch. Dist. v. Port Huron Educ. Ass'n*, 426 Mich. 143, 150, 393 N.W.2d 811,
21 814 (1986)). "Parties consenting to arbitration pursuant to written agreements consent to
22 arbitrate within the framework of the terms and conditions of such agreement." *Id.* (quoting
23 *Port Huron*, 393 N.W.2d at 815).

24 NRS 289.120 does not grant Mr. Knickmeyer standing to assert alleged violations of
25 the MOU under Article 13(5), Article 13, § 1(3), and Article 13, § 1(6). These rights only exist
26 through the MOU, which is a labor contract. Notably, however, Mr. Knickmeyer has not
27 asserted any contractual claims in this case, which precludes this Court from analyzing Mr.
28 Knickmeyer's allegations and arguments that these provisions of the MOU were violated

1 during his termination proceeding.

2 **4. NRS 289.120 does not give rise to a private right of action under the**
3 **Due Process Clause of the Fourteenth Amendment to the U.S.**
4 **Constitution.**

5 "[A] litigant complaining of a violation of a constitutional right does not have a direct
6 cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983."
7 *Arpin v. Santa Clara Valley Trans. Agency*, 261 F.3d 912, 925 (9th Cir. 2001) (citing *Azul-*
8 *Pacifico Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992)).

9 Section 1983 provides a cause of action for 'the deprivation of any
10 rights, privileges, or immunities secured by the Constitution and
11 laws' of the United States by any person acting 'under color of any
12 statute, ordinance, regulation, custom, or usage, of any State or
13 Territory.'

14 *Carter v. Rupracht*, 532 F.Supp. 383, 385 (D. Nev. 1981) (quoting 42 U.S.C. § 1983).

15 In *Will v. Michigan Dep't of State Police*, the Supreme Court held that "neither a State
16 nor its officials acting in their official capacities are 'persons' under § 1983." 491 U.S. 58, 71
17 (1989). The holding in that case applied not only to the states but also to government entities
18 that are considered "arms of the state" for Eleventh Amendment purposes. *Id.* at 70. The
19 District Courts of the State of Nevada are state entities and not "persons" subject to suit under
20 section 1983. *O'Conner v. State of Nevada*, 507 F.Supp. 546, 551 (D. Nev. 1981) (holding
21 that the Third Judicial District Court, as part of the Judicial Branch created under Article 6 of
22 the Nevada Constitution, is a state entity and not a "person" subject to suit under the Civil
23 Rights Acts).

24 Mr. Knickmeyer's constitutional arguments are jurisdictionally and legally deficient.
25 Claims under the Due Process Clause of the Fourteenth Amendment must be asserted under
26 Section 1983. Since this is not a Section 1983 action, Mr. Knickmeyer's constitutional
27 arguments are not properly before this Court. Second, Mr. Knickmeyer cannot assert a
28 Section 1983 claim against the EJDC. Section 1983 only grants a private right of action
against a "person" acting under color of law. A state entity, like the EJDC, is not considered a
person subject to suit under Section 1983. Accordingly, even if Mr. Knickmeyer had properly
asserted his Due Process claim under Section 1983, the claim would fail as a matter of law

1 since there is no private right of action against the EJDC under that statute. Accordingly, Mr.
2 Knickmeyer's constitutional arguments cannot be considered by this Court under this Petition.

3 **B. There is No Basis to Overturn an Arbitration Award Based on Arguments**
4 **and Allegations that Exceed the Scope of the Standard of Review and**
5 **Pertain to Evidence that Had No Impact on the Arbitration Award.**

6 "It is well-settled that arbitration is a favored means of resolving labor disputes and that
7 courts refrain from reviewing the merits of an arbitration award when considering its
8 enforcement." *Port Huron*, 393 N.W.2d at 814. "Judicial review of an arbitrator's decision is
9 very limited; a court may not review an arbitrator's factual findings or decision on the merits."
10 *Id.* "The legal basis underlying this policy of judicial deference is grounded in contract: the
11 contractual agreement to arbitrate and to accept the arbitral decision as 'final and binding.'"
12 *Id.* There is a strong presumption in favor of enforcing arbitral awards. *Id.* at 815. An
13 arbitration decision may be set aside if it is "dependent upon an arbitrator's interpretation of
14 provisions expressly withheld from arbitral jurisdiction, or upon an arbitrator's disregard and
15 contravention of provisions expressly limiting arbitral authority." *Id.*

16 Mr. Knickmeyer's challenge to the arbitration award exceeds the scope of the standard
17 of review. Specifically, Mr. Knickmeyer challenges the arbitration award on the basis that he
18 was not provided discovery related to the investigations of his three day suspension and
19 twenty day suspension in 1997 and 2003, respectively. Mr. Knickmeyer cannot request that
20 this Court set aside the arbitration award on this basis since the allegation does not establish
21 that Arbitrator MacLean exceeded his jurisdiction or disregarded or contravened provisions of
22 the MOU expressly limiting his authority.

23 Regardless, Mr. Knickmeyer's allegation is without merit. The records from the Step 2
24 Post-termination meeting and Step 3 Arbitration hearing reflect that Mr. Knickmeyer argued
25 that Ms. Bulla and Arbitrator MacLean could not consider these prior suspensions in
26 determining whether there was just cause for his termination since they were over five years
27 old, they were not subject to the just cause standard in the MOU, and the investigative
28 findings supporting the suspension were not provided to Mr. Knickmeyer. (Exhibit C,
Arbitration Award, EJDC_ARB 0765, Exhibit E, Post-Termination Meeting Transcript,

1 EJDC_ARB 0890-0895, 0902-0903, 0912-0914) Both Ms. Bulla and Arbitrator MacLean
2 agreed with Mr. Knickmeyer's position and did not consider these disciplinary suspensions as
3 prior instances of progressive discipline. (Exhibit C, Arbitration Award, EJDC_ARB 0765,
4 Exhibit B, Arbitration Joint Exhibit 3, EJDC_ARB 0721) Nevertheless, both found that Mr.
5 Knickmeyer's conduct on January 8, 2013, was sufficiently and independently serious to
6 warrant termination. *Id.* Accordingly, factual issues related to his suspensions in 1997 and
7 2003 were inconsequential to the overall determination and cannot be a basis for overturning
8 the arbitration award.

9 **C. The EJDC Provided Mr. Knickmeyer with the Contents of the Current**
10 **Investigative File and His Personnel File satisfying his alleged Rights**
Under NRS Chapter 289.

11 NRS 289.040(4) provides that "[a] peace officer must be given a copy of any comment
12 or document that is placed in an administrative file of the peace officer maintained by the law
13 enforcement agency." NRS 289.040(4). Further, NRS 289.057 provides, in pertinent part,
14 that after the conclusion of an investigation that causes a law enforcement agency to impose
15 punitive action against a peace officer, the peace officer or his representative may, except as
16 otherwise prohibited by federal or state law, may review any administrative or investigative file
17 maintained by the law enforcement agency relating to the investigation, including any
18 recordings, notes, transcripts of interviews and documents. NRS 289.057(3)(a).

19 There is no evidence to support Mr. Knickmeyer's arguments that his NRS Chapter
20 289 rights were violated. The aforementioned provisions of NRS Chapter 289 would grant
21 Mr. Knickmeyer the right to review the entire investigative file related to his misconduct on
22 January 7 and 8, 2013, as well as his personnel file. These records were provided to Mr.
23 Knickmeyer during the termination proceedings. (Exhibit D, Pre-termination Meeting
24 Transcript, EJDC_ARB 0779-0780, Exhibit F, Receipt Forms, EJDC_ARB 0966-0967) As Mr.
25 Knickmeyer's counsel acknowledged during the Step 2 Post-termination meeting, the
26 investigations into Mr. Knickmeyer's misconduct in 1997 and 2003 were conducted by and the
27 contents thereof were maintained by the Clark County Office of Diversity, which is a separate
28 entity from the EJDC. (Exhibit E, Post-termination Meeting Transcript, EJDC_ARB 0912-913)

1 These records were not maintained by the EJDC, and would not be part of the records that
2 Mr. Knickmeyer would be entitled to review under the aforementioned statutes. Therefore,
3 Mr. Knickmeyer's claim that his alleged rights under NRS Chapter 289 were violated during
4 the termination proceedings is meritless.

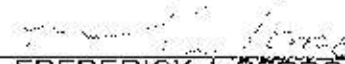
5 **V. CONCLUSION**

6 This Court cannot and should not overturn the arbitration award for three key reasons.
7 First, this Court lacks jurisdiction to hear Mr. Knickmeyer's arguments and claims under NRS
8 289.120, the MOU, and the Fourteenth Amendment to the U.S. Constitution. Second, Mr.
9 Knickmeyer's claims and arguments exceed the standard of review and were inconsequential
10 to the overall determination upholding his termination. Third, the EJDC provided Mr.
11 Knickmeyer with all of the documentation he could be entitled to receive under NRS Chapter
12 289. Accordingly, the EJDC respectfully requests that this Court dismiss or deny Mr.
13 Knickmeyer's Petition.

14 Pursuant to NRS 239B.030, this document does not contain the Social Security
15 Number of any person.

16 DATED this 6th day of February, 2015.

17 ADAM PAUL LAXALT
18 Attorney General

19
20 By: 
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("EJDC")

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Exhibit List

- Exhibit A - EJDC_ARB 0001-0276 – 09-11-14 Arbitration Hearing Transcript
- Exhibit B - EJDC_ARB 0277-0751 – Exhibits to 09-11-14 Arbitration Hearing
- Exhibit C - EJDC_ARB 0752-0765 – Arbitration Award
- Exhibit D - EJDC_ARB 0766-0849 – 11-07-13 Pre-Termination Meeting Transcript
- Exhibit E - EJDC_ARB 0850-0965 – 02-05-14 Post-Termination Meeting Transcript
- Exhibit F - EJDC_ARB 0966-0967 - Receipt of Personnel File by Thomas Knickmeyer

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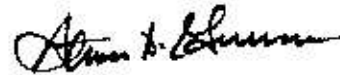
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CERTIFICATE OF SERVICE

I certify I am an employee of the Office of the Attorney General, State of Nevada, and that on this 6th day of February, 2015, I caused to be served a copy of the foregoing **STATE OF NEVADA EX REL. EIGHTH JUDICIAL DISTRICT COURT'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, RESPONSE TO PETITION TO SET ASIDE ARBITRATION DECISION**, by mailing to:

Attorney for Petitioner:
Kirk T. Kennedy, Esq.
815 S. Casino Center Blvd
Las Vegas, NV 89101
T (702) 385-5534


An Employee of the Office of
The Attorney General



CLERK OF THE COURT

0001
KIRK T. KENNEDY, ESQ.,
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of the Petition of	)	Case No: A-J4-711200-P
	)	Dept. No: XXXII
THOMAS KNICKMEYER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
STATE OF NEVADA, ex rel., EIGHTH	)	
JUDICIAL DISTRICT COURT,	)	
	)	
Respondent,	)	
_____	)	

MOTION TO DISQUALIFY THE EIGHTH JUDICIAL DISTRICT COURT

COMES NOW, the Petitioner, THOMAS KNICKMEYER, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., who files this motion to disqualify the Eighth Judicial District Court from hearing and deciding the Petition filed in this matter.

In support hereof, Petitioner relies on the following points and authorities.

Dated this 26th day of February, 2015.

/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

NOTICE OF HEARING

TO: Frederick Perdomo, Counsel for Respondent

YOU AND EACH OF YOU WILL PLEASE TAKE NOTE that the undersigned will bring the foregoing matter on for hearing on the 31 day of March, 2015, at the hour of 9:00am in Department 32 of the District Court, or as soon thereafter as counsel may be heard.

Dated this 26th day of February, 2015.

/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

POINTS AND AUTHORITIES

The Petition filed in this matter seeks judicial review pursuant to NRS 289.120 of the arbitration hearing held for Petitioner Knickmeyer, wherein the Respondent Eighth Judicial District Court succeeded in terminating Knickmeyer's employment as a marshal for the court system.

Given that the Responding party to the Petition is also the same party, technically, which is hearing the pending Petition, Knickmeyer contends that there exists an appearance of impropriety and/or appearance of bias in this matter. *Although it is clear that this Court Department has had no involvement in the underlying arbitration decision and the termination action against Knickmeyer*, the fact remains that the Petition seeks judicial review of a decision which impacts the Eighth Judicial District Court, which is the same employer of this Court Department.

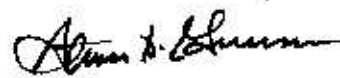
This motion is not a request for peremptory challenge under SCR 48.1, as such a request would be ineffective and not resolve the underlying conflict in having the Eighth Judicial District Court decide a Petition which financially impacts the same court system. The anticipated decision may also impact the personnel and human resource based decisions of the Eighth Judicial District Court.

1 **AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS**

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

3
4 Dated this 26th day of February, 2015.

5 /s/Kirk T. Kennedy
6 KIRK T. KENNEDY, ESQ.
7 Nevada Bar No: 5032
8 815 S. Casino Center Blvd.
9 Las Vegas, NV 89101
10 (702) 385-5534
11 Attorney for Petitioner
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CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of the Petition of
THOMAS KNICKMEYER,
Petitioner.

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

vs.

STATE OF NEVADA, ex rel., EIGHTH
JUDICIAL DISTRICT COURT,
Respondent.

PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS
OR, IN THE ALTERNATIVE RESPONSE TO PETITION TO SET ASIDE
ARBITRATION DECISION

COMES NOW, the Petitioner, THOMAS KNICKMEYER, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., who files this opposition to the Respondent's motion to dismiss the petition and/or its response to the petition to set aside the arbitration decision, to wit:

Petitioner Knickmeyer relies upon his filed Petition to Set Aside the Arbitration Decision has his response and opposition to the Respondent's motion to dismiss the petition.

Dated this 2nd day of March, 2015.

/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

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CERTIFICATE OF SERVICE

I hereby affirm that on this 2nd day of March, 2015, I mailed via first class
U.S. Mail to the Respondent a copy of the foregoing to:

Frederick J. Perdomo
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 2nd day of March, 2015.

/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

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

March 17, 2015 9:21 AM Minute Order Re: Reassignment

HEARD BY: Barker, David

COURTROOM:

COURT CLERK: April Watkins

RECORDER:

REPORTER:

PARTIES

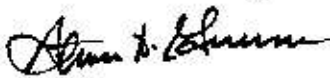
PRESENT:

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) andileen Spoor, Judicial Executive Assistant to the Senior Judge Department). aw


CLERK OF THE COURT

0001
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of the Petition of	)	Case No: A-14-711200-P
	)	Dept. No: XXXII
THOMAS KNICKMEYER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
STATE OF NEVADA, ex rel., EIGHTH	)	
JUDICIAL DISTRICT COURT,	)	
	)	
Respondent.	)	

RENEWED MOTION TO DISQUALIFY THE EIGHTH JUDICIAL DISTRICT
COURT

COMES NOW, the Petitioner, THOMAS KNICKMEYER, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., who files this renewed motion to disqualify the Eighth Judicial District Court from hearing and deciding the Petition filed in this matter. The Court previously granted this motion, however, recent action by the Court necessitates this renewed motion.

In support hereof, Petitioner relies on the following points and authorities.

Dated this 2nd day of July, 2015.

/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

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NOTICE OF HEARING

TO: Frederick Perdomo, Counsel for Respondent

YOU AND EACH OF YOU WILL PLEASE TAKE NOTE that the undersigned will bring the foregoing matter on for hearing on the ^{Aug.} 17 day of ~~July~~, 2015, ^{In Chambers} at the hour of am in Department 32 of the District Court, or as soon thereafter as counsel may be heard.

Dated this 2nd day of July, 2015.

/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

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POINTS AND AUTHORITIES

In February, 2015, Petitioner filed his first motion to disqualify the Eighth Judicial District Court, which was granted by the Court. However, since that time, Petitioner has been advised that the Court and/or the Nevada Supreme Court has selected Senior Judge Nancy Becker as the jurist to hear this Petition.

The Honorable Senior Judge Becker, who is a highly qualified jurist, was a former judge of the Eighth Judicial District Court and now sits as a Senior Judge for various cases in this District.

For the same reasons enunciated before, as argued below, Petitioner objects to this assignment. A jurist from Washoe County or another Nevada district is necessary to hear this claim.

As argued before, the Petition filed in this matter seeks judicial review pursuant to NRS 289.120 of the arbitration hearing held for Petitioner Knickmeyer, wherein the Respondent Eighth Judicial District Court succeeded in terminating Knickmeyer's employment as a marshal for the court system.

Given that the Responding party to the Petition is also the same party, technically, which is hearing the pending Petition, Knickmeyer contends that there exists

1 an appearance of impropriety and/or appearance of bias in this matter. *Although it is*
2 *clear that this Court Department and Senior Judge Becker have had no involvement in*
3 *the underlying arbitration decision and the termination action against Knickmeyer,* the
4 fact remains that the Petition seeks judicial review of a decision which impacts the
5 Eighth Judicial District Court, which is the same employer of this Court Department and
6 of Senior Judge Becker.

7 This motion is not a request for peremptory challenge under SCR 48.1, as such a
8 request would be ineffective and not resolve the underlying conflict in having the Eighth
9 Judicial District Court decide a Petition which financially impacts the same court
10 system. The anticipated decision may also impact the personnel and human resource
11 based decisions of the Eighth Judicial District Court.

12 Knickmeyer contends that the only relief which can remedy this conflict is to
13 have the matter heard and decided by another district court system, such as the First
14 Judicial District Court in Washoe County.

15 Under Nevada's Code of Judicial Conduct Rule 2.11, the various grounds of
16 disqualification are enumerated. As stated above, there is absolutely no evidence that
17 this Court Department or Senior Judge Becker has any express bias or prejudice against
18 the Petitioner. However, the situation still remains that this Court Department or Senior
19 Judge Becker would be deciding a matter which may impact their same employer.
20 Under NCJC Rule 2.11(3), the Eighth Judicial District Court, overall, has an economic
21 interest in this matter and disqualification of the entire Eighth Judicial District Court
22 remains appropriate.
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1 Petitioner Knickmeyer moves the Court to grant this renewed motion and allow
2 for the transfer and reassignment of this particular case to the First Judicial District
3 Court or to allow for some other form of accommodation to be discussed at time of
4 hearing.

5 Dated this 2nd day of July, 2015.

6 /s/Kirk T. Kennedy
7 KIRK T. KENNEDY, ESQ.
8 Nevada Bar No: 5032
9 815 S. Casino Center Blvd.
10 Las Vegas, NV 89101
11 (702) 385-5534
12 Attorney for Petitioner

13 **CERTIFICATE OF SERVICE**

14 I hereby affirm that on this 2nd day of July, 2015, I mailed via first class
15 U.S. Mail to the Respondent a copy of the foregoing to:

16 Frederick J. Perdomo
17 Deputy Attorney General
18 100 N. Carson St.
19 Carson City, NV 89701

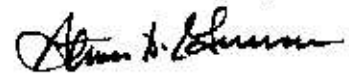
20 /s/Kirk T. Kennedy
21 Law Office of Kirk T. Kennedy
22
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1 **AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS**

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

3
4 Dated this 2nd day of July, 2015.

5
6 /s/Kirk T. Kennedy
7 KIRK T. KENNEDY, ESQ.
8 Nevada Bar No: 5032
9 815 S. Casino Center Blvd.
10 Las Vegas, NV 89101
11 (702) 385-5534
12 Attorney for Petitioner
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CLERK OF THE COURT

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

8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA

11 THOMAS KNICKMEYER,

12 Petitioner,

13 vs.

