

1 Mark Forsberg, Esq., NSB 4265
2 Rick Oshinski, Esq., NSB 4127
3 OSHINSKI & FORSBERG, LTD.
4 504 E. Musser Street, Suite 302
5 Carson City, NV 89701
6 T 775-301-4250 | F 775-301-4251
7 Mark@OshinskiForsberg.com
8 Rick@OshinskiForsberg.com
9 Attorney for Respondent

REC'D & FILED
2016 NOV 17 PM 2:51
SUSAN MERRITT
Electronically Filed
Nov 30 2016 09:51 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

STATE OF NEVADA, ex rel. its
DEPARTMENT OF TRANSPORTATION,

Case No. 15 OC 00275 1B

Dept. No. 2

Petitioner,

vs.

CHAD ZENOR,

Respondent.

NOTICE OF APPEAL


NOTICE IS HEREBY GIVEN that Respondent, Chad Zenor, hereby appeals to the Supreme Court of Nevada from the *Order Denying Motion for Attorney's Fees* entered in this action on the 16th day of September, 2016.

The undersigned does hereby affirm that this document, does not contain the social security number of any person or persons pursuant to NRS 239B.

Dated this 17th day of November, 2016.

OSHINSKI & FORSBERG, LTD.

By


Mark Forsberg, Esq., NSB 4265
Rick Oshinski, Esq., NSB 4127
Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Oshinski & Forsberg, Ltd., and that on this date, I served the within **Notice of Appeal** on the following individuals or entities by serving a true copy thereof by the following method(s):

☒ enclosed in a sealed envelope with postage fully prepaid thereon, in the United States Post Office mail, pursuant to NRCP 5(b)(2)(B);

☐ via electronic filing pursuant to Nevada Electronic Filing and Conversion Rules ("NEFCR") 9(b);

☐ hand delivery via Reno/Carson Messenger Service pursuant to NRCP 5(b)(2)(A);

☐ electronic transmission (e-mail) to the address(es) listed below, pursuant to NRCP 5(b)(2)(D);and/or

☐ Federal Express, UPS, or other overnight delivery fully addressed as follows:

Dominika J. Batten
Deputy Attorney General
Bureau of Litigation
Personnel Division
5420 Kietzke Lane, Suite 202
Reno, NV 89511
Fax 775-688-1822
Attorneys for Petitioner

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of November, 2016, in Carson City, Nevada.


Linda Gilbertson

1 Mark Forsberg, Esq., NSB 4265
2 Rick Oshinski, Esq., NSB 4127
3 OSHINSKI & FORSBERG, LTD.
4 504 E. Musser Street, Suite 302
5 Carson City, NV 89701
6 T 775-301-4250 | F 775-301-4251
Mark@OshinskiForsberg.com
Rick@OshinskiForsberg.com
Attorney for Respondent

REC'D & FILED
2016 NOV 17 PM 2:51

SUSAN MERRITT
CLERK

7
8 **IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA**

9 **IN AND FOR CARSON CITY**

10 STATE OF NEVADA, ex rel. its
11 DEPARTMENT OF TRANSPORTATION,

Case No. 15 OC 00275 1B

Dept. No. 2

12 Petitioner,

13 vs.
14

15 CHAD ZENOR,

16 Respondent.
17 _____/

18 **CASE APPEAL STATEMENT**

19 Pursuant to NRAP 3(f)(3), Respondent/Appellant, Chad Zenor, by and through his undersigned
20 counsel, hereby submits his Case Appeal Statement as follows:

21 A. Identify the district court case number and caption showing the names of all parties to
22 the proceeding below:

23 See above caption.

24 B. Identify the name of the judge who entered the order or judgment being appealed:

25 James Wilson, District Judge.

26 C. Identify the name of each appellant and the name and address of counsel for each
27 appellant:
28

1 Mark Forsberg, Esq.
2 Oshinski & Forsberg, Ltd.
3 504 E. Musser St., Suite 302
4 Carson City, NV 89701

Chad Zenor

5 D. Identify the name of each respondent and the name and address of appellate counsel, or
6 respondent's trial counsel:

7 Dominika J. Batten, Esq.
8 Deputy Attorney General
9 Office of the Attorney General
10 Bureau of Litigation-Personnel Division
11 5420 Kietzke Lane, Suite 202
12 Reno, NV 89511

State of Nevada ex rel. its Dept. of Transportation

13 E. Indicate whether an attorney identified in subparagraph (D) is not licensed to practice
14 law in Nevada:

15 No.

16 F. Indicate whether appellant was represented by appointed counsel in the district court,
17 and whether the appellant is represented by appointed counsel on appeal:

18 No.

19 G. Indicate whether the district court granted the appellant leave to proceed in *forma*
20 *pauperis*, and the date of the district court order granting that leave:

21 No.

22 H. Indicate the date the proceedings commenced in the district court:

23 December 21, 2015

24 I. A brief description of the nature of the action and result in the district court (including
25 the type of judgment or order being appealed from and the relief granted by the district court.