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

16 Respondent.

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

**ORDER DENYING PETITIONER'S
RENEWED MOTION TO DISQUALIFY
EIGHTH JUDICIAL DISTRICT COURT**

Hearing Date: August 17, 2015
Hearing Time: Matter Heard In Chambers

17 Petitioner, Thomas Knickmeyer's, Renewed Motion to Disqualify Eighth Judicial District
18 Court, having come before the Court on August 17, 2015, in Chambers, and the Court having
19 read and reviewed the Motion, and the Points and Authorities submitted in support thereof,
20 the Response, and the Points and Authorities submitted in support thereof, hereby rules as
21 follows:

22 THE COURT FINDS that the District Court system of the State of Nevada is created by
23 Article 6, Sections 5 and 6 of the Nevada Constitution, that each District Court is a subdivision
24 of the Nevada Judiciary whose jurisdiction is set by the Nevada Constitution and whose
25 boundaries are set by the Nevada Legislature. that each District Court has duties that are
26 both administrative and judicial, and that each District Court's functions are carried out under
27 the direction of the elected judges from that particular district;

28 ///

1 THE COURT FURTHER FINDS that the Eighth Judicial District Court expenses are
2 born by Clark County, except that the salaries of the judges are paid by the State;

3 THE COURT FURTHER FINDS that, in the instance case, Petitioner was terminated
4 from his employment as a Marshal for the Eighth Judicial District Court pursuant to the
5 procedures established by the district judges of that judicial district;

6 THE COURT FURTHER FINDS that the instant action originally proceeded before
7 Department 32, and District Court Judge Rob Bare of the Eighth Judicial District Court;

8 THE COURT FURTHER FINDS that Petitioner filed a motion to disqualify the Eighth
9 Judicial District Court on February 26, 2015 and that motion was forwarded to Chief Judge,
10 the Honorable David Barker, who found that even though Judge Bare had no knowledge of
11 the underlying facts and was not involved in any disciplinary action involving Petitioner, that
12 the matter involved procedures established by the Eighth Judicial District Judges and that it
13 would be better if the matter was assigned to the Senior Judge Program;

14 THE COURT FURTHER FINDS that Chief Judge Barker entered an order on March
15 16, 2015, that reassigned the case to the Senior Judge Program and that denied Petitioner's
16 motion as moot;

17 THE COURT FURTHER FINDS that the Senior Judge Program is a service of the
18 Nevada Supreme Court, that the program is comprised of retired district court judges, that the
19 Nevada Supreme Court assigns Senior Judges to particular cases referred to the program,
20 that Senior Judges are paid by the Administrative Office of the Courts and that the Senior
21 Judges are employees of the State of Nevada and not of individual district courts;

22 THE COURT FURTHER FINDS that on March 16, 2015, by Order of the Nevada
23 Supreme Court, Senior District Judge Nancy Becker was assigned to the case and that over
24 three months later Petitioner filed the instant renewed motion to disqualify the Eighth Judicial
25 District Court;

26 THE COURT FURTHER FINDS that Petitioner's motion states that there are no
27 particular grounds to disqualify Judge Becker under NRS 1.235 or the Nevada Canons of
28 Judicial Conduct. Petitioner's motion further states that at some point in the past Judge

1 Becker served as an elected district judge primarily assigned to the Eighth Judicial District,
2 though District Judges are State Judges and have authority to sit in any judicial district court
3 in the State. Petitioner's motion further states, albeit inaccurately, that the Senior Judge
4 Program is a department of the Eighth Judicial District Court and that Judge Becker is an
5 employee of the Court, and that Petitioner's motion finally states that the motion is not a
6 peremptory challenge under SCR 48.1, presumably because the time for filing such a
7 challenge has long passed;

8 THE COURT FURTHER FINDS that the sole basis for Petitioner's motion is the idea
9 that the Eighth Judicial District Court is a judicial subdivision of the respondent State of
10 Nevada and on this basis the entire case should somehow be transferred to another judicial
11 district;

12 THE COURT FURTHER FINDS that Petitioner's argument for disqualification is
13 unpersuasive as it confuses grounds for disqualification of a member of the judiciary with
14 jurisdiction, as Petitioner's motion is more akin to a motion for change of venue. There is no
15 basis to transfer the case to another judicial district since Chief Judge Barker recognized that
16 to avoid the appearance of impropriety none of the district court judges in the Eighth Judicial
17 Court should preside over the action, and as there is no basis for assigning the case to
18 another Senior Judge;

19 THE COURT FURTHER FINDS that there is no basis to disqualify Senior Judge Nancy
20 Becker from hearing this matter, as Judge Becker served as a district judge from 1989 to
21 1998, which was over ten years before the disciplinary issue in question and Petitioner makes
22 no allegation that Judge Becker was ever involved with or has knowledge of any disciplinary
23 actions taken against Petitioner, and in fact she does not have such knowledge. Senior
24 Judge Becker has had no other interaction with Petitioner outside of when Petitioner worked
25 for Judge Donald Mosely when Senior Judge Becker appeared before Judge Donald Mosely
26 as a practicing attorney.

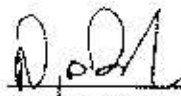
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1 The Court having made the foregoing findings and good cause appearing:

2 IT IS HEREBY ORDERED that Petitioner's Renewed Motion to Disqualify the Eighth
3 Judicial District Court is DENIED.

4 DATED this 29 day of September, 2015.

5
6 
7 Senior District Court Judge

8
9
10
11 SUBMITTED BY:
12 ADAM PAUL LAXALT
13 Attorney General
14 
15 FREDERICK J. PERDOMO
16 Senior Deputy Attorney General
17 Nevada Bar No. 10714
18 Bureau of Litigation
19 Public Safety Division
20 100-N. Carson Street
21 Carson City, Nevada 89701-4717
22 Tel: (775) 684-1250
23 Attorneys for Defendants

24 APPROVED AS TO FORM AND CONTENT BY:

25
26 
27 Kirk T. Kennedy, Esq.
28 815 S. Casino Center Blvd
Las Vegas, NV 89101
T (702) 385-5534

warranted. However, the "totality" of the Grievant's conduct on January 8, 2013, including his spiteful comments about Lt. Moody, more than supports that his intent was to cause disruption at the workplace versus exposing "rampant corruption." See *Johnson*. Clark County has a "legitimate" interest in protecting the public's safety at the Regional Justice Center. Baseless distractions that unnecessarily shift the Administrative Marshals' attentions away from the security screening cannot be tolerated. The Courts are not required to wait for a significant "harm" to occur before taking appropriate action. On balance, the information the Grievant shared with his co-worker regarding Lt. Moody does not outweigh the legitimate, safety interests of the Courts. Marshal Ellis was clearly distracted by the Grievant's actions at the gate based on the fact he reported it and gave a statement.³

Second, the letter from former Assistant Court Administrator Matthew E. Zoccole, dated January 29, 2014, and also submitted at the Step 2 meeting, does not bolster the Grievant's position. The letter itself is hearsay. Even if Mr. Zoccole were to testify in person, his statements would still be hearsay. If the contents of this letter are admissible under a hearsay exception (even though Security Director Bennett generally denied their substance at the Step 2 meeting), this does more harm than good to the Grievant's case. The letter demonstrates the lack of respect the Grievant had for his superiors. He engaged in a "disagreement" with Security Director Bennett, which escalated to the point where another Marshal had to intervene. For the Marshal Corps, charged with the security of a public building, "chain of command" is everything. Based on the Grievant's conduct, neither Security Director Bennett, nor the Grievant's other supervisors, could be certain Grievant Knickmeyer would follow orders due to his negative attitude about them as well as his job. To place the Grievant back

³ This analysis is not intended to revive Allegation No. 7, which was found to be unsubstantiated at the Step 1 meeting. Rather, the purpose is to point out that distractions did in fact occur at the North Gate Security entrance on January 8, 2013.

into his former position, under these circumstances, would be unreasonable. I also have no confidence that in returning Grievant Knickmeyer to his position of an Administrative Marshal he would willingly and without complaint follow his superiors' instructions.

Third, while it is recognized that the Grievant devoted 20 years of service to the Clark County Courts, most of it without blemish, the length of service does not play a role in the discipline imposed under DCMD 12.00.05. It is the "totality" of the Grievant's conduct on January 8, 2013, that is relevant in supporting termination. *Carney v. State of Nevada*, Docket No. 53404 (February 5, 2013) (unpublished decision), another case presented by CCDMD counsel that requires progressive discipline to be imposed, can be distinguished. *Carney* involved an isolated episode of inappropriate conduct by an off-duty officer with an otherwise unblemished record. Here, the conduct occurred in the workplace while the Grievant was on duty and when he should have been focused on protecting the public. Further, Grievant's misconduct on January 8, 2013, was not an isolated episode. For example, he had been formally disciplined in May 2013 for conduct that occurred in September 2012—giving the appearance of sleeping while court was in session. There are also other instances of misconduct referenced in the Step 1 decision. Thus, unlike *Carney*, this is not one instance of misconduct worthy of progressive discipline before termination.

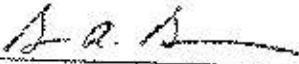
Fourth, and finally, the District Court cannot tolerate Grievant's Knickmeyer's conduct toward a member of the State Bar of Nevada. The incident, which took place in the screening area at the North Gate Security entrance to the Regional Justice Center on January 8, 2013, was retaliatory in nature and specifically directed at the lawyer because she made a prior complaint against the Grievant. The detention of the lawyer at the screening area under the pretext of re-examining her briefcase, even for

the relatively brief additional amount of time, was intended to embarrass and harass the lawyer in front of the general public. The lawyer was forced to wait in the screening area and endure a meaningless search of her personal effects in full display of those waiting in line behind her. The conduct of the Grievant was not intended to double check a purse that may have contained contraband, but instead was an act of retaliation. During her interview, the attorney reported feeling harassed by the Grievant. She stated that the Grievant had a "serious vendetta" against her because she had previously filed a complaint against him. The complaint at issue was related to events that occurred in September 2012, months before January 2013. This supports the inability of the Grievant to let go of his negative feelings and do his job in a professional manner. In his statement, Marshal Ellis indicated that the Grievant leaned over, and referring to the detained lawyer as she walked away, told him, "That's the bitch that complained on me."

The distasteful nature of the Grievant's conduct is supported not only by the testimony of the lawyer herself, but also the Grievant's co-worker, Marshall Ellis. He found the incident so distasteful and inappropriate as to warrant reporting the allegations of misconduct to his superiors.

It is unknown whether the detention may have been detrimental to the lawyer's client, as well. Even if it were not in this instance, the concern is the potential impact that such retaliatory detention might have on any person's composure just before having to step into the pressure cooker of the courtroom. It is important that an attorney represent her client to the best of her ability. A Marshal's duty is first and foremost to efficiently and respectfully serve all those who pass through the portal of the courthouse without harassment. When this does not happen because of a Marshal's personal agenda, then termination pursuant to DCMD 12.00.05 is warranted. This is because no amount of

progressive discipline will modify this type of behavior. This incident occurred because of the Grievant's clear desire to publically embarrass a former court employee, who had only done her duty in reporting the Grievant. Grievant Knickmeyer's conduct of demanding an unnecessary search of the lawyer's personal belongings was uncalled for—and the entire event caused the lawyer to feel "scared" of the Grievant. I believe the foregoing demonstrates sufficient harm under *Johnson* to support termination, especially in light of the Grievant's other conduct. If there had been no history between the lawyer and the Grievant, and the Grievant had ordered a search that turned out to be unnecessary, lesser discipline may have been warranted. But these are not the circumstances here. This one event of retaliatory conduct combined with the Grievant's other conduct on January 8, 2013—distracting a co-worker by showing him his cell phone with a civil complaint on it; commenting about Lt. Moody in an unprofessional manner; bringing up Lt. Moody's past in order to undermine his supervisor, making derogatory comments about his job and his superiors—supports termination based on the "totality of the incident" provision of DCMD 12.00.05. Further, taking into account his other inappropriate conduct set forth in Special Hearing Master De La Garza's decision, Grievant Knickmeyer's termination was appropriate and should stand.



Bonnie A. Bulla
Designee for the Eighth Judicial District Court
Step 2 Meeting

Dated: 2-20-14_____

EXHIBIT 6

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AN
ARBITRATION
BETWEEN

EIGHTH JUDICIAL DISTRICT COURT
(The Court)

and

THOMAS KNICKMEYER
(The Grievant)

TERMINATION OF EMPLOYMENT

BEFORE
HARRY N. MACLEAN
INDEPENDENT ARBITRATOR

APPEARANCES

For the Eighth Judicial District Court: David B. Dornak, Esq., Fisher & Phillips
For Thomas Knickmeyer: Kirk T. Kennedy, Esq.

I. INTRODUCTION

This matter was heard in Las Vegas, Nevada, on September 11, 2014. Both parties were given the opportunity to present oral and documentary evidence, and all witnesses testified under oath as administered by the Arbitrator. A transcript of the proceedings was made. Briefs were submitted on November 3, 2014.

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There was no objection to the arbitrability of the grievance. The parties stipulated to the following issue: Did the Court have just cause to terminate Grievant? If not, what is the appropriate remedy?

II. FACTS

Grievant was employed as a deputy marshal with the Court on July 25, 1995. He worked as a Judicial Marshal in the courtroom of Judge Mosley until March 5, 2012, when he began work as an administrative judicial marshal. In the former position, he served in a courtroom and at the pleasure of the judge. In the latter position, he worked mainly at the north gate entrance to the courthouse, although he occasionally worked in courtrooms.

Grievant was terminated on November 14, 2013, for misconduct on January 7 and 8, 2013. He was represented in the initial steps by an attorney for the Clark County Deputy Marshals Association, but retained Mr. Kennedy as private counsel for the arbitration. Prior to his termination, Internal Affairs Investigator Thomas Newsome conducted an investigation into the allegations regarding Grievant's conduct on January 7 and 8. He interviewed Grievant, Deputy Marshal David Ellis (Ellis), who had reported Grievant's behavior to his superiors, and Amanda Litt (Litt), whom Grievant had allegedly harassed as she passed through security on entering the courthouse on January 8.

In his investigative report, Newsome sustained the following allegations regarding Grievant's conduct on January 7 and 8:

1. Knickmeyer said, "fuck this place" while on duty and in uniform.
2. Knickmeyer, while on duty and in uniform, told Ellis that Director Bennett "was going to be fired."
3. Knickmeyer referred to Lieutenant Moody as a "motherfucker" and told Ellis that he was going to throw Moody under the bus" and that Lieutenant Moody falsified his Clark County application.
4. Knickmeyer engaged in conduct unbecoming an employee while on duty and in uniform by showing Ellis a copy of a civil lawsuit involving Lieutenant Moody.

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5. Knickmeyer engaged in conduct unbecoming an employee by telling Ellis that he was going to distribute a copy of the lawsuit involving Lieutenant Moody throughout the courthouse.

6. Knickmeyer referred to Amanda Litt as a "bitch" and unnecessarily and inappropriately restanned her purse, which did not contain any suspicious or banned items.

7. Knickmeyer was negligent in his duties when he engaged in inappropriate, unnecessary unprofessional conduct that distracted and prevented him and co-worker from performing their official duties.

After the report was submitted, Grievant had a pre-termination hearing on November 7, which is conducted before a hearing officer and at which both parties can present their side of the case. The hearing officer sustained the first six of the seven allegations and concluded that the findings warranted termination. On November 14 the Court adopted the findings of the hearing officer and terminated Grievant the same day. Grievant appealed the termination, and a Step 2 post-termination hearing was conducted on February 5, 2014, by a second hearing officer. The termination was upheld, with the hearing officer finding that termination was appropriate even in the absence of progressive discipline based on the "totality of the incident."

The termination was based on Grievant's conduct on January 7 and 8, 2013, when Grievant was working the number three scanner at the north gate of the courthouse. With one exception, the allegations of misconduct were based solely on the statements of Ellis, who was working the scanner with Grievant on both days. Ellis submitted a written statement to his supervisor, was interviewed on the record by Newsome, and testified at the arbitration.

Ellis testified that on January 7 he was on the observation or conveyer position at the scanner, which involved observing people coming through the magnetometer, advising them on what needed to be put on the conveyer, wandling some of them, and checking the scanned items when asked to by the marshal on the monitor. Grievant was working the monitor, which involved watching a screen showing the items passing through the scanner on the conveyer belt. Ellis testified

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that early in the shift, which began at 7:30 a.m., Grievant complained that he was subject to an internal affairs investigation regarding an incident that occurred earlier regarding a female attorney on the 12th floor. At one point, Grievant said, "fuck this place." He also said that both he and Security Director Bennett were going to be fired because of the investigation.

The next day, January 8, Ellis was again working at the conveyer position and Grievant was working at the monitor. Ellis testified that not long after the shift started, Grievant showed Ellis on his phone what he described as a lawsuit filed in California against Lieutenant Moody, their immediate supervisor. Grievant told Ellis that Moody had lied on his employment application with the Court and that he (Grievant) was going to show the lawsuit to everyone in the building. Grievant then said that he couldn't "stand the motherfucker," referring to Lieutenant Moody and that he was going "to throw him under the bus."

Shortly thereafter, a female attorney, later identified as Amanda Litt, came through the line. She put her bag through the scanner. According to Ellis, Grievant then told him to check the bag, which he did. He handed it to Grievant to run through the scanner again. Ellis testified that Grievant put the bag through the scanner a second and third time. On the second time, Ellis, curious as to why Grievant kept checking the bag, looked at the bag on the monitor as it went through the scanner. He told Grievant that he didn't see anything suspicious, but Grievant ran it through a third time. Ellis testified that he thought the third scan was totally unnecessary. He looked at the woman and could tell she was upset. Ellis felt like she was being harassed for some reason. He apologized to her. After that, the female attorney picked up her bag and walked away. Grievant then said to Ellis: "That's the bitch who complained on me." At that point, Ellis put "two and two together," as to why Grievant kept running the bag through the scanner. Grievant told Ellis that he should watch his back, referring to Lieutenant Moody, who was sitting nearby.

Ellis reported the incidents of Grievant's behavior to Lieutenant Moody that day and prepared a written statement the following day. Ellis testified that he held no personal animosity toward Grievant and hadn't at the time of the incidents. He

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worked with him steadily throughout 2012 and developed a good working relationship with him. Although they shared conversations about what was going on in their lives, Ellis would not call Grievant a friend.

On cross-examination, Ellis testified that in the two law enforcement jobs he previously held it was common for the officer to complain about their work conditions and supervisors. He also testified that Grievant's comments on both the 7th and the 8th were not said loud enough to be overheard by members of the public or other marshals.

Investigator Newsome, in addition to identifying and confirming the transcribed statements of Grievant, Ellis and Litt, identified documents concerning prior disciplinary action against Grievant. On July 17, 1997, Grievant was suspended for three days for an EEO related offense. On July 14, 2003, Grievant was suspended for 20 days, also for an EEO related offense. On May 17, 2013, Grievant was given a written reprimand for sleeping or sitting with his eyes closed while court was in session. Litt was listed as one of the witnesses to this event. Newsome also testified that Grievant was undergoing an internal investigation for another incident involving Litt. In his report, Newsome did not make a recommendation on discipline.

Edward May, Manager, Human Resources and Internal Affairs Bureau, testified that he assigned Newsome to investigate the allegations regarding Grievant. After the investigation and the two hearings, May recommended to the executive director that Grievant be terminated. He was primarily concerned that Grievant's behavior on January 7 and 8 undermined security and constituted harassment of Litt. This egregious behavior violated the Court's standards of professional conduct and several provisions in the Code of Conduct. He felt that the severity of the misconduct and the totality of the incident warranted termination. May was also concerned that Grievant said in the pre-termination hearing regarding a previous discipline that he "had taken one for the team," because this indicated he had not accepted responsibility for his actions. The decision to terminate Grievant was a collective decision, agreed upon by himself, the security director and the

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court executive officer. May testified that he was aware that Grievant had filed a complaint of discrimination with the Nevada Equal Right Commission.

Amanda Litt testified that she worked as a law clerk for the Court in 2011 until late 2012, at which time she went into private practice. She testified that on January 8, 2013, she put her purse through the scanner as usual. Grievant was working the monitor, and he scanned the purse four or five times. The other officer took every item out of the purse and examined it as well. The purse only contained her makeup, phone and keys. The line at the scanner was very busy with other lawyers and friends of hers. Litt testified that she felt like she was being harassed, partially because of her past history with Grievant. She believed that Grievant had a vendetta against her because of three previous incidents. In the first incident, Grievant cornered her in the courtroom and raised his voice and made several unfortunate comments. The second incident involved him sleeping in the courtroom, for which he was reprimanded. In the third incident, Grievant spoke to her boss at her law firm and said she shouldn't work for them. Her superiors at the law firm questioned her about Grievant's comments.

Litt testified that the reason she didn't file a complaint against Grievant over the scanning incident was because she was scared of him. Since that time she has avoided using the north gate, where Grievant worked.

In his testimony, Grievant stated that he was working the north gate when Ellis came on as a probationary employee in 2012. They talked about their past jobs and what they did over the weekends and kidded each other. However they did not socialize outside of work. Regarding the allegations of misconduct, Grievant testified that on January 7 he came to the scanner after "an ass-chewing" and said in front of Ellis something like, "What the fuck is going on with this place?" He admitted that on the 8th he showed Ellis a lawsuit on his cellphone involving Lieutenant Moody. He told Ellis that the man who was "leading the day-to-day operations of a law enforcement agency had a civil judgment that he violated someone's rights." As for the allegation that he called Moody a "motherfucker," Grievant testified that he doubted that he called him a "motherfucker" but that he

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may have called him a "fucking asshole." There was no one else in the vicinity who could have overheard the remarks.

Regarding the incident with Amanda Litt, Grievant testified that after Litt passed through the magnometer and was standing by the conveyer he noticed what appeared to be something sharp in her purse on the monitor. He didn't know it was Litt until he looked up at that point. He told Ellis to give him the purse back, which he did, and then Grievant ran the purse through the scanner again. He didn't see anything, but he told Ellis to check the purse. Ellis checked the contents of the purse and said there was nothing suspicious in it. Grievant then said to Litt, "Have a nice day." He didn't check the purse more than twice. After Litt had walked away, Grievant said to Ellis: "That's one classic example of what you've got to watch out for. A girl can say anything and she can put your butt in the frying pan, and that's living proof right there." He did not use the word "bitch."

Grievant also testified that he has an ongoing lawsuit in federal court against the District Court alleging discrimination. On cross-examination, Grievant testified that the "ass-chewing" he referred to was Lieutenant Moody writing him up for slapping someone in the interview room, when he had in fact only tapped him. He denied saying that the executive director was going to get fired or that he was going to throw Moody under the bus. He also denied telling Ellis that he was going to distribute the lawsuit against Moody around the courthouse. Grievant also testified that the basis for the internal affairs complaint filed against him by Litt was a conversation they had regarding an attorney in the law firm she went to work for. He believes that he lost his job because there was a vendetta in the Court against him.

III. RELEVANT CONTRACTUAL AND MANUAL PROVISIONS

The relevant provisions in the collective bargaining agreement between the Court and the Union are as follows:

Article 13 Sec. 1 – Discipline

3. The Arbitrator shall conduct a grievance proceeding adhering to the mutually developed guideline governing the process. The

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arbitrator will consider the incident and the discipline in terms of the severity of the action, evidence of progressive discipline and appropriateness of the disciplinary action. Progressive discipline includes a documented oral warning, an admonishment, one (1) or more written reprimand(s), a final written warning and, thereafter, termination. The CCDMA recognizes the need for more severe initial disciplinary action in the event of major violation of established rule regulations or policies of the Courts. The decision to uphold the disciplinary action will be based on the reasonableness of the discipline imposed by the supervisor in response to the actions taken or not taken by the marshal.

5. No deputy marshal who has satisfactorily completed probation may be demoted or terminated without just cause. Just cause may include, but not be limited to . . . violation of established department work rules or procedures.

The relevant provisions of the Clark County Marshal's Division Policy and Procedure Manual are as follows:

12.00.00 Code of Conduct

12.01.00 Standards of conduct

The following shall be grounds for disciplinary action, including discharge. The following shall also constitute cause as referred to below.

" . . . Cause is defined as some good reason for disciplinary action. Cause shall include, but not be limited to, any of the following:

6. Conduct unbecoming an employee.

12.02.00 Prohibitive Conduct

While on Duty Clark County Courts Marshal's Division members will act in a professional manner at all times while on duty. The Supervising Marshal will ensure that members are putting forth a positive and professional image of the Division at all time while assisting the public.

12.00.01 in the Code of Conduct Discipline and Prior Offenses

The Court and Division are committed to utilizing disciplinary actions as a means to change and correct behavior. The Court and Division will normally apply discipline progressively, however, based on the violation and/or the totality of the incident, there will be times when non-progressive discipline, up to termination, may be warranted and implemented.



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IV. ANALYSIS AND CONCLUSION

The issue before the Arbitrator is whether or not the Court had just cause to terminate Grievant. In establishing just cause for discipline, the Court must prove two elements by a preponderance of the evidence: (1) That the employee committed the misconduct which formed the basis for the discipline, and (2) That the discipline was appropriate to the misconduct.

In this case, the Arbitrator finds that the following six allegations forming the basis for the discipline were established by a preponderance of the evidence: (1) That Grievant said "fuck this place" while on duty and in uniform, (2) That Grievant while on duty and in uniform told Ellis that Director Bennett was going to be fired, (3) That Grievant referred to Moody as a "motherfucker" and told Ellis that he was going to "throw Moody under the bus," (4) That Grievant showed Ellis a copy of a lawsuit on his phone and told him he was going to distribute a copy of the lawsuit around the courthouse, (5) That Grievant unnecessarily scanned Litt's purse three times, and that (6) Grievant commented to Ellis after Litt left the scanning station that, "That was the bitch who complained on me."

In making these findings, the Arbitrator has had to make credibility determinations. Grievant's testimony was contrary on many counts to that of both Ellis and Litt. For several reasons, the Arbitrator finds the testimony of both Ellis and Litt to be more credible.

First, the Arbitrator notes that there was no apparent reason for Ellis to make up statements about Grievant's conduct on January 7 and 8. There was no evidence of any animosity or past history of difficulty between the two men. Both men testified that they got along well and talked about various personal matters at work. Grievant considered Ellis a friend and was surprised when he learned that Ellis was the source of the allegations against him. The evidence showed two men had worked together for almost a year without any conflict or disagreement.

Grievant disagreed with several of Ellis' allegations—that he called Lieutenant Moody a motherfucker, for example, or that he scanned Litt's bag more than twice—and Grievant had an obvious reason to be less than truthful: to save his job. While the Arbitrator does not subscribe to the theory that a grievant's credibility is always in question because of this bias,

he does believe that it is an appropriate consideration when weighing his credibility against another witness who had no discernible reasons to concoct or confabulate his testimony.

Additionally, the Arbitrator found Ellis to be an extremely credible witness. His testimony was straightforward and convincing. He answered the questions that were asked and nothing more. He did not contradict himself on the stand, and his testimony at the hearing was consistent with his transcribed interview and his written statement given on January 9th. Additionally, his testimony is corroborated by other facts, such as his statement that Grievant told him on the 8th that he was subject to an internal investigation based on the complaint of a female attorney, a fact which Ellis would not have known had not Grievant told him. His testimony is also corroborated by Litt, whose testimony regarding the scanning and rescanning was remarkably similar to his. Ellis testified that he felt like she was being harassed by Grievant, and Litt also testified that she felt like she was being harassed by Grievant.

Litt was also a credible witness. She testified that she did not file a complaint against Grievant over the incident on the 8th because she was scared of him. This fact was corroborated by her attitude and affect on the witness stand. She felt like Grievant was on a vendetta against her because of the three previous incidents, two of which (the sleeping incident and the internal affairs investigation) were substantiated. She didn't want to file a complaint because of the additional "chaos" it would cause, not because she didn't feel harassed by the incident.

On the other hand, Grievant's testimony was inconsistent, contradictory and sometimes vague. In his interview with Newsome, Grievant could not recall whether he called Newsome a "motherfucker." At the hearing, he thought he probably called him "a fucking asshole." On cross-examination, Grievant figured that he must have used "profanity." In his investigatory interview, Grievant could not recall whether he threatened to throw Lieutenant Moody "under the bus," but at the hearing he testified that he told Ellis that Lieutenant Moody was throwing him "under the bus." During the hearing, Grievant first testified that another deputy marshal had emailed him the lawsuit against Moody, but later on he testified that he found it on the Internet himself after being advised of it by the marshal.

The Arbitrator understands that several months went by before Grievant realized that the events of January 7 and 8 were the basis of the allegations of misconduct against him, but

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this would seem to justify an uncertainty of recollection rather than contradictory statements. In a general sense, Grievant's demeanor on the stand was not convincing; he seemed to be concerned about convincing the Arbitrator of the wrongs that had been done him as to testifying to events to the best of his recollection.

Finally, if the Arbitrator were to conclude that Grievant did not unnecessarily scan Litt's purse at least three times without any reason he would have to find that both Ellis and Litt were either mistaken or lying. They were both firm and consistent in their testimony on the facts. Their versions of events corroborated each other. The more probable conclusion is that Grievant was either mistaken or less than truthful about his behavior in re-scanning Litt's bag.

Given the factual findings of misconduct, the Arbitrator must address the second element of just cause: Was the discipline administered appropriate to the misconduct. Did the misconduct on January 7 and 8 warrant termination? A central principle underlying just or good cause is the notion of "progressive discipline." Discipline must be corrective rather than punitive, which means that in most instances there should be steps of increasing severity which puts the employee on notice and provides the employee the opportunity to improve his or her performance. Arbitrator Platt wrote:

It is not socially desirable that disciplinary penalties for industrial offenses be regarded strictly as punishment for wrongdoing. Rather, the object of the penalty should be to make employees recognize their responsibilities so that they might become better workers in the future. The Arbitration Process in the Settlement of Labor Disputes, 32 Am. Judicature Soc'y 58 (1947).

Arbitrator McCoy, in defining the term progressive discipline, stated:

The Company imposes a mild penalty for a first offense, a somewhat more severe penalty for a second, etc., before abandoning efforts at correction and resorting to discharge. . . The theory is that this is in the interest of both management and employees. International Harvester Co., 12 LA 1190 (1949).

However, it is also generally recognized that there are certain types of cases where progressive discipline does not apply. There are the less serious infractions,

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which do not call for discharge on the first offense, and there are extremely serious offenses "such as stealing, striking a foreman, persistent refusal to obey a legitimate order, which usually justify summary discharge without the necessity of prior warnings or attempts at corrective discipline." Elkouri and Elkouri, How Arbitration Works, (BNA, 5th ed.) p. 916. The existence of progressive discipline does not mean that management has given up the right to discharge summarily for serious offenses. Inland Steel Prods., 47 LA 966 (Gilden, 1966).

The Court recognizes the principle of progressive discipline in its Code of conduct, when it states that:

The Court and Division will normally apply discipline progressively, however, based on the violation and/or the totality of the incident, there will be times when non-progressive discipline, up to termination, may be warranted and implemented.

Similarly, the parties in Article 1, Section 3 of their collective bargaining agreement adopt the principle of progressive discipline by outlining a written warning, an admonishment, one or more written reprimand(s), a final written warning and, thereafter, termination" as the usual progression of discipline. However, similar to the Code of Conduct, the provision recognizes that there might be "major violations" which would warrant more "severe initial discipline."

In applying these principles to the case at hand, it is important to keep in mind that the workplace is a courthouse and that Grievant was an armed, uniformed peace officer charged with the safety of the general public and court employees. Accordingly, he must be held to a higher standard of professionalism than employees in ordinary work places, such as factory or a warehouse. The safety and security of fellow citizens may well depend on how conscientiously and professionally the marshals performs their duties.

The Arbitrator finds that the Grievant's conduct on January 7 would have warranted progressive discipline. Saying, "fuck this place" and stating that the director was going to get fired is certainly inappropriate behavior for a uniformed officer on duty, but it the type that would normally be subject to corrective discipline. His comments the next day, in which he referred to Lieutenant Moody as a "motherfucker," and saying that he was going to "throw him under the bus," and

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referencing an internal affairs investigation based on a complaint by a female attorney, while of serious concern, would also seem to warrant a written reprimand on the first offense.

Where Grievant's conduct clearly crosses the line is when he shows Ellis a copy of the lawsuit against Lieutenant Moody, states that Moody falsified his application and that he was going to circulate the lawsuit throughout the courthouse. This behavior constitutes the undermining of supervisory authority, a serious offense in any work place but totally unacceptable when done by peace officers charged with the safety and security of a government building. The armed marshals must be prepared to respond to a threat as a cohesive and effective team, and this means that there must be a functioning and respected chain of command. Any effort to undermine this command structure can only be seen as serious misconduct warranting severe discipline.

The most serious offense, however, comes from Grievant's behavior on the monitor on January 8. Both Ellis and Litt testified that they considered the unnecessary scanning of Litt's purse to be harassment. Ellis was confused as to why Grievant kept rescanning the purse, until Grievant said to him, after Litt had left, "That was the bitch who complained on me." Ellis connected that with the statement Ellis made the previous day about the internal affairs investigation and a female attorney on the 12th floor. His conclusion that Grievant's behavior in the unnecessary rescanning of the purse was in fact retaliation for Litt having filed the complaint against him was reasonable. Litt's conclusion that the rescanning was part of Grievant's vendetta against her was also reasonable. All of the evidence, as summarized above, when coupled with the findings regarding the credibility of the witnesses, can only lead to the conclusion that Grievant's conduct in unnecessarily rescanning Litt's purse was retaliatory and constituted harassment.

The hearing officer in the second hearing found that Grievant's behavior in this regard constituted harassment and would alone, without consideration of previous discipline, justify termination. The Arbitrator agrees. Grievant's willingness to misuse his position as a peace officer to get even with or retaliate against Litt for filing a complaint against him distracted him from his duties and could easily have jeopardized the safety and security of the building and the people in it. This misconduct is sufficiently egregious, in the Arbitrator's view, to warrant termination in and of itself.

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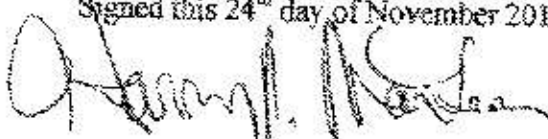
The Arbitrator would agree with the Grievant that the 1997 and 2003 suspensions are too remote in time to constitute earlier incidents of progressive discipline. Grievant's arguments over the lack of due process in the administration of these suspensions are also well taken. However, the written reprimand for sleeping was recent enough to be considered as previous discipline and this discipline was subject to the provisions of the collective bargaining agreement and Court manuals. Be that as it may, the Arbitrator's finding that Grievant's retaliatory conduct toward Litt is sufficient on the first offense to warrant discharge makes this discussion somewhat moot.

For the above reasons, the Arbitrator finds that the Court had must cause to terminate Grievant and that the grievance should be denied.

V. AWARD

The grievance is denied.

Signed this 24th day of November 2014.



Harry N. MacLean

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EXHIBIT 7

ARTICLE 13
GRIEVANCE AND DISCIPLINARY PROCEDURES

Introduction

1. The Courts recognize and agree that all deputy marshals will be afforded their rights as provided for in NRS Chapter 289. For those issues and concerns that are not resolved through open communications, this Article is designed to allow deputy marshals to voice job-related complaints, to have them considered fairly by the Courts, and to have them resolved at the lowest level possible. Any deputy marshal who has a grievance shall complete the Grievance Form and submit it to their immediate supervisor, or other management representative. Each party involved in a grievance must act quickly so that the grievance can be resolved promptly. Every effort must be made to complete the action within the time limits specified in the grievance procedures. The parties may extend the time limitations for any step through mutual written consent.
2. A grievance is defined as a filed dispute between the CCDMA, on behalf of a Deputy Marshal or deputy marshals and the Courts over the interpretation and/or application of the express terms of this Agreement or a dispute over the issuance of discipline as defined herein. Performance evaluations and denial of step increases are not subject to these grievance procedures. A grievance shall not be defined to include any matter or action taken by the Courts, the County, or their representatives for which the Nevada Equal Rights Commission (hereafter "NERC"), Office of Diversity (hereafter "OOD") or the Equal Employment Opportunity Commission (hereafter "EEOC") has jurisdiction or any matter specifically excluded from grievance and arbitration by other provisions of this Agreement. Disputes specifically excluded in other Articles of this Agreement from the dispute resolution procedures shall not be construed as within the purview of this Article.
3. If mutually agreed, either party may request, in writing, a waiver of the time limitations set forth in this Article. A grievance shall be considered abandoned if not filed and processed by the CCDMA on behalf of the deputy marshal, where indicated in accordance with the time limitations. Failure on the part of the Courts to respond to a grievance in accordance with the time limits set forth in this Agreement shall result in the grievance advancing to the next step of the procedure. The failure on the part of management to process a grievance will be given serious weight in the resolution or retroactivity of an award. A waiver of timeliness requested by the CCDMA will be taken into consideration in the determination of any retroactive award.
4. No prejudicial, discriminatory or retaliatory action may be taken, at any time, by the CCDMA or the Courts against any person for his/her participation in or statements made in the investigation or settlement of a grievance.
5. For the purpose of resolving grievances at the earliest possible point in time, both parties will make full disclosure of the facts and evidence which bear on the grievance, including but not limited to furnishing copies of evidence, documents, reports, written statements and witnesses relied upon to support their basis of action. Both parties agree to share such facts and evidence at least one (1)

working day prior to Step 1 or Step 2 meetings and at least three (3) working days prior to a Step 3 Hearing. An arbitrator will not consider any evidence from a party who willfully failed to produce such evidence in support of his/her position.

Section 1 - Discipline

1. Discipline is defined as a deputy marshal's written reprimand, final written warning, demotion or involuntary termination from service with the Courts. Any matters for which the NERC, EEOC or (OOD) of the Clark County Manager's Office has jurisdiction will be handled through a separate procedure identified in this Article, Section-3, NERC, EEOC or OOD Procedure.
2. Arbitrators used for written reprimands, final written warnings, demotions, and involuntary terminations of this Article shall be jointly selected by the parties. The arbitrators must meet the requirements established in the Arbitrator Guidelines. The fees of the arbitrator shall be borne by the losing party.
3. The arbitrator shall conduct a grievance proceeding adhering to the mutually developed guidelines governing the process. The arbitrator will consider the incident and the discipline in terms of severity of the action, evidence of progressive discipline and appropriateness of the disciplinary action. Progressive discipline includes a documented oral warning, an admonishment, one (1) or more written reprimand(s), a final written warning and, thereafter, termination. The CCDMA recognizes the need for more severe initial disciplinary action in the event of major violation of established rules, regulations or policies of the Courts. The decision to uphold the disciplinary action will be based on the reasonableness of the discipline imposed by the supervisor in response to the actions taken or not taken by the marshal.
4. All written reprimands, final written warnings, demotions and involuntary termination appeals of deputy marshals covered by this Agreement shall be handled solely in accordance with the procedure set forth in this Section, with the decision of the arbitrator being final and binding on the parties.
5. No deputy marshal who has satisfactorily completed probation may be demoted or terminated without just cause. Just cause may include, but not be limited to: inefficiency, incompetence, insubordination, moral turpitude, mental or physical disability as shown by competent medical evidence, habitual or excessive tardiness or absenteeism, abuse of sick leave or authorized leaves, withholding services as a result of a strike, and violation of established departmental work rules or procedures.
6. Upon written request of the deputy marshal to the Clark County Human Resources Director, the deputy marshal or his/her CCDMA representative shall have the right to review items in his/her personnel file. The deputy marshal may provide rebuttal comments to be attached to original documents where the deputy marshal believes appropriate. Such rebuttal comments must be restricted to the document in question.
7. Although documented oral warnings and admonishments are not subject to the full disciplinary procedure, a deputy marshal who receives an oral warning or

admonishment may, within five (5) working days of receipt of the oral warning or admonishment, submit a rebuttal in writing, which shall be attached to the warning or admonishment. Such rebuttal comments must be restricted to the specific warning or admonishment in question.

8. Upon written request by the deputy marshal to the Clark County Human Resources Director, the deputy marshal shall have all documented oral warnings removed from his/her personnel file that were issued more than 6 months prior to the request, admonishments removed that were issued more than 12 months prior to the request, written reprimands removed that were issued more than eighteen (18) months prior to the request, and final written warnings removed that were issued twenty-four (24) months prior to the request, provided that no ensuing discipline occurred. Upon removal, the documented oral warning or admonishment will be sent to the deputy marshal and shall not be used or referenced in any future disciplinary proceeding, as defined herein. In the event a deputy marshal fails to make the written request as referenced above, the expired discipline(s) will not be used in any future proceedings.
9. Upon written request or authorization by a deputy marshal involved in a disciplinary hearing, the deputy marshal or his/her CCDMA representative may obtain data that is necessary from the personnel file of the deputy marshal subject to the discipline in preparation of a grievance meeting.
10. An eligible deputy marshal who is to be issued a written reprimand or final written warning shall be given the discipline, in writing, at a meeting with management. The deputy marshal may request a CCDMA representative to be present at the meeting. A deputy marshal shall be given at least 24 hours notice of the meeting and advised of the purpose, time, date and site of the meeting, except when a deputy marshal's continued presence in the work place is unsafe for co-workers, the public, or resources of Clark County or the Court. Grievances regarding written reprimands or final written warnings shall be initiated at Step 1 of the Disciplinary Procedure within ten (10) working days from the issuance of the discipline.
11. An eligible deputy marshal who is recommended for demotion shall be given a written statement setting forth the reasons upon which the proposed demotion is based. The statement shall include an identification of the specific reasons against the deputy marshal and an explanation of the evidence. Grievances regarding demotions shall be initiated at Step 2 of the disciplinary procedure within five (5) working days of the effective date of the demotion.
12. An eligible deputy marshal who is recommended for termination, unless the deputy marshal is in a leave without pay status or has violated his/her last chance agreement, will be placed on paid administrative leave pending the Step 1 pre-termination meeting and shall receive written notification of such recommendation. The Step 1 meeting shall take place no sooner than three (3) working days from the effective date of the proposed termination but within five (5) working days after receipt of the notification unless extended by the department head or designee in which case the deputy marshal will remain on paid leave status until the Step 1 meeting is held, unless the deputy marshal is in a leave without pay status or has violated his/her last chance agreement. A deputy

marshal who grieves the termination decision of the department head as a result of the Step 1 pre-termination meeting may initiate the grievance at Step 2 within five (5) working days from the date of receipt of the Step 1 decision. In the event a termination is overturned by the arbitrator at the Step 3 hearing, the arbitrator has the ability to mitigate the final outcome to the deputy marshal by imposing a lesser penalty, as defined in the progressive discipline process, including a leave without pay provision.

Section 2 – Arbitration Procedures for Contract Interpretation/Discipline

Grievances relating to the interpretation and application of the express terms of this agreement shall be initiated at step 1 of this procedure and shall be initiated within ten (10) working days of the deputy marshal's knowledge of the contract violation. The grievance shall state the violation and cite the article and section.

Step 1 – Chronology of Actions Within the Courts

1. Whenever a deputy marshal believes that he or she has a grievance as defined above, the deputy marshal must file the grievance in writing and deliver it to his or her supervisor, as soon as possible but not later than ten (10) working days after the deputy marshal knew or should have known of the act or event which is the basis of the grievance.
2. If the grievance is being filed against the deputy marshal's supervisor, the matter must be brought to the attention of the Lieutenant / Court Security Administrator.
3. It is the responsibility of the supervisor or Lieutenant / Court Security Administrator, as applicable, to investigate the grievance, attempt to resolve it, and communicate a written or electronically mailed decision to the deputy marshal within ten (10) working days of the date the complaint is brought to the attention of the supervisor or Lieutenant / Court Security Administrator. Every Court employee and all deputy marshals are required to participate in the investigation process, as directed. This includes truthfully disclosing facts and maintaining confidentiality.
4. If the deputy marshal is not satisfied with the decision of the supervisor or Lieutenant / Court Security Administrator, the deputy marshal may appeal that decision to the Chief Judge of the applicable court or the Chief Judge's designee. The appeal must be filed within 10 working days of the decision of the supervisor or Lieutenant / Court Security Administrator.
5. Within ten (10) working days of receipt of the appeal, the Chief Judge or his/her designee, a Human Resources representative/itason, a CCDMA representative, and the affected deputy marshal will meet to try to resolve the problem. If desired, both parties may choose an additional representative who may attend the meeting. If the problem is not resolved at the meeting, the Chief Judge, or his/her designee, shall have five (5) working days from the date of the meeting to respond, in writing, to the grievance. The response shall be sent by certified mail to the CCDMA Executive Director. Copies of the response shall be sent to the

Human Resources representative/liaison, the CCDMA representative, and the affected deputy marshal.

Step 2 - County Manager Response

If the grievance is not settled at the Step 1 meeting, the CCDMA, on behalf of a deputy marshal or deputy marshals, may, within five (5) working days of the receipt of the department head's decision, file an appeal of the decision with the Clark County Human Resources Director as representative of the County. Within ten (10) working days of receipt of the request for appeal, the County Manager, or his/her designee, will meet with the affected deputy marshal(s), a CCDMA representative, and a Human Resources Representative to try to resolve the problem. If desired, both parties may choose an additional representative who may attend the meeting. If the problem is not resolved at the meeting, the County Manager or designee shall have five (5) working days to respond in writing to the grievance giving his decision. The response shall be sent by certified mail to the CCDMA Executive Director. Copies of the response shall be sent to the affected deputy marshal(s) and department, and the CCDMA representative. One additional steward may attend a meeting as a steward in training.

Step 3 - Arbitration

1. If the Step 2 decision is deemed unacceptable, the CCDMA, on behalf of a deputy marshal, may make a written request for arbitration within five (5) working days of receipt of the Step 2 decision. In such event, the parties shall, within ten (10) days, jointly request an arbitration panel from the American Arbitration Association (AAA). Both parties shall make every effort to mutually set forth the issue(s) to be arbitrated in advance of the arbitration hearing date. The selection shall be accomplished by the CCDMA first and the County next, each striking one (1) name from the list in turn until only one (1) name remains. A permanent panel of arbitrators may be established by the parties and may be utilized on a case-by-case basis provided both parties agree to do so in writing.
2. The arbitrator's decision shall be final and binding on all parties to this Agreement as long as the arbitrator does not exceed his/her authority as set forth below and as long as the arbitrator performs 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).
3. Only one (1) grievance may be decided by the arbitrator at any hearing unless it is shown that the grievance being considered is related to another grievance pending a Step 3 hearing for the same deputy marshal and for a similar infraction. It shall be the arbitrator's sole determination to consolidate the grievances into one hearing. The arbitrator shall within a reasonable period of time prior to the hearing date inform both parties of his/her decision regarding consolidation.
4. The arbitrator shall not have the authority to modify, amend, alter, ignore, add to, or subtract from any of the provisions of this Agreement. The arbitrator is without power to issue an award inconsistent with the governing statutes and/or ordinances of the jurisdiction. The arbitrator, in the absence of expressed written agreement of the parties to this Agreement, shall have no authority to rule on any

dispute between the parties which is not within the definition of a grievance set forth in this Article. The arbitrator shall consider and decide only the particular issues presented by the CCDMA and the County, and the decision and award shall be based solely on his/her interpretation of the application of the express terms of this Agreement. Any and all settlements or awards issued by the arbitrator shall be limited in retroactivity to the date of alleged violation or date of the filing of the grievance as decided by the arbitrator.

5. Subject to the provisions of Paragraph 2 of this Article, the arbitrator shall not have the authority to excuse a failure by the deputy marshal, the CCDMA, or the Court to comply with the time limitations set forth above unless mutually agreed by both parties.
6. If the parties disagree about the arbitrability of a grievance, the arbitrator shall decide this issue prior to hearing the merits of the case.

Section 3 - NERC/EEOC/ODD/ Procedure

Grievances on those matters for which the Nevada Equal Rights Commission, Equal Employment Opportunity Commission or Office of Diversity Division of the Clark County Manager's Office has jurisdiction will be referred to and processed by the OOD investigation staff. The deputy marshal(s) being investigated shall have the right to CCDMA representation commencing at this level and continuing throughout the entire procedure. If discipline results from the investigation, deputy marshals are eligible for Step 1 and Step 2 meetings and Step 3 arbitrations as defined in Section 2 of this Article. However, 1) if the department head chooses not to conduct the Step 1 meeting within the time frames, then the case will be heard at the next level; 2) if the matter proceeds to the arbitration process, then in addition to satisfying the standard requirements and qualifications for an arbitrator, the individual hearing matters covered in this Section must have training or expertise in the application and interpretation of civil rights laws.

Section 4—Settlement

At any time, the grievant and the Court may settle a grievance on such terms as are mutually agreeable. Settlement shall terminate the grievance process. The Court and the grievant or the grievant's representative may at any time agree to submit the matter to mediation in an attempt to settle the grievance.

ARTICLE 14

HIRING, RECRUITMENT, AND COURTROOM ASSIGNMENTS

A. Recruitment Policies

The paramount consideration in the recruitment of applicants is to attract qualified candidates with the competence and integrity to be employed by the Eighth Judicial District Court. The recruitment program shall comply with all equal employment opportunity laws and regulations.

EXHIBIT 8

In Re:

*Eighth Judicial District Court vs.
Thomas Knickmeyer*

**CERTIFIED
TRANSCRIPT**

*Arbitration Hearing
September 11, 2014*

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**Arbitration Hearing - September 11, 2014
Ninth Judicial District Court vs. Thomas Knickmeyer**

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1	IN ARBITRATION PROCEEDINGS BEFORE
2	JERRY MADSON
3	In the Matter of the
4	Arbitration between
5	NINTH JUDICIAL DISTRICT
6	COURT,
7	Employer,
8	and
9	THOMAS KNICKMEYER,
10	Employee.
11	
12	
13	REPORTER'S TRANSCRIPT OF PROCEEDINGS
14	Taken on Thursday, September 11, 2014
15	at 9:05 a.m.
16	At Regional Justice Center
17	Division Court Administration
18	Second Floor Conference Room
19	200 Lewis Avenue
20	Las Vegas, Nevada 89155
21	
22	
23	
24	
25	REPORTED BY: JUAN RAMIREZ, SR., CDR NO. 759, CDR 12715

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1	THOMAS
2	WITNESS:
3	DAVID ELLIS
4	Direct Examination by Mr. Donnak
5	Cross-Examination by Mr. Kennedy
6	Re-direct Examination by Mr. Donnak
7	Re-cross Examination by Mr. Kennedy
8	THOMAS MICHAEL NEWSOME
9	Direct Examination by Mr. Donnak
10	Cross-Examination by Mr. Kennedy
11	Re-direct Examination by Mr. Donnak
12	Re-cross Examination by Mr. Kennedy
13	EDWARD MAY
14	Direct Examination by Mr. Donnak
15	Cross-Examination by Mr. Kennedy
16	Re-direct Examination by Mr. Donnak
17	Re-cross Examination by Mr. Kennedy
18	AMANDA LYNN:
19	Direct Examination by Mr. Donnak
20	Cross-Examination by Mr. Kennedy
21	Re-direct Examination by Mr. Donnak
22	Re-cross Examination by Mr. Kennedy
23	THOMAS KNICKMEYER
24	Direct Examination by Mr. Kennedy
25	Cross-Examination by Mr. Donnak

Page 2	
1	APPEARANCES:
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7	hmadson@jdc.com
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17	KENNEDY LAW OFFICES
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21	(702) 385-8534
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23	kkenedy@kennedylaw.com
24	Also Present:
25	Thomas Knickmeyer, Employee
26	Edward W. May, Mediator, Union Representative and
27	Internal Affairs Bureau
28	Andrew Moore, Staff Attorney

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1	JOINT EXHIBITS
2	EXHIBIT
3	DESCRIPTION
4	ADMITTED
5	Joint Exhibit 1 Article 11 Provisions and
6	Memorandum of Understanding
7	between the Ninth Judicial
8	District Court and the Clark
9	County Deputy Marshals
10	Association NARSD/CNA
11	Local 9216/AFM, CIO
12	Joint Exhibit 2 Step 1 Decision 11/13
13	Joint Exhibit 3 Step 2 Decision 2/20/14
14	Joint Exhibit 4 Investigative Report, 3/24/13
15	Joint Exhibit 5 Prior Suspension/Discharge
16	Notice, July 17, 2007 and
17	July 11, 2008
18	Joint Exhibit 6 Exempt Employee Status
19	Evidence
20	Joint Exhibit 7 District Court Marshals
21	Division Code of Conduct
22	Joint Exhibit 8 Employment Performance
23	Evaluation, December 2003
24	Joint Exhibit 9 Counseling Completion
25	Certificates

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1 need to talk. He left another message asking why I
2 wasn't calling him back. Then after that I would just
3 get calls from his number and I wouldn't answer.

4 Q. Did you receive any text messages?

5 A. Yeah. The text message was, "We need to talk."
6 and a voicemail too, both.

7 Q. Did he ever physically show up to work to try to
8 talk to you?

9 A. Yes. One date -- I don't recall the date -- I
10 told Lieutenant Moody. I was working the Scanner
11 Number 2, and he walked up from the information desk in
12 plainclothes and said, "We need to talk." And I just
13 kind of, like, blew him off and kept working, and he
14 walked away.

15 Q. Do you have any personal animosity towards
16 Mr. Knickmeyer?

17 A. No.

18 Q. Would you like Mr. Knickmeyer to return to work?

19 A. No.

20 Q. Why not?

21 MR. KENNEDY: Objection, relevance on that kind
22 of question. I know it's an arbitration, but, I mean,
23 what relevance is that whether the officer wants him to
24 come back or not?

25 THE ARBITRATOR: Well, I think he can answer in

1 for basically the rest of 2012, you worked with him on
2 pretty much a daily basis there at the gate or -- is
3 that how you came to know him is working at the gate?

4 A. Yes.

5 Q. Now, throughout 2012, were your primary duties
6 working at the gate, at the north gate or --

7 A. Well, I worked at the north gate, and then I was
8 transferred down to Justice Court Traffic, and then from
9 there I went up to DC 15.

10 Q. Okay.

11 A. But I still worked the north gate.

12 Q. Like, for example, you maybe worked the gate in
13 the morning and then go off to the courtroom or
14 something like that, wherever you were needed?

15 A. Yes.

16 Q. And typically when you worked the north gate
17 during 2012, would you work at the same time
18 Mr. Knickmeyer would be working?

19 A. Yes.

20 Q. So in other words, he was someone you frequently
21 saw working the north gate as well?

22 A. Yes.

23 Q. And in 2012, seeing him on a regular basis, did
24 you come to develop a work relationship with him? In
25 other words, he's a coworker, you see him all the time.

1 terms of his personal situation.

2 THE WITNESS: The reason why I said no is
3 because after this, I was told that I should be careful
4 because it was reported that he was riding around the
5 Regional Justice Center on his motorcycle looking for
6 me, and he was also --

7 MR. KENNEDY: Hearsay objection. I mean --

8 THE ARBITRATOR: Okay, I'll note the objection.
9 Go ahead and finish.

10 THE WITNESS: That one would be hearsay too
11 because I was also told that he called several marshals
12 intoxicated one night, upset about me and this report.

13 MR. DORNAK: That's all I have.

14 THE ARBITRATOR: Questions?

15 MR. KENNEDY: Thank you.

16 CROSS-EXAMINATION

17 BY MR. KENNEDY:

18 Q. Marshal Ellis, you've testified that you started
19 working the District Courts as an administrative marshal
20 in March of 2012; is that correct?

21 A. Yes.

22 Q. And that's when you first came to know my
23 client, Mr. Knickmeyer, is that right?

24 A. Yes.

25 Q. Was that because you were from that point on,

1 you talk to him, things of that type; is that fair to
2 say?

3 A. Yes.

4 Q. Would you share conversations with him about
5 things going on in your life or things you thought were
6 important, or anything of that type, as you would with
7 any -- someone you worked with?

8 A. Yes.

9 Q. And did he share with you things that were going
10 on in his life as well?

11 A. Yes.

12 Q. Okay. Was he someone you would call a friend
13 that you would see outside the workplace?

14 A. No.

15 Q. So it was only when you were at work and you
16 talked to him while you're there at the gate; is that
17 correct?

18 A. Correct.

19 Q. And sometimes working the gate, as you testified
20 to a moment ago, sometimes it's slow and sometimes it's
21 busy; is that correct?

22 A. Correct.

23 Q. And when it's slow, would you say it's fair to
24 say that the marshals kind of stood around and, if
25 they're not doing anything, just talk and kind of shoot

2 the staff, as they say?
3 A. Yes.
4 Q. All right. And you testified that prior to
5 working here, you had 22 years of experience in law
6 enforcement in Ohio; is that correct?
7 A. Yes.
8 Q. And where did you work at in Ohio?
9 A. I worked out of Youngstown Police Department and
10 Mahoning County Sheriff's Department.
11 Q. Were you -- did you hold any type of
12 officer-type position, like a lieutenant or a sergeant,
13 some sort of striped position or -- in any department?
14 A. No.
15 Q. What kind of work did you do? Were you like a
16 traffic officer or a -- how would you --
17 A. Which department?
18 Q. Youngstown.
19 A. Youngstown? I was a patrol officer, I was also
20 a field-training officer, and also a gang-unit officer.
21 Q. And was Youngstown Police Department a
22 relatively large department during the years you worked
23 there?
24 A. About 260 officers, 260 uniformed officers.
25 Q. Mostly male?
A. Yes.

1 Q. Yes. In other words, when I say the "same" --
2 A. Yes.
3 Q. -- did you also develop relationships and you
4 just talked about the normal things that happened at
5 work?
6 A. Yes.
7 Q. Do you know the difference between the
8 administrative marshals versus a judicial marshal,
9 someone who works solely for a judge? Do you know the
10 difference? Only if you know, between the two.
11 A. Yes.
12 Q. And what's your understanding of the difference
13 between the two?
14 A. The judicial marshals are appointed by the
15 judge, and basically they answer to the judge and the
16 judge's needs, not so much to the sergeant and
17 lieutenant that are commanding the administrative
18 marshals.
19 Q. So the judicial marshal, basically he or she
20 works at the pleasure of the judge; is that correct?
21 A. Correct.
22 Q. While the administrative marshals work for the
23 District Court itself and are subject to the supervision
24 of the lieutenant or the director of security, things of
25 that type; is that correct?

1 Q. I'm sure. Okay. And did you develop
2 friendships with the officers that you worked with?
3 A. Yes.
4 Q. And did those friendships include sometimes
5 talking about the normal -- the daily grind of working,
6 being a police officer and complaining about things of
7 that type?
8 A. Yes.
9 Q. Would you say that in 22 years of your
10 experience prior to working here at the District Court
11 that you had friends or other police officers that you
12 complained to about whatever was going on in your life?
13 A. Yes.
14 Q. Did you sometimes in 22 years complain about
15 maybe your work condition, maybe you had a supervisor
16 you didn't like or anything something like that? Did
17 you ever have any of that kind of instance in 22 years
18 of a two-decade experience, did you ever once complain
19 about your supervision, you know, about a supervisor or
20 a boss to another officer that you're working with on a
21 daily basis?
22 A. Yes.
23 Q. Now, was that the same at the other departments
24 you worked with?
25 A. Mahoning County Sheriff's Department?

1 A. Correct.
2 Q. Now, getting to the incidents in questions in
3 January of 2013, I believe you said, if I'm not
4 mistaken, was it on the 7th that Mr. Knickmeyer told you
5 that he was upset that he was a subject of some sort of
6 investigation? Was that on the 7th or the 8th, do you
7 remember which day it was?
8 A. I have to refer to my report --
9 Q. Sure.
10 A. -- because it's two different days and two
11 different conversations.
12 Q. Right. Right.
13 A. I know on the 7th that's when he was -- I read
14 about the Diversity complaint, and he said he was going
15 to be fired.
16 Q. And is that when he said, "Fuck this place"?
17 A. Yes, that was on the 7th.
18 Q. On the 7th. So on the 7th, was he visibly upset
19 to you when he was talking to you about this?
20 A. No. No.
21 Q. And he told you he thought he was the subject of
22 some kind of investigation?
23 A. Yes.
24 Q. And so did it surprise you in any way that, you
25 know, that he would be upset that he was the subject of

1 an investigation and he said, "Ahh, fuck this place" or
2 something like that? Is that surprising that he would
3 say that?
4 A. Not really.
5 Q. Okay. And you, of course, didn't know -- you
6 weren't part of any of that investigation? You don't
7 know all of the details, the ins and outs or anything of
8 that type? Is that correct?
9 A. Correct.
10 Q. So in other words, Mr. Knickmeyer on this
11 particular day on the 7th is, for lack of a better
12 words, blowing off steam to you, just pissed off that
13 he's under some kind of investigation against him and he
14 says, "Ahh, fuck it, fuck this place"?
15 A. Yes.
16 Q. And when this was said, it was said to you; is
17 that correct?
18 A. Yes.
19 Q. And when I say that, it's because you had bail
20 up to that point in time about a year's worth of
21 conversations and statements going back and forth with
22 Mr. Knickmeyer; is that correct, when you worked the
23 front gate?
24 A. Yes.
25 Q. In other words, what I'm trying to say is, you

1 I guess it was from California when the lieutenant was
2 on the LAPD.
3 Q. Did he explain to you that what he had was
4 actually a copy of a judgment against Lieutenant Moody
5 for civil rights violations? Did he explain that to
6 you?
7 A. I don't recall that.
8 Q. But what he did show you was just something he
9 had on his smart phone, some kind of file that he picked
10 up -- pulled up, rather, and showed it to you; is that
11 correct?
12 A. Correct.
13 Q. Did you have an opportunity to sit there while
14 you're standing and just kind of go through and scroll
15 through whatever it is he was showing you?
16 A. No, I just briefly looked at it to see that it
17 was some type of a lawsuit type.
18 Q. So it was, like, something on a phone like this
19 that he just handed to you -- for the record, I'm
20 showing him a smart phone -- you look at it and then you
21 go, "Okay," and then you get back to work; is that fair
22 to say?
23 A. Yeah, he never handed it to me. He just --
24 Q. He showed it to you?
25 A. -- went like that.

1 understand that this is just one more conversation that
2 you've had with him out of the countless conversations
3 you've had with him over the last year; is that fair to
4 say?
5 A. Yes.
6 Q. Did you take it, when he told you that he was
7 upset about this investigation and he said "F this
8 place," did you take it that he was, you know, just
9 complaining about it, he wasn't happy about it?
10 A. Yes.
11 Q. And when this was said, it wasn't in the
12 presence of any other marshals in the immediate
13 vicinity; is that fair to say?
14 A. Not really.
15 Q. Okay. You think someone else was in the area?
16 A. Oh, yeah, there were definitely other marshals
17 in the area.
18 Q. Then on the 8th, the very next day, you
19 described some other incidents where -- well, the 8th
20 is that when you claim that Mr. Knickmeyer showed you
21 his cell phone and he had some sort of file in there
22 showing some sort of action involving Lieutenant Moody?
23 A. Yes.
24 Q. Did he explain to you what that was?
25 A. He said it was a lawsuit, some kind of lawsuit.

1 Q. All right. And it was around during this same
2 date that this -- did this all happen in the morning,
3 these conversations on January 8th? This all happened in
4 the morning at the gate?
5 A. Yes.
6 Q. And was it afterwards that he said -- I believe
7 you testified he said, "I can't stand the motherfucker,"
8 referring to Lieutenant Moody?
9 A. Yes, that was on the 8th.
10 Q. It was after, okay. Was that after he showed
11 you this, "Hey, look at this judgment"?
12 A. That was before.
13 Q. Before? Okay.
14 And I believe you testified that Mr. Knickmeyer
15 did not tell you why he didn't like Lieutenant Moody or
16 anything of that type; is that correct? He didn't tell
17 you what the basis of his feelings were about him; is
18 that correct?
19 A. Not that I remember. But I did remember he --
20 Lieutenant Moody was sitting right by us on the 8th at
21 the supervisor's desk. It wasn't called the
22 supervisor's desk then, but he was within --
23 Q. Earshot or --
24 A. Yeah, basically. And he told me I should watch
25 my back. Knickmeyer said I should watch my back.

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1 Q. Did Mr. Knickmeyer -- was he represented by
2 counsel at Step I?
3 A. Yes, he was. He was there along with the Union
4 attorney, Adam Levine -- Clark County Deputy Marshal
5 Association attorney, Adam Levine -- and Anthony Vogel,
6 who was the president of the Clark County Deputy
7 Marshals Association. So those were the individuals
8 there. I, along with -- I had Tom Newsome there with
9 me, and I also had our court security director at the
10 time, Bob -- Robert Bennett; we call him Bob.
11 Q. Did Mr. -- or Attorney Levine object to
12 Ms. de La Garza being the hearing officer at Step I?
13 A. No, he did not.
14 Q. Did Mr. Vogel object to Ms. De La Garza being
15 the hearing officer at the Step I?
16 A. No, sir.
17 Q. Did Ms. Knickmeyer object to Ms. De La Garza
18 being the hearing officer at Step I?
19 A. No, sir.
20 Q. Did Mr. Knickmeyer or any representative of his,
21 were they able to speak at the Step I hearing?
22 A. Absolutely, and they did.
23 Q. Did both of them? Did Mr. Knickmeyer and his
24 attorney speak?
25 A. Mr. Knickmeyer spoke, and his attorney did most

1 going through that entire process, still had not even
2 appreciated the fact that it was about his behavior,
3 about what he had done. And the question is, we're an
4 organization and we're the courts. Do we wait until
5 something worse happens? Do we wait until we have more
6 litigation? Those were concerns that I know that I had
7 at the point in time of the meeting.
8 Q. Now, you mentioned a Title VII issue.
9 (Discussion held off the record.)
10 MR. MOSES: Amanda is here.
11 THE ARBITRATOR: Do you want to ask her to wait,
12 or do you want to suspend this witness; whatever you're
13 comfortable with.
14 THE WITNESS: Why don't you suspend me.
15 MR. DORNAK: What's that?
16 THE WITNESS: Why don't you suspend me.
17 MR. KENNEDY: Why don't you ask her what her
18 time frame is.
19 THE ARBITRATOR: Ask her if she can hang around
20 until you're done.
21 (Discussion held off the record.)
22 THE ARBITRATOR: Raise your right hand.
23 Do you swear the testimony you're about to give
24 in this matter will be the truth?
25 THE WITNESS: Yes.

1 of the speaking for him, though, on his behalf.
2 Q. What did Mr. Knickmeyer say?
3 A. There was an issue relative to his records and
4 the fact that I think somehow towards the end of the
5 meeting, there was an issue about his personnel record
6 and previous suspensions that had taken place. And I
7 think he had received two separate suspensions over the
8 period of his career, and one of them was a 30-day
9 suspension for behavior or conduct that was unbecoming
10 that was -- I think he had two that were of a Title VII
11 nature.
12 And what was interesting is during the meeting,
13 I think he made a statement -- and it's referenced by
14 Melissa de La Garza in her decision, that "I think he
15 took one for the team." And that was extremely
16 concerning because you're taking one for the team.
17 Yeah, it's all about your behavior. And you, of course,
18 normally when we're looking at administering discipline,
19 it's about modifying behavior.
20 But there are times in cases of egregious
21 conduct when -- and in the case of egregious kind of
22 conduct that we may -- in 200.05 indicates that we may
23 bypass progressive discipline. And this again was one
24 of those where we were just listening to his
25 explanation. It was a concern that he still, after

1 AMANDA EMILY LIFT,
2 having been first duly sworn to tell the truth, the
3 whole truth, and nothing but the truth, was examined and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. DORNAK:
7 Q. Hi. Can you state your name and spell it for
8 the record.
9 A. Amanda Emily Lift, A-m-a-n-d-a E-m-i-l-y
10 L-i-f-t.
11 Q. And can you give us just a brief history of your
12 employment history?
13 A. Sure. Sure. I worked for the court system for
14 Judge Levitt. I was her law clerk from -- in 2011
15 until late 2012, and then after that I went and worked
16 for a private firm, Mason Law Firm, and then in November
17 of last year I opened my own law firm.
18 Q. And approximately how many times have you
19 entered through the north gate of the courthouse?
20 A. Hundreds.
21 Q. Are you aware of the items that you're not
22 allowed to bring in?
23 A. Yes.
24 Q. And then I'm just going to kind of jump right
25 into January of 2013. Do you recall entering the

1 courthouse that day and having your purse scanned
2 multiple times?
3 A. I enter the courthouse -- every time I enter, my
4 purse gets scanned, so a particular -- every time, yes.
5 So yes.
6 Q. Do you remember it getting rescanned multiple
7 times?
8 A. Yes.
9 Q. And can you tell me what happened that day?
10 A. I entered the courthouse just like every other
11 day. I went through the attorney line; they had that
12 scanner open. And on this particular occasion -- I
13 always beep when I go through because of my heels and
14 everything. So I put my purse through; it has the
15 normal stuff in it -- you know, pens, a wallet, cell
16 phone, that kind of thing. And I had some files in my
17 hands, so all of that went on the scanner. I walked
18 through -- I believe I beeped and they scanned me -- my
19 shoes always beep. And then my purse got brought
20 through a number of times; I think four or five times.
21 is what I recall.
22 Q. And did you have any unauthorized items in your
23 purse that day?
24 A. No, I never do.
25 Q. And do you know who was working the scanner that

1 kind of -- just waited and went. And I was late for
2 court, so I didn't really think too much about it
3 afterwards.
4 Q. Now, there's been testimony that -- I'm going to
5 step back.
6 You were interviewed about the incident;
7 correct?
8 A. I was.
9 Q. And there has been testimony that during your
10 interview that you said that you felt harassed going
11 through this process. Did you feel that?
12 A. I felt harassed; but for that reason and others,
13 obviously.
14 Q. And why did you feel harassed?
15 A. Well, because of the history I've already had
16 with Mr. Knickmeyer.
17 Q. And can you just give us, like, a brief
18 overview?
19 A. I had an incident with him when I worked for
20 Judge Leavitt, so this was significantly after that.
21 Q. And do you recall telling the investigator that
22 you thought Mr. Knickmeyer had a vendetta against you?
23 A. Yes.
24 Q. And why did you tell him that?
25 A. Because I figured from the first incident and

1 day?
2 A. I know that Tom Knickmeyer was working the
3 scanner. I don't recall who else was working. I'm not
4 super familiar with everybody's names.
5 Q. And was your purse emptied at any point, or
6 items taken out?
7 A. Yes. After a couple scans, it was then -- every
8 item was taken out one by one and looked through, as
9 well.
10 Q. In your opinion, was there any reason to search
11 your purse multiple times?
12 A. No. It's never been actually searched besides
13 that one time.
14 Q. How busy was the line that day, do you recall?
15 A. It was busy. It's always super busy generally
16 when I come through because I do all the calendars in
17 the morning for criminal court, and I'm very familiar
18 with many lawyers, so there's a lot of lawyers and
19 friends behind me that I walked in with in the
20 courthouse.
21 Q. And how did you feel about your purse being
22 scanned multiple times that day?
23 A. It was very strange to me. I could only guess
24 why it was happening, but it felt strange, like I was
25 being harassed. But I didn't say anything, and that was

1 how all that went down, even though I didn't actually
2 file the complaint for that -- I was just interviewed
3 for it afterwards -- and then -- actually, there's been
4 three incidents. And then the other one in which he
5 sought out my boss, I figured there was something he
6 clearly had against me.
7 Q. So the first incident -- and I won't get into
8 too much detail -- but that's the one involving the
9 harassment or discrimination?
10 A. Right.
11 Q. And then the second, you said, involving your
12 boss?
13 A. Yes. And another partner in my law firm.
14 Q. Can you tell me about that?
15 A. Apparently, this is -- I obviously -- I was not
16 involved in this at all; I heard it after the fact.
17 MR. KENNEDY: Objection, relevance and hearsay,
18 mem. Her boss and other people are not even part of
19 this litigation.
20 MR. DORNAK: Isn't it?
21 MR. KENNEDY: I mean, if she's going to talk
22 about issues involving her boss and her employer,
23 they're not a party to this, so --
24 BY MR. DORNAK.
25 Q. Well, this second incident, did it happen after

2 for the record.
3 MR. DORNAK: Let me grab them.
4 MR. KENNEDY: It was Exhibit 6, Tab 6.
5 THE ARBITRATOR: So the record's complete.
6 BY MR. DORNAK:
7 Q. Okay. There's been testimony by Thomas
8 Knickmeyer regarding an incident that occurred on
9 September 8th, 2012.
10 A. Okay.
11 Q. Do you recall that incident?
12 A. I do. This is the same date as the other
13 incident.
14 THE ARBITRATOR: Which other incident?
15 THE WITNESS: The first incident.
16 BY MR. DORNAK:
17 Q. And can you tell me what you recall about that?
18 A. We all sit in the courtroom during calendar --
19 well, I'm sorry, we did sit in the courtroom during
20 calendar. Judge Leavitt, she likes us all in there.
21 And at some point we looked over -- and this was a busy
22 criminal calendar. I remember -- and he was sleeping
23 with his legs up and his chair was way back.
24 Q. And you were asked to provide testimony on that?
25 A. I was asked in the interview, because all this
came to light at the same time. This was all on the

1 Q. So you saw him -- prior to January 8th, you saw
2 him a number of times working the gate, working the
3 scanner, the same thing that you go through every
4 morning; is that correct?
5 A. I'd say a few times. I didn't see him a number
6 of times.
7 Q. Okay. And not once prior to January 8th were
8 you ever subjected to the multiple scanings; is that
9 fair to say?
10 A. Correct.
11 Q. This is the only time that this happened to you;
12 is that correct?
13 A. Correct.
14 Q. And when it happened to you, you said it
15 happened to you -- your purse was scanned and rescanned
16 four or five times; is that correct?
17 A. That's correct.
18 Q. We had someone else testify it happened three
19 times. Do you have an independent recollection as to
20 whether it was --
21 A. I said three to five.
22 Q. A number of times.
23 A. A number of times.
24 Q. And your purse was one of these large -- a large
25 purse; is that fair to say?

1 same day.
2 MR. DORNAK: Okay, that's all I have.
3 CROSS-EXAMINATION
4 BY MR. KENNEDY:
5 Q. Ms. Lim, you indicated that prior to
6 January 8th, the incident with the scanner, that you'd
7 been in the courthouse numerous times, coming and going;
8 is that correct?
9 A. That's correct.
10 Q. And during those numerous times, I believe you
11 had Mr. Newsome -- do you remember talking to
12 Mr. Newsome as somebody who was investigating this?
13 A. I do.
14 Q. He indicated that you told him prior to
15 January 8th, you'd probably been in and out of the
16 courthouse at least 90 times through that front gate.
17 Is that about right, at that time frame?
18 A. Approximately. I was here every day.
19 Q. A number of times, okay. And you're aware that
20 Mr. Knickmeyer, prior to January 8th of 2012, was also
21 working the gate and scanner area during that time, you
22 know, throughout 2012; are you aware of that?
23 A. Whenever I saw him. I don't know.
24 Q. I mean --
25 A. Sure, I've seen him.

1 A. Sure.
2 Q. I mean, in other words, was it -- your purse,
3 was it large enough -- well, is it large enough that you
4 can put files into --
5 A. No.
6 Q. -- like you set your files in?
7 No? Okay. But it was a bag as opposed to --
8 A. Sure. I had a makeup bag in it and -- actually,
9 I don't think I had a makeup bag. I had my wallet in
10 it, phone, keys, and it held all that.
11 Q. Sure. When that purse was initially scanned
12 through the scanner -- and you know at the north scanner
13 there's a monitor there that the officer will look at;
14 is that correct? You've seen that before?
15 A. Yes.
16 Q. But when it's going through the scanner, would
17 you agree with me that you don't actually see what
18 they're looking at in the scanner because you're walking
19 through the metal detector; is that right?
20 A. That's correct.
21 Q. And so actually, as you sit here today, you
22 don't really know what Mr. Knickmeyer saw or thought he
23 saw in your purse; is that fair? Would you agree with
24 that?
25 A. Sure.

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1 Q. And you testified there was nothing in there,
2 and I understand that. But you don't know what he saw
3 when you first went through; is that correct?
4 A. Sure.
5 Q. And your testimony that you believe that
6 Mr. Knickmeyer had some sort of vendetta against you was
7 based on the prior incident that you talked about when
8 you were working for Judge Leavitt; is that right?
9 A. That's right.
10 Q. And this incident with going through the
11 scanners; is that fair to say?
12 A. And the incident with my boss.
13 Q. And talking to Mr. Moran's office, one of those,
14 okay.
15 A. Correct.
16 Q. Was there -- there was no other incidents of him
17 following you or doing anything to harass you or
18 anything of that type; is that correct?
19 A. That's correct.
20 MR. KENNEDY: I'll pass the witness.
21 MR. DORNAK: That's all I have.
22 THE ARBITRATOR: One question.
23 EXAMINATION
24 BY THE ARBITRATOR:
25 Q. When you were going through the security line

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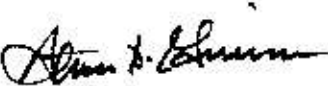
1 this was happening with the scanning of your purse and
2 so forth -- did Mr. Knickmeyer say anything to you? Was
3 there any contact between the two of you?
4 A. He didn't say anything to me, but I heard him
5 say, "There's something suspicious in there," after it
6 was empty, so --
7 Q. After the -- was it empty --
8 A. They emptied it and then scanned it again.
9 Q. They emptied it and scanned the empty purse?
10 A. Right.
11 Q. And after that he said --
12 A. I think he said it numerous times, but I --
13 Q. There's something suspicious in there?
14 A. Right. And then --
15 Q. But that's the only thing you heard him say,
16 though?
17 A. Right. He didn't say anything to me.
18 Q. You didn't say anything to him?
19 A. That's correct. I didn't say a word to anybody.
20 Q. Do you remember the other security guard there
21 apologizing to you?
22 A. I do.
23 THE ARBITRATOR: Okay, that's all.
24 MR. KENNEDY: I have one follow-up question to
25 trial.

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1 THE ARBITRATOR: Okay.
2 FURTHER RECROSS-EXAMINATION
3 BY MR. KENNEDY:
4 Q. After this incident occurred, is it true that
5 you did not file a formal complaint about this happening
6 with anyone with the RJC or the District Court or
7 anything of that type?
8 A. That's correct.
9 Q. And in fact, for you, you didn't like it, but
10 you had other things to do, like every other lawyer; you
11 didn't seek out to formally complain about this incident
12 at all until you were contacted by Mr. Newsome; is that
13 right?
14 A. Correct.
15 MR. DORNAK: Was there any reason why you didn't
16 file a complaint?
17 THE WITNESS: To be frank, I'm scared of him.
18 THE ARBITRATOR: Let me make sure he heard that.
19 Did you hear her answer?
20 MR. KENNEDY: No, I didn't.
21 THE ARBITRATOR: Would you read that back,
22 please.
23 MR. KENNEDY: Slowly.
24 THE REPORTER: To be frank, I'm scared of him.
25 MR. KENNEDY: After January 8th, did you come to

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1 the very next day or other days and see Mr. Knickmeyer
2 there?
3 THE WITNESS: No.
4 MR. DORNAK: After January 8th, did you continue
5 to use the north gate?
6 THE WITNESS: As soon as they opened the other
7 one, I went there. And then I don't know when that was,
8 and then I never have used the north gate really since.
9 MR. DORNAK: So you would use the south gate?
10 THE WITNESS: Correct. That's the attorney one
11 right there.
12 THE ARBITRATOR: Anything else?
13 MR. KENNEDY: That's it.
14 THE ARBITRATOR: Thank you very much.
15 THE WITNESS: Thank you.
16 THE ARBITRATOR: Everybody ready to keep going?
17 You're still under oath.
18 THE WITNESS: Yes, sir.
19 DIRECT EXAMINATION OF EDWARD MAY (resumed)
20 BY MR. DORNAK:
21 Q. I believe the last question I had pending before
22 you was addressing your Title VII discipline you
23 mentioned of Mr. Knickmeyer. I just want to talk about
24 those type of disciplines in general.
25 Are there certain types of discipline that are


CLERK OF THE COURT

1 CASE NO. A-14-711200-P

2 DEPT. NO. 32

3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CLARK**

8 In the matter of the Petition of

9 THOMAS KNICKMEYER,

10 Petitioner,

11 vs.

12 STATE OF NEVADA, ex rel., EIGHTH
13 JUDICIAL DISTRICT COURT,

14 Respondent.

15 **STATE OF NEVADA EX REL. EIGHTH JUDICIAL DISTRICT COURT'S MOTION**
16 **TO DISMISS OR, IN THE ALTERNATIVE, RESPONSE TO PETITION**
17 **TO SET ASIDE ARBITRATION DECISION**

18 Respondent, the State of Nevada, ex rel. Eighth Judicial District Court ("EJDC"), by
19 and through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and
20 Frederick J. Perdomo, Deputy Attorney General, hereby files this Motion to Dismiss or, in the
21 Alternative, Response to Petition to Set Aside Arbitration Decision. This brief is supported by
22 the following memorandum of points and authorities, all papers and pleadings on file in this
23 action, and any oral argument this Court may entertain on this matter.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 Petitioner Thomas Knickmeyer's ("Mr. Knickmeyer") Petition to Set Aside Arbitration
27 Decision ("Petition") must be dismissed or denied for three key reasons: (1) this Court does
28 not have jurisdiction to hear Mr. Knickmeyer's claims under NRS Chapter 289, his union's

1 collective bargaining agreement, and the Fourteenth Amendment to the U.S. Constitution; (2)
2 Mr. Knickmeyer's basis for setting aside the arbitrator's decision exceeds the relevant
3 standard of review and the facts underlying his arguments were inconsequential to the
4 arbitration decision; and (3) Mr. Knickmeyer was provided with a copy of the investigation that
5 resulted in his termination and his personnel file in compliance with Mr. Knickmeyer's alleged
6 rights under NRS Chapter 289.

7 First, this Court lacks jurisdiction over Mr. Knickmeyer's claims and arguments under
8 NRS Chapter 289. In particular, the rights provided for under NRS Chapter 289 only apply to
9 peace officers that are employed by *law enforcement agencies*. The EJDC is not a law
10 enforcement agency within the plain meaning of that term, and application of that chapter to
11 the EJDC would violate the separation of powers doctrine. Furthermore, Mr. Knickmeyer's
12 claim that his rights under the collective bargaining agreement between his union and the
13 EJDC sounds in contract and cannot be enforced under NRS 289.120. Likewise, Mr.
14 Knickmeyer cannot assert rights conferred by the Due Process Clause of the Fourteenth
15 Amendment through an action brought under NRS 289.120. Mr. Knickmeyer's Petition is not
16 properly before this Court and must be dismissed.

17 Second, the standard of review of an arbitrator's decision is very limited. Mr.
18 Knickmeyer cannot challenge the factual findings or decisions made by the arbitrator but
19 rather must show that the arbitrator acted in excess of his jurisdiction or authority under the
20 collective bargaining agreement. Mr. Knickmeyer's allegations and arguments related to
21 disclosure of the investigative files related to his prior disciplinary suspensions do not
22 establish that the arbitrator acted in excess of his jurisdiction or authority. Furthermore, the
23 factual findings supporting the arbitrator's decision to uphold Mr. Knickmeyer's termination
24 were explicitly based on his current misconduct and not his prior disciplinary history.
25 Accordingly, Mr. Knickmeyer has not provided a relevant basis to overturn the arbitration
26 decision in his Petition.

27 Finally, assuming arguendo that Mr. Knickmeyer has standing to sue under NRS
28 Chapter 289, Mr. Knickmeyer cannot establish a violation of these rights. NRS Chapter 289

1 purportedly requires the EJDC to furnish Mr. Knickmeyer with a copy of the current
2 investigative file that resulted in punitive action against him and his personnel file. Mr.
3 Knickmeyer received all of these documents during his termination proceedings. Therefore,
4 Mr. Knickmeyer has no claims for relief under NRS Chapter 289.

5 Mr. Knickmeyer has not provided this Court with any basis to set aside the arbitration
6 decision. In particular, this Court lacks jurisdiction over Mr. Knickmeyer's arguments and
7 claims under NRS 289.120, the collective bargaining agreement, and the Fourteenth
8 Amendment to the U.S. Constitution. Mr. Knickmeyer's claims and arguments do not support
9 reversal of the arbitration award under the relevant standard of review, and Mr. Knickmeyer
10 received all of the documents he was allegedly entitled to under NRS Chapter 289.
11 Accordingly, the EJDC respectfully requests that this Court dismiss or deny Mr. Knickmeyer's
12 Petition.

13 II. STATEMENT OF CASE

14 Mr. Knickmeyer commenced this action on December 16, 2014, by filing a Petition to
15 Set Aside Arbitration Decision under NRS 289.120. The Petition seeks an order from this
16 Court setting aside an arbitration award which upheld the EJDC's decision to terminate Mr.
17 Knickmeyer as a result of serious misconduct.

18 The termination process commenced on October 23, 2013, when Mr. Knickmeyer
19 received a notice that the EJDC was placing him on administrative leave and recommending
20 termination as a result of various forms of misconduct he engaged in on January 7 and 8,
21 2013. (Exhibit B, Arbitration Joint Exhibit 4, EJDC_ARB 0727-0729) The termination process
22 was guided by a Memorandum of Understanding ("MOU") between the Clark County Deputy
23 Marshals Association ("CCDMA") and the EJDC, which provided for a three step grievance
24 procedure. (Exhibit B, Arbitration Joint Exhibit 1, EJDC_ARB 0687-0707) Mr. Knickmeyer
25 was represented by counsel for CCDMA during the first two steps of this process, and private
26 counsel during the last step of this process.

27 Mr. Knickmeyer received a Step 1 Pre-termination meeting on November 7, 2013,
28 before Special Hearing Master Melisa De La Garza, Esq. ("Hearing Master De La Garza").

1 (Exhibit B, Arbitration Joint Exhibit 2, EJDC_ARB 0711) The meeting concluded without a
2 resolution between the EJDC and Mr. Knickmeyer. Following the meeting, Hearing Master
3 De La Garza entered an eleven page written ruling, which sustained six of the seven
4 allegations of misconduct against Mr. Knickmeyer and upheld the EJDC's recommendation to
5 terminate him. *Id.* at EJDC_ARB 0708-0718. The EJDC's Court Administrator, Steven
6 Grierson, adopted these findings on November 14, 2013. (Exhibit B, Arbitration EMP, Exhibit
7 5, EJDC_ARB 0681)

8 On November 18, 2013, Mr. Knickmeyer, through CCDMA counsel, appealed this
9 decision and requested a Step 2 Post-termination meeting. (Exhibit B, Arbitration EMP
10 Exhibit 6, EJDC_ARB 0682-0683) Mr. Knickmeyer received a Step 2 Post-termination
11 meeting on February 5, 2014, before Bonnie Bulla ("Ms. Bulla"), who was designated by the
12 EJDC to preside over the meeting. (Exhibit B, Arbitration Joint Exhibit 3, EJDC_ARB 0719)
13 Once again, Mr. Knickmeyer and the EJDC did not resolve their differences at that meeting.
14 *Id.* After the meeting concluded, Ms. Bulla issued an eight page written ruling, which found
15 that the EJDC had just cause to terminate Mr. Knickmeyer. *Id.* at EJDC_ARB 0719-0726.

16 Thereafter, Mr. Knickmeyer requested that the matter be submitted to arbitration. The
17 parties selected a neutral arbitrator, Harry N. MacLean ("Arbitrator MacLean"), to hear the
18 matter. The arbitration hearing was held on September 11, 2014. (See generally, Exhibit A,
19 Arbitration Transcript, EJDC_ARB 0001-0276, Exhibit B, Arbitration Exhibits, EJDC_ARB
20 0277-0751) On November 3, 2014, the parties submitted written briefs in support of their
21 respective positions. (Exhibit C, Arbitration Award, EJDC_ARB 0752) Arbitrator MacLean
22 issued a written ruling on November 24, 2014, which found that the EJDC had just cause to
23 terminate Mr. Knickmeyer. *Id.* at EJDC_ARB 0752-0765. Mr. Knickmeyer now seeks judicial
24 review of the arbitration award upholding his termination.

25 **III. STATEMENT OF FACTS**

26 Mr. Knickmeyer was hired by Judge David Mosely as judicial marshal on July 25, 1995.
27 (Exhibit C, Arbitration Award, EJDC_ARB 0753) During his tenure as judicial marshal, which
28 lasted until March 5, 2012, Mr. Knickmeyer was disciplined by Judge Mosely twice, on July

1 17, 1997, and July 14, 2003, for EEOC related misconduct involving sexual harassment of his
2 female co-workers. (Exhibit B, Arbitration Joint Exhibit 5, EJDC_ARB 0737-0738, Exhibit C,
3 Arbitration Award, EJDC_ARB 0756) The first disciplinary action resulted in a three day
4 suspension without pay and the second disciplinary action resulted in a twenty day
5 suspension without pay and a warning that "if there is repeat behavior of this nature in the
6 future, such shall be grounds for immediate termination whether or not such conduct is 'per
7 se' unlawful." *Id.*

8 On March 5, 2012, Mr. Knickmeyer began work as an administrative marshal for the
9 EJDC. (Exhibit C, Arbitration Award, EJDC_ARB 0753) He remained in this position until he
10 was terminated on November 14, 2013, for engaging in misconduct on January 7 and 8,
11 2013. *Id.* An investigation into the incidents on those days commenced as a result of a
12 complaint filed by Mr. Knickmeyer's co-worker Deputy Marshal David Ellis ("Deputy Marshal
13 Ellis") who had observed Mr. Knickmeyer's actions and reported it to his supervisors. *Id.* The
14 EJDC's Marshal's Division opened an Internal Affairs Investigation of the allegations made by
15 Deputy Marshal Ellis. *Id.* The investigation included interviews of Deputy Marshal Ellis,
16 Amanda Litt ("Ms. Litt"), whom Mr. Knickmeyer had allegedly harassed on January 8, 2013,
17 and Mr. Knickmeyer. *Id.* As result of the investigation, Sergeant Thomas Newsome, the lead
18 investigator, sustained the following allegations against Mr. Knickmeyer:

- 19 1. That Mr. Knickmeyer said, "fuck this place" while on duty and in uniform;
- 20 2. That Mr. Knickmeyer, while on duty and in uniform, told Deputy Marshal Ellis
21 that Director Robert Bennett "was going to be fired;"
- 22 3. That Mr. Knickmeyer referred to Lieutenant Steve Moody ("Lieutenant Moody")
23 as a "motherfucker" and told Deputy Marshal Ellis that he was going to throw
24 Lieutenant Moody under the bus and that Lieutenant Moody falsified his Clark
25 County application;
- 26 4. That Mr. Knickmeyer engaged in conduct unbecoming of an employee while on
27 duty and in uniform by showing Deputy Marshal Ellis a copy of a civil lawsuit
28 involving Lieutenant Moody;

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

THOMAS KNICKMEYER,

) No. 71372

)
)
)
) Appellant,
)
)

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Feb 13 2017 04:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.)
)
)

STATE OF NEVADA ex rel. THE
EIGHTH JUDICIAL DISTRICT
COURT,)
)
)

) Respondent.
)

APPELLANT'S APPENDIX
VOLUME 1

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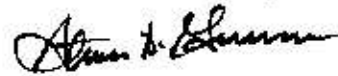
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CERTIFICATE OF SERVICE

I hereby affirm that on this 13th day of February, 2017, I mailed via first class U.S. Mail a copy of the foregoing to the Respondent at the address below:

D. Randall Gilmer
Deputy Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

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



CLERK OF THE COURT

PET
KIRK T. KENNEDY, ESQ.
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Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of the Petition of

THOMAS KNICKMEYER,

Petitioner,

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

vs.

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

Respondent.

PETITION TO SET ASIDE ARBITRATION DECISION

COMES NOW, the Petitioner, THOMAS KNICKMEYER, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., who files this petition pursuant to N.R.S. 289.120 to seek judicial review of the Arbitration decision submitted on November 24, 2014, in the matter of the arbitration between Petitioner and Respondent resulting in Petitioner's termination and to set aside the decision on the grounds set forth herein.

In support hereof, Petitioner relies on the following points and authorities and exhibits on file herein.

Dated this 15th day of December, 2014.

/s/Kirk T. Kennedy
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815 S. Casino Center Blvd.
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Attorney for Petitioner

NOTICE OF HEARING

TO: Brian Dvorak, Counsel for Respondent

YOU AND EACH OF YOU WILL PLEASE TAKE NOTE that the undersigned will bring the foregoing matter on for hearing on the 22 day of January, 2015, at the hour of 9:00 am in Department 32 of the District Court, or as soon thereafter as counsel may be heard.

Dated this 15th day of December, 2014.

/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

POINTS AND AUTHORITIES

I. Procedural Background:

1. Petitioner Knickmeyer is a peace officer as defined under Nevada law in NRS 289 et seq. He was formerly employed with the Respondent as a judicial bailiff from 1995 to February, 2012, wherein he worked as the judicial bailiff for the Honorable Judge Donald Mosley. Thereafter, in March, 2012, he was employed with the Respondent as an administrative marshal.
2. Following incidents which occurred on January 7 and 8, 2013, the Respondent conducted an investigation into Petitioner's alleged conduct, which resulted in the preparation of an investigative report dated May 20, 2013. Exhibit 1- Notification of Internal Investigation and Interview. Petitioner was given a written reprimand and placed on administrative leave with pay on the same date. Exhibit 2-Relief of Duty.
3. In October, 2013, Respondent served Petitioner notice that it was seeking his termination from employment premised upon the allegations documented in the May 20, 2013, written reprimand. Exhibit 3- Notice re: Termination, 10/23/2013.
4. Petitioner Knickmeyer challenged his termination at a Step 1 hearing allowed by the Respondent which occurred in November, 2013. The Step 1 decision upheld the recommendation for termination of Knickmeyer's employment. Exhibit 4- Step 1

Decision.

5. Petitioner then requested a Step 2 hearing which occurred on February 5, 2014. The Step 2 decision also upheld his termination and the findings from the Step 1 decision.

Exhibit 5- Step 2 Decision, 2/20/14.

6. Petitioner was represented by union counsel at both the Step 1 and Step 2 hearings.

7. Petitioner requested an arbitration to challenge the Step decisions upholding his termination. On September 11, 2014, an arbitration was held before Harry Maclean, an independent arbitrator selected by the parties from the American Arbitration Association. On November 24, 2014, the arbitrator issued his decision which upheld the termination of Knickmeyer. Exhibit 6- Arbitration Decision

8. Pursuant to NRS 289.120, Petitioner Knickmeyer now seeks judicial review of the arbitration decision.

11. Standard of Review:

In Ruiz v. City of North Las Vegas, 255 P.3d 216 (Nev. 2011), the Nevada Supreme Court recognized that peace officers, as defined in NRS 289 et seq., have a right to seek judicial relief following an arbitration decision, as occurred in this case, pursuant to NRS 289.120, to wit:

"Any peace officer aggrieved by an action of the employer of the peace officer in violation of the Peace Officers Bill of Rights may, after exhausting any applicable internal grievance procedures, grievance procedures negotiated pursuant to collective bargaining and other administrative remedies, apply to the district court for judicial relief." Id., at 222-223.

Pursuant to NRS 289.120 and the Ruiz case, Petitioner Knickmeyer is properly before the Court seeking judicial review to set aside the arbitration decision.

Under authority of NRS 289.040(4), a peace officer "must be given a copy of any comment or document that is placed in an administrative file of the peace officer maintained by the law enforcement agency."

Regarding the findings of an investigation, NRS 289.057(3)(a) provides that a

1 peace officer may review the content of all files and documents related to an
2 investigation. Further, NRS 289.057(3)(b) provides that if a law enforcement agency is
3 required to remove a record of an investigation or the imposition of punitive action, then
4 the agency shall not keep or make a record of such investigation or punitive action after
5 the record is required to be removed from an administrative file.

6 Upon a finding that evidence against a peace officer was obtained unlawfully,
7 then an arbitrator or court must exclude the evidence from any administrative proceeding
8 or civil action, pursuant to NRS 289.085.

9 **III. Factual Background:**

10 As set forth in the investigative report, Exhibit 1, Petitioner was accused of the
11 following offenses occurring on January 7 and 8, 2013, which allegedly supported the
12 Respondent's termination action:

- 13 1. Knickmeyer said "fuck this place" while on duty.
- 14 2. Knickmeyer told co-worker, Marshal Dave Ellis, that then security director Bob
15 Bennett "was going to be fired."
- 16 3. Knickmeyer referred to his supervising Lt. Steve Moody as a "motherfucker" and told
17 Marshal Ellis that he was going to "throw Moody under the bus." Further, Petitioner
18 said that Lt. Moody had falsified his application for employment as a marshal with the
19 Respondent.
- 20 4. Knickmeyer allegedly showed Ellis a copy of a lawsuit involving Lt. Moody, which
21 was on Petitioner's cell phone.
- 22 5. Knickmeyer allegedly said he was going to show the lawsuit involving Lt. Moody to
23 others.
- 24 6. Knickmeyer, while working the security gate scanners on January 8, 2013,
25 unnecessary scanned and re-scanned the purse of attorney Amanda Litt and then
26 allegedly called her a bitch to Marshal Ellis after she walked away from the gate.

27 At the September 11 arbitration, Arbitrator Maclean found that the Respondent
28 had established the foregoing allegations by a preponderance of the evidence. Exhibit 6,
pg. 9. The Arbitrator also found the allegations regarding the re-scanning of Amanda

Litt's purse sufficiently egregious to warrant termination. Id., pg. 13-14.

At issue in this Petition is whether the Respondent properly followed the mandates set forth in NRS 289, given Knickmeyer's status as a peace officer.

A. The Arbitration Decision:

The evidence presented at the Arbitration indicated that Knickmeyer was terminated off of the conversations he had with fellow co-worker David Ellis in the morning on January 7-8, 2013. Exh. 6, pgs. 2-7. No other witnesses or evidence was presented at the hearing which indicated that any other person, employee or customer of the courthouse was privy to the alleged conversation between Knickmeyer and Ellis at the security gate area on January 7-8, 2013.

The alleged content of the conversations, as testified to by Ellis, included Knickmeyer making off-color comments about his supervisor, Lt. Moody; Knickmeyer expressing his opinion regarding his supervision by Moody and Knickmeyer showing a screenshot from his cell phone of a pleading from litigation in the California federal court involving Lt. Moody as a defendant. Id. Again, there was no independent evidence from any third party indicating that they heard this conversation or that they saw the subject screenshot on Knickmeyer's cell phone of the federal court case paper involving Moody. Further, there was no evidence presented that Knickmeyer did anything with the California case information involving Lt. Moody or that he disseminated the document to any other parties. Id.

Marshal Ellis' testimony revealed only that Knickmeyer voiced off hand remarks and complaints about the work environment. Blowing off steam and complaining about management is an accepted part of nearly every job in every working environment. Even Ellis admitted that he witnessed such conduct and statements on numerous occasions with his prior law enforcement work over the last 22 years. Ellis Arbitration Transcript, pg. 42-43.

Ellis also testified that over the course of the time he worked with Knickmeyer at the gate area, throughout 2012, he shared numerous conversations about events in his own life, as well as those events involving Knickmeyer. Ellis, Trans., pg. 40. It was

1 commonplace for the two marshals to exchange words and to relate events occurring in
2 their own lives to each other, while standing at the gate area. Ellis agreed that when
3 Knickmeyer said something to the effect of "fuck this place" to him on January 7, that he
4 was blowing off steam or just upset to some degree. Id., pg. 45-46. Again, typical
5 language among men in the working environment. The alleged statements by
6 Knickmeyer to Ellis on the next day, January 8, are also of the same ilk.

7 The Respondent presented absolutely no evidence at the Arbitration that
8 Knickmeyer's comments adversely impacted the work environment in any negative
9 fashion or that his alleged comments caused any disruption to the work performance of
10 Marshal Ellis, or any other district court employee. Marshal Ellis did not stop his work
11 because of these statements, nor did he immediately report them to his supervisor.

12 Regarding the incident on January 8, 2013, wherein attorney Amanda Litt had her
13 handbag scanned at least twice through the scanner, Knickmeyer's uncontroverted
14 testimony was that he thought he saw something notable when the bag was first scanned.
15 Arb. Decision, pg. 7. He directed Ellis to search the bag and Ellis indicated he found
16 nothing. Id. Knickmeyer agreed that he directed the bag to be scanned at least one more
17 time.

18 It is the job of the marshals working the security gates to insure the safety of all
19 courthouse personnel and the public by properly clearing each and every visitor to the
20 building, attorneys included. Amanda Litt admitted that every time she enters the
21 courthouse, her purse is scanned. Litt Testimony, Trans., pg. 137. She did testify that on
22 January 8, 2013, her purse was scanned several times. Id., pg. 137-138.

23 Additionally, the area where this occurred was under constant video surveillance.
24 The Respondent produced no video evidence of this incident at any of the hearings in
25 this case.

26 Litt admitted that following the incident she did not think much about it
27 afterwards, so clearly it was not an incident that adversely impacted her when it
28 occurred. Id., pg. 139. Only after the Respondent chose to interview Litt about the
matter did Litt then say she felt harassed. Id. Litt did not file any formal complaint

1 immediately after the incident occurred. Id. Litt was not interviewed by the
2 Respondent (Lt. Thomas Newsome) until March 25, 2013. *It is undisputed that Litt*
3 *never filed any complaint or other claim regarding the incident of January 8, until*
4 *nearly 3 months later when she was interviewed by Lt. Newsome.*

5 Litt also admitted that she had been through the security gate prior to January 8,
6 2013, when Knickmeyer was working there and she reported no issues or concerns. Id.,
7 pgs. 146-147. Litt also testified that she did not hear Knickmeyer say anything
8 derogatory to her when she was in the scanner/gate area on January 8, 2013. Id., pg. 150.

9 The Step 1 and 2 decisions both inflated the Litt incident into some dramatic
10 event. Yet, the whole matter was of such little consequence to Ms. Litt, that she never
11 felt the need or urgency to file a complaint with the district court or with the Marshal's
12 office. Rather, she took her bag and got on with her day on January 8. Only after the
13 Respondent deliberately chose to make an issue of it and then interview Litt nearly 3
14 months later did she now say she felt "harassed." Clearly, she did not feel that way
15 before being pressured and prodded by the Respondent into making a statement about
16 the incident months afterwards.

17 **III. Argument:**

18 **A. Knickmeyer was deprived of his procedural due process rights mandated by** 19 **NRS 289:**

20 Knickmeyer was subjected to discipline and ultimately termination pursuant to
21 the Article 13 Grievance and Disciplinary Procedures set forth in the Memorandum of
22 Understanding between the Eighth Judicial District Court and the Clark County Deputy
23 Marshals Association. Exhibit 7.

24 Article 13 acknowledges that all deputy marshals are afforded those rights set
25 forth in Nevada Revised Statutes 289 et seq. Pursuant to those statutes, NRS 289.040,
26 289.060 and 289.080 provide requirements that all of the investigative files, notes and
27 documents used against a peace officer during an investigation into misconduct must be
28 made available to and disclosed to the peace officer.

Article 13 also has a disclosure requirement, to wit:

1 ".. both parties will make full disclosure of the facts and evidence which bear on the
2 grievance, including but not limited to furnishing copies of evidence, documents, reports
3 written statements and witnesses relied upon to support their basis of action." Article
4 13(5).

5 Regarding the subject of discipline, Article 13, Section 1(3) provides, in part, that
6 "the decision to uphold the disciplinary action will be based on the reasonableness of the
7 discipline imposed by the supervisor in response to the actions taken or not taken by the
8 marshal."

9 Article 13 also provides that a deputy marshal shall have complete access to
10 review all items in his personnel file. Article 13, Sect. 1(6).

11 The termination action against Knickmeyer was initiated by the Respondent in
12 October, 2013, when Knickmeyer received written notification of the allegations and
13 notice that he was being placed on administrative leave pending termination. Exh. 3,
14 Notice re: Termination.

15 The subject notice recommended termination premised on Knickmeyer's overall
16 disciplinary history, which included a written reprimand from May 20, 2013; a 20 day
17 suspension from July, 2003; and a 3 day suspension from July, 1997. Id. This Notice
18 failed to provide copies of any relevant documentation in support of the 2003 or the
19 1997 incidents. Id. Additionally, the Investigation Report prepared by Lt. Thomas
20 Newsome, and relied upon to initiate termination, also failed to include any relevant
21 documentation regarding the 2003 and 1997 suspension incidents. Exhibit 1-
22 Investigative Report.

23 This disciplinary history was relied upon at Knickmeyer's Step 1 hearing on
24 November 7, 2013. Exhibit 4, Step 1 Decision. This same history was also relied upon
25 at the Step 2 hearing conducted February 5, 2014. Exhibit 5, Step 2 Decision. The
26 Respondent utilized this history as a means to improperly and unfairly bypass other
27 forms of progressive discipline in this matter.
28

1 Petitioner Knickmeyer was not provided *any discovery* related to the suspension
2 matters from 2003 and 1997, nor any meaningful opportunity to defend against that
3 disciplinary history which was used against him at both Step hearings. The Respondent
4 willfully failed and refused to provide any of the background reports and statements
5 regarding both suspension incidents prior to either Step hearing. The Respondent's
6 conduct was a willful violation of NRS 289.040(4) and 289.057.

7 The Respondent utilized the prior disciplinary history to support its termination
8 action and to support its unreasonable decision to bypass other forms of progressive
9 discipline to redress what were essentially relatively minor incidents from January, 2013.
10 Pursuant to Nevada Revised Statutes 289.040, 289.057, 289.060 and 289.080, the
11 Respondent was legally obligated to provide Knickmeyer access to all information and
12 documents being utilized at each hearing, i.e. Step 1, Step 2 and Arbitration.

13 It is established that public employees are entitled to procedural due process
14 protections related to their work for a government employer. Public employees have a
15 protected property interest in their employment. Board of Regents v. Roth, 408 U.S.
16 564, 576-77 (1972). Additionally, in Vanelli v. Reynolds School District No. 7, 667
17 F.2d 773, 777 (9th Cir. 1982), the Ninth Circuit held, based on Roth, that the Fourteenth
18 Amendment's procedural due process guarantees apply when a constitutionally protected
19 liberty or property interest is at stake.

20 Vanelli further held that "there is a strong presumption that a public employee is
21 entitled to some form of notice and opportunity to be heard before being deprived of a
22 property or liberty interest. *Id.*, at 778. Further, "an individual must have an opportunity
23 to confront all the evidence adduced against him, in particular that evidence with which
24 the decisionmaker is familiar." *Id.* 780.

25 Vanelli explicitly provides that Knickmeyer is entitled to "all the evidence
26 adduced against him," which necessarily must include access to the prior suspension
27 records and documentation from 2003 and 1997. Nevada law provides the same
28 disclosure mandates for peace officers to be allowed complete access to any files or
records used to support a disciplinary action. NRS 289.040, 289.057, 289.060, 289.080.

1 In this instance, as evidenced by the findings at the Step 1 and Step 2 hearings,
2 Knickmeyer was deprived of a meaningful opportunity to contest and explain the nature
3 of his prior disciplinary background, because of the Respondent's refusal to disclose any
4 of the subject records and documentation related to that history. The Respondent's
5 refusal was a direct and explicit violation of NRS 289.

6 This violation supports the setting aside of the arbitration decision, because, from
7 the start, Knickmeyer's 289 rights were deliberately ignored by the Respondent. The
8 entire process from the Step 1 to the final arbitration was infected with substantive
9 defects related to the willful violations of NRS 289 by the Respondent.

10 These defects and willful violations had the net effect of depriving Petitioner of a
11 full and fair hearing or the opportunity to effectively challenge his termination prior to
12 the final Arbitration hearing. The Respondent's refusal to follow the rules of full and
13 fair disclosure, as required by NRS 289, equates to the total denial of important Due
14 Process rights and statutory rights held by peace officer Knickmeyer.

15 **II. Conclusion:**

16 For all the foregoing reasons, the Arbitrator's decision must be set aside as the
17 entire process from the Step 1 through the Arbitration was infected with substantive
18 violations of NRS 289, as argued herein, and violations of Petitioner's Due Process
19 rights.

20 Dated this 15th day of December, 2014.

21 /s/Kirk T. Kennedy
22 KIRK T. KENNEDY, ESQ.
23 Nevada Bar No: 5032
24 815 S. Casino Center Blvd.
25 Las Vegas, NV 89101
26 (702) 385-5534
27 Attorney for Petitioner
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CERTIFICATE OF SERVICE

I hereby affirm that on this 15th day of December, 2014, I mailed via first class
U.S. Mail to the Respondent a copy of the foregoing to:

David B. Dornak, Esq.
3800 Howard Hughes Pkwy., Ste. 950
Las Vegas, NV 89169

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

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AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

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

Dated this 15th day of December, 2014.

/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

11

EXHIBIT 1

EIGHTH JUDICIAL DISTRICT COURT MARSHALS DIVISION
EMPLOYEE NOTIFICATION OF INTERNAL
INVESTIGATION AND INTERVIEW

Date: May 20, 2013

To: Deputy Marshal Thomas Knickmeyer, P#146

 X SUBJECT

 WITNESS

This is to inform you that an investigation is being conducted concerning IA # 003-2013

Investigating Officer: Deputy Marshal Investigator Thomas Newsome will be conducting the interview scheduled for Wednesday, May 22, 2013 at 2:00 p.m. in conference room #2115 of the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89155.

Alleged Misconduct

On January 7, 2013, Deputy Marshal Knickmeyer while on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance demonstrated conduct unbecoming an employee when he made inappropriate and unprofessional comments regarding his employment and supervision.

On January 8, 2013, Deputy Marshal Knickmeyer while on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance demonstrated conduct unbecoming an employee when he made inappropriate and unprofessional comments regarding his employment and supervision. Deputy Marshal Knickmeyer demonstrated unprofessional conduct when he presented at least one co-worker with a civil suit document regarding his assigned Lieutenant's actions with a former employer. Deputy Marshal Knickmeyer also demonstrated conduct unbecoming an employee by directing a co-worker to unnecessarily and inappropriately search and re-scan a female visitor's purse after his co-worker informed him the purse contained no suspicious or banned items. Deputy Marshal Knickmeyer later identified the female visitor as the same person who filed a complaint against him and referred to her as a "bitch". Deputy Marshal Knickmeyer was negligent in his duties while he engaged in inappropriate, unnecessary and unprofessional conduct that distracted and interfered with the performance of his official duties and the official duties of his co-worker.

NOTICE OF INVESTIGATION AND INTERVIEW

IA # 303-2013

Page 2 of 3

ALLEGATION No. 1

On January 7, 2013, Deputy Marshal Knickmeyer was on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance where he demonstrated conduct unbecoming an employee when he made inappropriate and unprofessional comments regarding his employment and stated "Fuck this place".

ALLEGATION No. 2

On January 7, 2013, Deputy Marshal Knickmeyer was on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance where he demonstrated conduct unbecoming an employee when he made inappropriate and unprofessional comments regarding his employment and supervision when he told at least one co-worker that the Director of Security was going to be fired. *P*

ALLEGATION No. 3

On January 8, 2013, Deputy Marshal Knickmeyer was on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance where he demonstrated conduct unbecoming an employee when he made inappropriate and unprofessional comments regarding his employment and supervision when he told at least one co-worker that he was going to throw his assigned Lieutenant under the bus, stated this particular Lieutenant falsified his County application, and referred to this Lieutenant as a "mother fucker".

ALLEGATION No. 4

On January 8, 2013, Deputy Marshal Knickmeyer was on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance where he demonstrated conduct unbecoming an employee when he showed at least one co-worker a copy of a civil suit involving his assigned Lieutenant's actions at a former employer that was saved on his cell phone.

ALLEGATION No. 5

On January 8, 2013, Deputy Marshal Knickmeyer was on-duty in uniform assigned to the Regional Justice Center, North Gate Security entrance and demonstrated conduct unbecoming an employee when he told at least one co-worker he was going to distribute a copy of a civil suit involving his assigned Lieutenant's actions with a former employer.

NOTICE OF INVESTIGATION AND INTERVIEW

IA # 063-2013

Page 3 of 3

ALLEGATION No. 6

On January 8, 2013, Deputy Marshal Krickmeyer was on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance where he demonstrated conduct unbecoming an employee by directing a co-worker to unnecessarily and inappropriately search and re-scan a female visitor's purse after his co-worker informed him the purse contained no suspicious or banned items. Deputy Marshal Krickmeyer later identified the female visitor as the same person who filed a complaint against him and referred to her as a "bitch".

ALLEGATION No. 7

On January 8, 2013, Deputy Marshal Krickmeyer was on-duty in uniform and assigned to the Regional Justice Center, North Gate Security entrance where he was negligent in his duties when he engaged in inappropriate, unnecessary and unprofessional conduct that distracted and prevented him and a co-worker from performing their official duties.

EMPLOYEE NOTIFICATION OF INTERNAL INVESTIGATION AND INTERVIEW

You are afforded certain rights under NRS and representation during the interview. This representative must not be connected to this investigation. You may also obtain a copy of your investigation and/or record the interview with your own recording equipment.

You are again hereby directed/ordered not contact any employee or persons involved in this internal investigation until the complaint is finally adjudicated. You may not disclose the existence of this complaint or discuss any facts of the complaint with anyone except those persons with designated authority until the complaint is finally adjudicated.

Designated authority is extended to your representative of choice as allowed by the "Rights of Peace Officers". Failure on your part to adhere to these directives/orders will subject you to discipline up to and including termination from employment.

Please contact Investigator Thomas Newsome at 702-671-4359 if you have any questions regarding this notice. A copy of NRS 289 has been attached for your review.

Employee Signature: _____

Date: _____

SCORAA PRESIDENT: _____

[Signature]
NOTED: [unclear]

01-20-13

FOR REPORT: Krickmeyer

EXHIBIT 2

16



Eighth Judicial District Court
(702) 671-4528

MEMORANDUM EIGHTH JUDICIAL DISTRICT COURT

TO: THOMAS KNICKMEYER, DEPUTY MARSHAL
FROM: ROBERT BENNETT, COURT SECURITY DIRECTOR *RB*
SUBJECT: ADMINISTRATIVE LEAVE WITH PAY PENDING INVESTIGATION
DATE: MAY 20, 2013

You are the subject of an internal investigation conducted by District Court's IA Bureau. The following misconduct is alleged:

1. While on duty assigned to the Regional Justice Center, North Gate security entrance, you demonstrated conduct unbecoming an employee by making inappropriate and unprofessional comments regarding your employment and supervision. You showed at least one co-worker a civil suit involving your supervisor and indicated you were going to distribute it.
2. You demonstrated conduct unbecoming an employee by directing a co-worker to unnecessarily and inappropriately search and re-scan a visitor's purse after the co-worker informed you the purse contained no suspicious or banned items. You later identified the female visitor as the same person who filed a complaint against you, and you referred to her as a "Bitch."
3. You were negligent in your duties while you engaged in inappropriate, unnecessary and unprofessional conduct that distracted and interfered with the performance of the official duties of you and your co-worker.

Due to the seriousness of the allegations, you are being placed on Administrative Leave with Pay pending the conclusion of this internal investigation. This action is in compliance with NRS 289.057 and is effective immediately upon receipt of this notice.

cc: Steve Grierson, Court Executive Officer
Edward May, Human Resources Manager
Sharon Witt, Sr. Human Resource Analyst
Personnel File

17



**EIGHTH JUDICIAL DISTRICT COURT MARSHALS DIVISION
ADMINISTRATIVE LEAVE/RELIEF OF DUTY**

(See Policies and Procedures Manual section 13.13.00)

Employee: Thomas Knickmeyer, P# 145

Assignment: Administrative Marshal

RELIEF OF DUTY

You are hereby relieved of duty effective May 20, 2013. Therefore, you are not authorized to perform any peace officer related duties while this relief of duty is in effect. Your access to all Court property has also been restricted. If you have a need to access Court property you are required to use the public entrance and you are not allowed to possess a firearm while on Court Property. In addition, you will be escorted by Court Security staff while on Court property.

EQUIPMENT

Mark the box for any agency property/equipment that was REMOVED from the employee.

☐ Firearm ☐ Radio ☐ Badge ☐ Proximity card(s) ☐ Marshal ID ☐ Keys ☐ Other _____

☒ Employee is NOT authorized to carry any agency issued firearm(s) or agency issued equipment of any kind.

☐ Employee is NOT authorized to carry firearm(s) (included permitted concealed weapons, agency issued or personally owned firearms).

ADMINISTRATIVE LEAVE/RELIEF OF DUTY WITH PAY

You are to be available for duty or investigative purposes between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday unless otherwise directed by your supervisor or the investigating authority. You must be accessible by telephone and able to report for duty in order to receive your regular pay.

Failure to comply with any provision contained in this relief of duty notice may result in serious disciplinary action.

Employee (signature):

Thomas Knickmeyer

Date:

5-20-13

Relieving Authority (print name/title):

Robert V. Bennett, Court Security Director

Relieving Authority (signature):

Robert V. Bennett

Date:

5-20-13

18

EXHIBIT 3



EIGHTH JUDICIAL DISTRICT COURT
MARSHALS DIVISION

EMPLOYEE NAME: Thomas Knickmeyer #8 145	TITLE: Deputy Marshal
DIVISION: Marshals Division - RJC	DATE: October 23, 2013
NAME/TITLE OF SUPERVISOR COMPLETING FORM: Bob Bennett, Court Security Director	
TYPE OF ACTION:	
☐ DOCUMENTED ORAL WARNING	☐ ADMONISHMENT
☐ WRITTEN REPRIMAND	☐ FINAL WRITTEN WARNING
☐ INVOLUNTARY DEMOTION	☒ ADMINISTRATIVE LEAVE PENDING TERMINATION

DATE AND TYPE OF LAST ACTION: Written Reprimand dated May 20, 2013 for inappropriate and unprofessional behavior.

DESCRIPTION OF INCIDENT AS COMPILED FROM THE INVESTIGATION:

On January 7, 2013, you were on-duty in uniform assigned to the Regional Justice Center, North Gate Security entrance where you demonstrated conduct unbecoming an employee when you made inappropriate and unprofessional comments regarding your employment and supervision. Your inappropriate/unprofessional comments include, but are not limited to, making the following comment, "Fuck this place."

On January 8, 2013, you were on-duty in uniform assigned to the Regional Justice Center, North Gate Security entrance where you demonstrated the following conduct unbecoming an employee:

- You made inappropriate and unprofessional comments regarding your employment and supervision. You told at least one co-worker you were going to throw Lieutenant Steve Moody under the bus. You also stated Lieutenant Moody falsified his County application and referred to him as a "mother fucker."
- You showed at least one coworker a copy of a civil suit involving your assigned Lieutenant's actions at a former employer that was saved on your cell phone; while on duty, in uniform, assigned to a public area.
- You told at least one co-worker, Deputy Marshal David Ellis, you were going to distribute a copy of a civil suit involving your assigned Lieutenant's actions with a former employer.
- You directed a co-worker, Deputy Marshal Ellis, to unnecessarily and inappropriately search and re-scan a visitor's purse, Amanda Litt, after your co-worker informed you the purse contained no suspicious or banned items. You later identified the female visitor, Ms. Litt, as the same person who filed a complaint against you and referred to her as a "bitch." This is retaliatory conduct.
- You engaged in inappropriate, unnecessary and unprofessional conduct that distracted and potentially interfered with the performance of your official duties and the official duties of your co-worker.

During the investigative interview on May 22, 2013, you didn't recall many of the details related to the alleged misconduct and failed to provide clear and concise answers to various questions. You stated you might have said "fuck this place" and that you possibly used profanity. You admitted to showing DM Ellis a copy of the civil judgment related to Lt. Moody while on duty. You recalled Ms. Litt's purse being re-scanned/searched and indicated if you saw something suspicious you would automatically re-scan it. You also stated you must have told DM Ellis that Ms. Litt filed a complaint against you.

You engaged in inappropriate and unprofessional conduct by unnecessarily re-scanning and searching Ms. Litt's purse. This was a distraction that potentially prevented DM Ellis and yourself from performing your official duties, to include visibly monitoring the public entrance and screening additional court patrons awaiting entrance. You were responsible for harassing and retaliating against Ms. Litt.

In accordance with 12.00.04 of the Eighth Judicial District Court Marshals Division, the totality of your actions while in uniform and on-duty, including your unprofessional and inappropriate comments and your retaliatory conduct constitutes a level of misconduct warranting termination of your employment.

In addition, a review of your overall disciplinary history with the Court reflects the following:

- Written Reprimand – Inappropriate/unprofessional behavior— Appearing asleep while on duty in Court, May 29, 2013.
- Twenty (20) Day Suspension - Inappropriate Behavior--EEO related, July 14, 2003. You were advised of the following: "Additionally, it shall be understood that if there is a repeat of behavior of this nature in the future, such shall be grounds for immediate termination whether or not such conduct is "per se" unlawful."
- Three (3) Day Suspension – Inappropriate Behavior, EEO related, July 17, 1997

Another major consideration is that in June 2013, the Office of Diversity completed an investigation into a third-party complaint of sex, race and religious misconduct brought against you. Based upon the information gathered during the investigation, it was determined you did engage in misconduct that if left unchecked could rise to the level of unlawful conduct.

YOU ARE IN VIOLATION OF THE FOLLOWING:

Model Code of Conduct for Judicial Employees in the State of Nevada, Canons 1, 2 and 3
Eighth Judicial District Court Marshals Division Policy & Procedures Manual
Clark County Equal Opportunity, Affirmative Action, Sexual Harassment Policy

REQUIRED CORRECTIVE ACTION:

As a result of the violations identified above, including your continued pattern of inappropriate/unprofessional behavior, your employment with the Eighth Judicial District Court has been recommended for termination. You will remain on administrative leave with pay, pending the Step 1 pre-termination meeting. The meeting will take place on Tuesday, October 29, 2013 at 2:00 p.m. in the Regional Justice Center, 300 Lewis Avenue, 2nd Floor, Las Vegas, NV 89155, District Court Conference room #2115.

Nov 8 2013 2:00 pm
Nov 7 2013 9:00 am
Advised
21
2

Pursuant to subsection 1 of NRS 289.080, a Peace Officer may upon request have two representatives of the Peace Officer's choosing present with the Peace Officer during any phase of an interrogation or hearing relating to an investigation, including, without limitation, lawyer, a representative of a labor union or another Peace Officer.

I have read, discussed, and understand the contents of the above memo.

Employee Signature



(Your signature does not indicate that you agree, only that you have been presented with this information.)

Date:

10-23-13

Cc: Steve Grierson, Court Executive Officer
Edward May, Human Resources Manager
Sharon Will, Sr. Human Resource Analyst
Personnel File

EXHIBIT 4

DECISION ON STEP 1 PRE-TERMINATION MEETING
Re: Tom Knickmeyer

On or about January 7, 2013, Deputy Marshal Thomas Knickmeyer (hereinafter "Grievant Knickmeyer") was on duty in uniform and assigned to the Regional Justice Center, North Gate Security. During this assignment, Deputy Marshal David Ellis (hereinafter "Marshal Ellis") was working the x-ray scanner while Grievant Knickmeyer was operating the monitor. (See Ellis Statement). Grievant Knickmeyer told Marshal Ellis that Knickmeyer "should quit his job as they were out to get him." (See Ellis Statement). Grievant Knickmeyer also showed Marshal Ellis a copy of a civil lawsuit involving their lieutenant, Lt. Moody, on Knickmeyer's cell phone. Grievant Knickmeyer stated to Marshal Ellis he "can't stand that motherfucker" and Knickmeyer was going to throw Lt. Moody "under the bus." (See Ellis Statement). Grievant Knickmeyer also told Marshal Ellis that Lt. Moody "falsified his county application" and that Lt. Moody "should not be working here." (See Ellis Statement). Grievant Knickmeyer was "irate" and stated "fuck this place." (See Ellis Statement). Grievant Knickmeyer went on to tell Marshal Ellis that the "HR Diversity and our 'L.A. Departments' were investigating Knickmeyer for an 'incident with a white female attorney on the 12th floor.'" (See Ellis Statement). Grievant Knickmeyer told Marshal Ellis that Chief Bennett was getting fired and Grievant Knickmeyer "was going to be fired." (See Ellis Statement).

On or about January 8, 2013 at approximately 8 am, a white female came through the rear scanner. (See Ellis Statement). Grievant Knickmeyer asked Marshal Ellis for the female attorney's black purse. (See Ellis Statement). Marshal Ellis gave Grievant Knickmeyer the purse as the female attorney waited. (See Ellis Statement). Grievant Knickmeyer had Marshal Ellis check through the purse then wanted to scan it again. (See Ellis Statement). Marshal Ellis "looked at the monitor and did not observe anything suspicious." (See Ellis Statement). Grievant Knickmeyer wanted Marshal Ellis to look through the purse again. (See Ellis Statement). Marshal Ellis did not observe any suspicious or banned items. (See Ellis Statement). Grievant Knickmeyer asked if Marshal Ellis was sure. (See Ellis Statement). Marshal Ellis stated "it looks good to me" and replaced the removed items back into the female attorney's purse. (See Ellis Statement).

As Marshal Ellis returned her purse, he "observed her to have a facial expression of harassment." (See Ellis Statement). Marshal Ellis apologized for the delay. (See Ellis Statement). As she walked away, Grievant Knickmeyer leaned over and said "that's the bitch that complained on me." (See Ellis Statement). Grievant Knickmeyer then told Marshal Ellis that he "should watch his back because Lt. Moody was sitting at the Northgate Supervisors' Desk." (See Ellis Statement).

Grievant Knickmeyer also told Marshal Ellis he was going to make copies of the lawsuit regarding Lt. Moody and distribute them around the RJC. (See Ellis Statement).

On or about January 8, 2013, Marshal Ellis reported these allegations of misconduct to his supervisory staff. He also prepared and submitted a written statement. (The aforementioned excerpts are taken from said statement).

On or about January 14, 2013, Deputy Marshal Investigator Thomas Newsome was assigned to investigate the allegations.

On Jan 16, 2013, Newsome looked for surveillance tapes of the incidents but found none. However, the Marshals Division assignment logs confirmed Marshal Ellis and Grievant Knickmeyer worked on the alleged dates.

On or about March 6, 2013, Marshal Ellis was interviewed and confirmed he wrote the aforementioned statement. He also picked Attorney Amanda Litt out of photo.

On or about March 25, 2013, Investigating Marshal Newsome interviewed Attorney Amanda Litt. Attorney Litt confirmed entering the Regional Justice Center on the date in question. (See Litt Interview). Attorney Litt indicated there was no legitimate reason for her purse to be scanned multiple times, emptied and searched by hand. (See Litt Interview). Attorney Litt stated her purse contained her keys, wallet, cell phone and pens. (See Litt Interview). Attorney Litt stated the repeated scanning and search of her purse was upsetting. (See Litt Interview). Attorney Litt felt harassed and indicated that Grievant Knickmeyer has a "serious vendetta" against her because a complaint she filed against him while she was employed with the District Court. (See Litt Interview). Attorney Litt stated that Grievant Knickmeyer "scares her" but she did not report the incident to the District Court because "she did not want to cause anymore havoc." (See Litt Interview).

On or about May 20, 2013, Grievant Knickmeyer was given a written reprimand for "appearing" to be asleep while court was in session on September 18, 2012.

On or about June 7, 2013, Grievant Knickmeyer was interviewed by Investigating Marshal Newsome. It should be noted 48 hours prior to the interview Grievant Knickmeyer was provided a written notice of the investigation/interview and a copy of NRS Chapter 289. Present, representing Grievant Knickmeyer, was the Marshal's Association President, Anthony Vogel and their Attorney Adam Levine. Grievant Knickmeyer couldn't recall whether he said "fuck this place" and said he "may have." (See Knickmeyer interview). Grievant Knickmeyer said he would have to deny saying Director of Security was going to be fired, but also noted he couldn't recall because it had been so long. (See Knickmeyer interview). With regard to the statements about Lt. Moody, Grievant Knickmeyer again stated it has "been so long" but also said he "was wondering if [Moody] disclosed such a conviction." (See Knickmeyer interview). Grievant Knickmeyer said he could have used profanity but he doesn't use the term "throw him under the bus" but again he couldn't recall. (See Knickmeyer interview). Grievant Knickmeyer did admit showing the civil judgment noting it was a public record but didn't think he said he was going to distribute it. (See Knickmeyer interview). With regard to the Attorney Litt incident at the scanner, Grievant Knickmeyer couldn't recall the incident but denied that he would have done that. He said he may have mentioned Litt filed a complaint against him but didn't think he called her a "bitch." (See Knickmeyer interview).

On or about July 31, 2013, Internal Affairs Investigator Thomas Newsome prepared an Eighth Judicial District Court Marshals Division Internal Affairs Complaint Investigation Report setting forth the allegations against Grievant Knickmeyer. The Report alleged Grievant Knickmeyer violated the following Eighth Judicial District Court Marshals Division policies and procedures:

- 1.01.00 Oath of Office
- 1.02.00 Law Enforcement Code of Ethics
- 1.03.01 Vision
- 1.03.02 Values
- 1.03.03 Mission

1.03.04 Goals

4.05.00 Entry Screening Procedures

5.00.00 Duty Position – RJC

12.00.00 Code of Conduct

12.01.00 Standards of Conduct

12.02.00 Prohibitive Conduct While on Duty

The Report also noted that Grievant Knickmeyer violated the Model Code of Conduct for Judicial Employees in the State of Nevada, specifically:

Canon 1 – A Judicial employee shall uphold the integrity and independence of the judiciary and of the judicial employee's office;

Canon 2 – A Judicial employee shall avoid impropriety and the appearance of impropriety in all activities;

Canon 3 – A Judicial employee shall adhere to appropriate standards in performing the duties of office.

In setting forth the allegations, Investigating Marshal Newsome divided the allegations into 7 allegations of conduct unbecoming an employee.

Based upon the aforementioned allegations, Grievant Knickmeyer was recommended for termination.

On or about October 23, 2013, Grievant Knickmeyer was placed on administrative leave pending termination.

On or about November 7, 2013, a Step 1 Pre-Termination meeting was held. Present at the meeting were Grievant Knickmeyer; Human Resources Manager Edward May; Security Director Robert Bennett; Internal Affairs Investigator Thomas Newsome; Deputy Marshal Anthony Vogel; Attorney Adam Levine and Melissa De La Garza, Esq., Special Hearings Master for the Eighth Judicial District Court.

ISSUES

The issue at the Step 1 Pre-Termination meeting is whether there is just cause for Grievant Knickmeyer's termination.

ANALYSIS

The Clark County Courts Marshal's Division Policy and Procedure Manual, 1.02.00- LAW ENFORCEMENT CODE OF ETHICS, specifically states:

AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the

innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; *and to respect the Constitutional rights of all men and women to liberty, equality, and justice.*

I WILL keep my private life unsullied as an example to all; maintain courageously calm in the face of danger, scorn or ridicule; *develop self-restraint*; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, *I will be exemplary in obeying the laws of the land and the regulations of my Department.*

Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit my personal feeling, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, *I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence* and never accepting gratuities. . . . (CCCMD Policy and Procedure Manual, 1.01.00 emphasis added)

Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.01- VISION, specifically states: The vision of the Clark County Courts marshal's Division is to provide the best public safety and service in partnership with our community. (CCMD Policy and Procedure Manual, 1.03.01)

Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.02- VALUES, specifically states: The values of the Clark County Courts marshal's Division are:

- *Teamwork*
- *Respect for people*
- *Unity*
- *Serving the public*
- *Together reducing an unsafe atmosphere*

The acronym "TRUST" is the guiding principal for each and every employee.

The values are supported by behaviors, demonstrated by the actions of employees, as they live these values. All employees are expected to represent the values of the division *while in the workplace and on-duty.*

Clark County Courts Marshal's Division Policy and Procedure Manual
1.03.03 -- MISSION, specifically states:

The Mission of the Clark County Courts Marshal Division is to protect and to serve the Judiciary and the Public by *ensuring a safe environment* at all Clark County court facilities. All orders of the court shall be served and enforced with a commitment to providing those services in the most efficient, *courteous* and cost-effective manner.

Clark County Courts Marshal's Division Policy and Procedure Manual
12.01.00- STANDARDS OF CONDUCT, specifically states:

The following shall be grounds for disciplinary action, including discharge. The following shall also constitute cause as referred to below . . . Cause shall include, but not be limited to, any of the following: . . . 6. Conduct *unbecoming an employee*.

Clark County Courts Marshal's Division Policy and Procedure Manual
12.02.00 -- PROHIBITIVE CONDUCT WHILE ON DUTY, specifically states:

Clark County Courts marshal's Division members will act in a professional manner at all times while on duty. The Supervising Marshal will ensure that members are putting forth a positive and professional image of the Division at all times while assisting the public . . .

The Model Code of Conduct for Judicial Employees in the State of Nevada, Canon requires a judicial employee to uphold the integrity and independence of the judiciary and the employee's Office (See Canon 1). Canon 2 requires judicial employees to avoid impropriety and the appearance of such (See Canon 2); and Canon 3 requires Judicial Employees to adhere to appropriate standards in performing the duties of office. (See Canon 3).

In looking at the actions of Grievant Knickmeyer on January 7, 2015, it is clear that his actions were those unbecoming of an officer. (See Clark County Courts Marshal's Division Policy and Procedure Manual 12.01.00 -- STANDARDS OF CONDUCT). Not only was he "irate," he used profanity and went on essentially a tirade while on duty and in uniform. Upset that he is under investigation (which should be confidential in and of itself) and believing he will be fired, he tells a fellow officer that he

can't stand their superior, Lt. Moody. He says he will throw him under the bus and he has "falsified" documents and that the Security Director will also be fired. He even goes so far as to say, "F*** this place." This is not a show of self-restraint. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.02.00 - LAW ENFORCEMENT CODE OF ETHICS). He isn't being an exemplary individual. (See Clark County Courts Marshal's Division Policy and Procedure Manual 12.01.00 - STANDARDS OF CONDUCT and Model Code of Conduct for Judicial Employees Canon 1). And he is without a doubt allowing his personal feelings determine his actions. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.02.00 - LAW ENFORCEMENT CODE OF ETHICS).

Grievant's counsel argues that while the profanity may warrant action, it doesn't warrant termination. He also argues that the statements about Lt. Moody and showing the civil judgment is a "matter of public concern" and is constitutionally protected. This hearing master disagrees.

In order for these statements and actions to be protected, Grievant must show that the statements are constitutionally protected. Gillotte v. Delmore, 886 F.2d 1194, 1197 (9th Cir. 1989). And the speech will not be protected unless it "substantially involved matters of public concern." McKinley v. City of Eley, 705 F.2d 1110, 1114 (9th Cir. 1983). For his statements/actions be considered "public concern" they must relate to "any matter of political, social, or other concern to the community." Connick v. Myers, 461 U.S. 138, 103 S.Ct. at 1690. Furthermore, "whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." Id at 147-48, 103 S.Ct. at 1690, the employee's motivation and the chosen audience are among the many factors to be considered in light of the public's interest in the subject matter of the speech. Havekost v. United State Dep't of Navy, 925 F.2d 316, 318 (9th Cir. 1991) (quoting Berg v. Hunter, 854 F.2d 238, 243 (7th Cir. 1988)).

In looking at the context of Grievant Knickmeyer's statements, we must first note that he is "irate" as reported by Marshal Ellis. He is telling his fellow officer that he should just quit because he is going to be fired for a complaint. He further says that the Director of Security will be fired, but gives no basis. He says he can't stand his superior

L.L. Moody, but doesn't give any basis other than he must have falsified his application. He doesn't give proof of a falsified application but instead shows a civil judgment to his fellow officer stating that he will throw L.L. Moody under the bus. His statements are not made to human resources or administration or as part of a debate but out of anger because Grievant Knickmeyer believes they are "out to get" him. These are not the statements of a person attempting to bring forth a matter of public concern. Instead they are a vindictive attack from a person who feels he is being targeted for termination. Even more disturbing is that the Grievant is an officer. He is charged with the duty of protecting the public entering the courthouse. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.02 - VALUES; Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.03 - MISSION). Instead of bringing forth a legitimate grievance to superiors, he is essentially asking and trying to show that his superior should not be trusted. This is of major concern in that should a security breach occur in the courthouse, these officers must work together to ensure everyone's safety including their own. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.02 - VALUES). However, Grievant Knickmeyer is telling a fellow officer that their superiors are liars and will be fired. Creating this mistrust in fellow officers does not create the feeling of trust and could have a detrimental impact on working relationships and therefore safety in the courthouse. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.02 - VALUES). These are not the type of statements that the law looks to protect in promoting free speech.

However, even if we assume that Grievant Knickmeyer's statements are protected free speech, the burden would then shift to the Eighth Judicial District Court to show that its legitimate administrative interests outweigh the First Amendment interest in Knickmeyer's freedom of speech. See Pickering v. Bd. Of Education, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734. If the EJDC shows that the speech so severely damaged office harmony and working relationships that the administration's interest in promoting an effective workplace outweighs Knickmeyer's First Amendment rights. Hyland v. Wonder, 972 F2d at 1139. "The more tightly the First Amendment embraces the speech the more vigorous a showing of disruption must be made." *Id.* In the instant matter, as noted above the speech does not appear to be protected but if so, the embrace would be

loose. Nonetheless, a showing of interference and disruption can be shown. Based upon the function of the Marshal's Division in the courthouse, teamwork, respect and unity of the Marshals is of the utmost importance. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.01.00-1.03.03). The Marshals are charged with ensuring a safe environment at the court facilities. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.03 - Mission). The type of statements made by Grievant Knickmeyer are evidence of a detrimental impact on his working relationship with Lt. Moody as well as Director of Security Bennett, his direct supervisors. He is saying he will throw Lt. Moody under the bus and Bennett will be fired. There can be no hope, based on those statements, that Knickmeyer will follow their lead and/or orders at a time of security breach. During his assignment of January 7, 2013, he is to be "reducing an unsafe atmosphere" and instead he is saying "F*** this place." How can either administration or the public feel confident that he is "providing the best public safety and service." (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.01 - VISION) with statements of that nature? It can't. In fact, the goals of the Marshal's Department are wholly undermined by Knickmeyer's statements.

Administration, the public, and the whole Regional Justice Center are looking to Grievant Knickmeyer and his colleagues to keep them safe when they enter. The safety of all is put in danger when Grievant Knickmeyer displays an attitude of distrust of his superiors, a desire to "throw them under the bus" and a complete lack of commitment to provide safety evidenced by his words.

On January 8, 2013, Grievant Knickmeyer goes even further in committing acts unbecoming an officer. While at the North Gate, Grievant Knickmeyer requires the re-scan and physical check of a female attorney's purse because she was the "bitch that complained on" him. Deputy Marshal Ellis looks at the purse noting that it looks good but then Grievant Knickmeyer insists on checking it further harassing the attorney who has complained against him. He even leans over to Marshal Ellis afterwards and notes that she's the one the complained. Grievant Knickmeyer then tells Ellis to be careful because Lt. Moody is at the supervisors' desk. Even though Ellis believes he has done nothing wrong, it gives us further insight into Grievant Knickmeyer's belief. He must believe he is doing wrong if he is concerned about Lt. Moody's presence. (See Clark

County Courts Marshal's Division Policy and Procedure Manual 12.02.00 -- PROHIBITIVE CONDUCT WHILE ON DUTY). If he didn't believe he was doing anything wrong then why would he tell Marshal Ellis to watch his back. Not only is he forcing Marshal Ellis' cooperation in wrongdoing, he is harassing and violating the rights of a female attorney clearly as retaliation for her earlier complaint. In violation of his Oath of Office and Code of Ethics he is subjecting her to an additional search even though he has been told nothing is suspicious. (Also see Model Code of Conduct for Judicial Employees, Canon 2 and Canon 3(C)). The attorney, Ms. Litt, herself felt harassed and later expressed her fear of Grievant Knickmeyer. Persons entering the courthouse should feel secure not threatened and fearful of the very persons given the duty to protect them. (See Clark County Courts Marshal's Division Policy and Procedure Manual 1.03.03 - MISSION). This is a grave violation of his duties as a Marshal.

Grievant's counsel, in a hypothetical, argues that it was Knickmeyer's duty to re-check the purse if he had concerns. However, there is absolutely no evidence that Grievant Knickmeyer had any concerns. In fact, the evidence is to the contrary. The evidenced adduced is that this unconstitutional behavior was retaliation for a complaint. This is unacceptable behavior that should not and cannot be tolerated by a law enforcement division.

These violations, in and of themselves, are quite serious. But they don't stand alone. In making the recommendation of termination, Investigator Newsome noted a Written Reprimand issued May 20, 2013, a twenty (20) day suspension for inappropriate behavior - EEO related, July 14, 2003, and a three day suspension for inappropriate behavior, EEO related, July 17, 1997 as well as a 2013 finding of "misconduct that if left unchecked could rise to the level of unlawful conduct." (See Administrative Leave Pending Termination, page 2). Furthermore, during the Pre-Termination meeting, Grievant Knickmeyer, didn't see one of his prior substantiated infractions as wrongdoing, but instead noted he was "taking one for the team." That statement doesn't evidence an acknowledgement that he has committed errors and it is time to change, i.e. there will be a modification of behavior. Instead it gives one concern that inappropriate and unlawful conduct will happen in the future. As noted by the administration, they

cannot be placed in a situation of waiting "to see if anyone else is going to file a complaint."

CONCLUSION

Based upon the aforementioned, I do find that allegations 1-6 are substantiated. Allegation 7 is not pled with specificity and therefore is unsubstantiated. However, based upon allegations 1-6, I hereby find the recommendation for termination UPHOLD.



Melisa De La Garza, Esq.
Special Hearings Master
Eighth Judicial District Court

EXHIBIT 5

Decision on Step 2: County Manager Response
Re: Thomas Knickmeyer

On February 5, 2014, pursuant to Article 13, Section 2 of the M.O.U., a Step 2 meeting was conducted in an effort to resolve the grievance filed by Thomas Knickmeyer regarding his termination. The recommendation to terminate Mr. Knickmeyer was upheld as a result of the Step 1 Pre-Termination meeting held on November 7, 2013. Special Hearing Master for the Eighth Judicial District Court, Melisa De La Garza, presided over this meeting and subsequently prepared a written decision upholding the recommendation to terminate Grievant Knickmeyer. On or about November 13, 2013, the Court Chief Executive Officer Steve Grierson adopted the findings and recommendations of Special Hearing Master De La Garza. From there, the Grievant appealed the decision, resulting in the Step 2 meeting.

Present at the Step 2 meeting conducted on February 5, 2014, were Grievant Knickmeyer; Human Resources Manager Edward May; Security Director Robert Bennett; Internal Affairs Investigator Thomas Newsome; Staff Counsel for Eighth Judicial District Court Andres Moses; CCDMA President Anthony Vogel; CCDMA Vice President William Campbell; CCDMA counsel Adam Levine, and myself as the designee of the Eighth Judicial District Court. One purpose of the Step 2 meeting was to give both sides the opportunity to meet and resolve their differences. For Grievant Knickmeyer, this would necessarily mean the imposition of reasonable discipline short of termination. Since a resolution has not been reached, I must now determine whether terminating Grievant Knickmeyer, without first imposing progressive discipline, was reasonable or, alternatively, if the recommendation should be reversed and some lesser form of discipline imposed.

As more fully explained below, I affirm the decision to terminate Grievant Knickmeyer. I incorporate the findings made by Special Hearing Master De La Garza, and supplement them as set forth herein.

The applicable section of the District Court Marshal Division's Manual, which provides the basis for my decision, is DCMD 12.00.05. This section states as follows:

"12.00.05 DISCIPLINE AND PRIOR OFFENSES

The Court and Division are committed to utilizing disciplinary actions as a means to change and correct behavior. The Court and Division will normally apply discipline progressively, however, based on the severity of the violation and/or the totality of the incident, there will be times when non-progressive discipline, up to termination, may be warranted and implemented." (Emphasis added).

Although CCDMA counsel suggested that this provision is reserved for egregious behavior, such as theft, I do not find this persuasive. The plain reading of the provision does not limit the ability to terminate without progressive discipline to certain types of acts. Rather, it is a fairly expansive provision, and one that was agreed to by both Management and the Marshals.

As a result of the Step 2 meeting, I considered whether the level of discipline imposed on Grievant Knickmeyer – termination – was reasonable under the "totality of the incident" standard that permits termination without progressive discipline. See DCMD 12.00.05.

The "totality of the incident" that I considered in Step 2, was Grievant Knickmeyer's conduct on January 8, 2013, while working as an Administrative Marshall at the North Gate Security entrance of the Regional Justice Center.¹ His conduct included the following:

1. Making inappropriate and unprofessional comments regarding his employment and his supervisor, Lt. Steven L. Moody, including that he was going to "throw Lt. Moody under the bus";
2. Showing at least one co-worker a copy of a civil lawsuit, involving Lt. Moody during his previous employment, that was downloaded on his cell phone;
3. Telling at least one co-worker that he was going to distribute a copy of the civil lawsuit around the Regional Justice Center; and,
4. Directing a co-worker to unnecessarily and inappropriately search and rescan a female lawyer's purse: the same woman who had previously "complained on" him.

These four acts, when considered in their totality, constitute sufficient conduct under DCMD 12.00.05, to warrant termination without first imposing progressive discipline. Special Hearing Master De La Garza's decision from the Step 1 Pre-Termination Meeting is detailed and fully supports termination without progressive discipline. It should be noted that the factual record developed from the Step 1 meeting wasn't seriously disputed during the Step 2 meeting. During the Step 2 meeting,

¹ Grievant Knickmeyer engaged in conduct warranting discipline on several occasions before January 8, 2013. While I affirm the Special Hearing Master De La Garza's findings in this regard, the conduct that I believe independently upholds the termination without progressive discipline occurred on January 8, 2013.

additional issues were raised. These issues are addressed below in order to supplement the Step 1 proceedings.

First, while the Grievant's comments regarding Lt. Moody may have been "protected speech" under certain circumstances, it is unlikely they were protected in this case. The case law provided by CCDMA counsel at the Step 2 meeting can either be distinguished or is supportive of the District Court's position. I agree with Mr. Levine that "exposure of official misconduct especially within the police department is generally of great consequence to the public." *Dahlia v. Rodriguez*, 2013 WL 4437594 (CA.9) (Cal.), at page 9. But this is not the case here. Lt. Moody's past conduct during his previous employment that resulted in a civil lawsuit, does not constitute the type of corruption contemplated by *Dahlia*, which if revealed would be "protected speech." Further, it was only after the events of January 8, 2013, involving the Grievant, that he reported his concerns about Lt. Moody to Mr. May in letters dated January 10, 2013 and January 14, 2103 (sic)². Because the Grievant's comments about Lt. Moody were made to Marshall Ellis, a "co-worker", during business hours on January 8, 2013, they were likely made to undermine his supervisor's authority in the eyes of his co-worker rather than to share his knowledge for the public's benefit. See e.g., *Johnson v. Multnomah County*, 48 F.3d 420, 425 (9th Cir. 1995), another case provided at the Step 2 meeting by CCDMA counsel. I conclude that the Grievant's statements concerning Lt. Moody do not constitute "protected speech" under either *Dahlia* or *Johnson*. If the Grievant had merely mentioned Lt. Moody's civil lawsuit, without further undermining his supervisor's authority, lesser discipline may have been considered or not even

² I would note that in the past Discovery shared office space with the Marshall's on the Fifth Floor of the Regional Justice Center. In the January 10, 2013, letter prepared by the Grievant to Mr. May there are certain allegations involving Lt. Moody that purportedly occurred on the Fifth Floor around 0615 hours. As my days usually start between 0800 and 0900 I do not have any knowledge regarding these allegations, nor have I been privy to such allegations. My first knowledge of these allegations came as a result of reviewing Grievant Knickmeyer's correspondence in conjunction with the Step 2 meeting within the last month.