26 NDOT filed a petition for judicial review pursuant to NRS 233B contesting a hearing officer's
27 decision order it to return Appellant to work after his wrongful termination and to pay him back pay.
28 The District Court upheld the hearing officer's decision, Appellant sought attorney's fee pursuant to
NRS 18 and NRCP 11. Appellant appeals the denial of its motion for attorney's fees.

1 J. Indicate whether the case has previously been the subject of an appeal to or original writ
2 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior
3 proceeding:

4 No.

5 K. Indicate whether the appeal involves child custody or visitation:

6 No.

7 L. Indicate in civil cases whether the appeal involves the possibility of settlement:

8 There does appear to be a reasonable prospect for settlement.

9 Dated this 17th day of November, 2016.

10 OSHINSKI & FORSBERG, LTD.

11
12 By 
13 Mark Forsberg, Esq., NSB 4265
14 Rick Oshinski, Esq., NSB 4127
15 Attorneys for Respondent
16
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Oshinski & Forsberg, Ltd., and that on this date, I served the
3 within **Case Appeal Statement** on the following individuals or entities by serving a true copy thereof by the
4 following method(s):

5 ☒ enclosed in a sealed envelope with postage fully prepaid thereon, in the United States Post
6 Office mail, pursuant to NRCP 5(b)(2)(B);

7 ☐ via electronic filing pursuant to Nevada Electronic Filing and Conversion Rules ("NEFCR")
8 9(b);

9 ☐ hand delivery via Reno/Carson Messenger Service pursuant to NRCP 5(b)(2)(A);

10 ☐ electronic transmission (e-mail) to the address(es) listed below, pursuant to NRCP
11 5(b)(2)(D);and/or

12 ☐ Federal Express, UPS, or other overnight delivery fully addressed as follows:

13 Dominika J. Batten
14 Deputy Attorney General
15 Bureau of Litigation
16 Personnel Division
17 5420 Kietzke Lane, Suite 202
18 Reno, NV 89511
19 Fax 775-688-1822
20 dbatten@ag.nv.gov
21 *Attorneys for Petitioner*

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on this 17th day of November, 2016, in Carson City, Nevada.

24 
25 Linda Gilbertson
26
27
28

Judge: WILSON JR, JAMES E

Case No. 15 OC 00275 1B
Ticket No.
CTN:

STATE OF NEVADA

By:

ZENOR, CHAD

DRSPND

-vs-

By: FORSBERG, MARK R
600 E WILLIAM STREET
SUITE 300
CARSON CITY, NV 89701Dob: Sex:
Lic: Sid:Plate#: Make:
Year: Accident:
Type:
Venue:
Location:

STATE OF NEVADA

PLNTPET

Bond: Set:
Type: Posted:

Charges:

Ct.

Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	11/17/16	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
2	11/17/16	NOTICE OF APPEAL Receipt: 47077 Date: 11/17/2016	1BCCOOPER	24.00	0.00
3	10/27/16	NOTICE OF ENTRY OF ORDER	1BVANESSA	0.00	0.00
4	10/20/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
5	10/19/16	ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE AND ORDER OF REMAND	1BCCOOPER	0.00	0.00
6	10/18/16	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
7	10/17/16	REQUEST TO SUBMIT	1BCCOOPER	0.00	0.00
8	10/17/16	REPLY IN SUPPORT OF RESPONDENTS MOTION FOR ORDER TO SHOW CAUSE	1BCCOOPER	0.00	0.00
9	10/13/16	CERTIFICATE OF SERVICE	1BVANESSA	0.00	0.00
10	10/06/16	ERRATA TO PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR ORDER TO SHOW CAUSE	1BVANESSA	0.00	0.00
11	10/03/16	PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR ORDER TO SHOW CAUSE	1BVANESSA	0.00	0.00
12	09/16/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
13	09/16/16	ORDER DENYING MOTION FOR ATTORNEY'S FEES	1BJULIEH	0.00	0.00
14	09/15/16	MOTION FOR ORDER TO SHOW CAUSE	1BCCOOPER	0.00	0.00
15	07/26/16	REQUEST TO SUBMIT	1BVANESSA	0.00	0.00
16	07/26/16	REPLY IN SUPPORT OF RESPONDENT'S MOTION FOR ATTORNEY'S FEES	1BVANESSA	0.00	0.00
17	07/15/16	PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR ATTORNEY'S FEES	1BCGRIBBLE	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
18	07/08/16	RESPONDENTS REPLY TO OPPOSITION TO MEMORANDUM OF COSTS	1BCCOOPER	0.00	0.00
19	07/01/16	MOTION FOR ATTORNEY'S FEES	1BVANESSA	0.00	0.00
20	06/30/16	PETITIONER'S OPPOSITION TO RESPONDENT'S MEMORANDUM OF COSTS	1BVANESSA	0.00	0.00
21	06/21/16	RESPONDENTS MEMORANDUM OF COSTS	1BCCOOPER	0.00	0.00
22	06/20/16	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
23	06/16/16	SUMMARY JUDGMENT	1BCGRIBBLE	0.00	0.00
24	06/15/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCGRIBBLE	0.00	0.00
25	06/15/16	ORDER DENYING PETITIONER'S PETITION FOR JUDICIAL REVIEW	1BCGRIBBLE	0.00	0.00
26	06/01/16	REQUEST FOR SUBMISSION	1BCGRIBBLE	0.00	0.00
27	05/26/16	PETITIONER'S REPLY IN SUPPORT OF OPENING BRIEF	1BVANESSA	0.00	0.00
28	05/25/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
29	05/25/16	STIPULATION TO EXTEND TIME TO FILE PETITIONER'S REPLY BRIEF AND ORDER	1BJHIGGINS	0.00	0.00
30	05/19/16	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00
31	05/19/16	STIPULATION TO EXTEND TIME TO FILE PETITIONERS REPLY BRIEF AND ORDER	1BCCOOPER	0.00	0.00
32	04/21/16	RESPONDENT'S ANSWERING BRIEF	1BVANESSA	0.00	0.00
33	03/07/16	PETITIONER'S OPENING BRIEF	1BVANESSA	0.00	0.00
34	03/04/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
35	03/04/16	STIPULATION TO EXTEND TIME TO FILE PETITIONERS OPENING BRIEF AND ORDER	1BCCOOPER	0.00	0.00
36	03/01/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSA	0.00	0.00
37	03/01/16	ORDER DENYING MOTION FOR STAY PENDING APPEAL	1BVANESSA	0.00	0.00
38	02/29/16	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
39	02/16/16	SUBSTITUTION OF ATTORNEY	1BJULIEH	0.00	0.00
40	02/08/16	REQUEST TO SUBMIT	1BCCOOPER	0.00	0.00
41	01/29/16	NOTICE OF CHANGE OF TELEPHONE NUMBERS OF COUNSEL	1BVANESSA	0.00	0.00
42	01/29/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
43	01/29/16	ORDER GRANTING MOTION	1BCCOOPER	0.00	0.00
44	01/25/16	PETITIONERS REPLY TO RESPONDENTS OPPOSITION TO MOTION FOR STAY PENDING APPEAL	1BCCOOPER	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
45	01/25/16	NOTICE OF NON-OPPOSITION	1BCCOOPER	0.00	0.00
46	01/20/16	CERTIFICATION OF TRANSMITTAL	1BCCOOPER	0.00	0.00
47	01/20/16	RECORD ON APPEAL	1BCCOOPER	0.00	0.00
48	01/20/16	PLAINTIFF'S/PETITIONER'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BCCOOPER	0.00	0.00
49	01/20/16	TRANSMITTAL OF RECORD ON APPEAL	1BCCOOPER	0.00	0.00
50	01/20/16	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
51	01/19/16	MOTION FOR EXTENSION OF TIME TO FILE REPLY TO OPPOSITION TO MOTION FOR STAY PENDING APPEAL	1BCCOOPER	0.00	0.00
52	01/12/16	AFFIDAVIT OF SERVICE	1BVANESSA	0.00	0.00
53	01/08/16	OPPOSITION TO MOTION FOR STAY PENDING APPEAL	1BCCOOPER	0.00	0.00
54	01/08/16	NOTICE OF INTENT TO PARTICIPATE	1BCCOOPER	0.00	0.00
55	01/08/16	NOTICE OF APPEARANCE Receipt: 42621 Date: 01/08/2016	1BCCOOPER	218.00	0.00
56	01/07/16	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
57	01/07/16	ORDER FOR RESPONSE	1BCCOOPER	0.00	0.00
58	12/21/15	MOTION FOR STAY PENDING APPEAL	1BCCOOPER	0.00	0.00
59	12/21/15	EX-PARTE MOTION FOR ORDER SHORTENING TIME	1BCCOOPER	0.00	0.00
60	12/21/15	PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
Total:				242.00	0.00
Totals By: COST				242.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

REC'D & FILED

2016 SEP 16 PM 4:47

SUSAN MERRIWETHER
CLERK

BY SW DEPUTY

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

STATE OF NEVADA, ex rel.
its DEPARTMENT OF
TRANSPORTATION,

Plaintiff,

vs.

CHAD ZENOR,

Defendant.

1500 00275
CASE NO. 16 DR1 00322 1B
DEPT. 2

ORDER DENYING MOTION FOR
ATTORNEY'S FEES

For the purpose of this order the court accepts the statement of facts
in Chad Zenor's Motion for Attorney's Fees.

A court cannot make an award of attorney's fees unless authorized by statute,
rule or contract. *State, Dep't of Human Resources v. Fowler*, 109 Nev. 782, 784,
858 P.2d 375 (1993). Mr. Zenor's Motion for Attorney's Fees seeks judicial
action concerning a final decision in a contested case involving an agency. NRS
233B.130(6) states in pertinent part: "The provisions of this chapter are the
exclusive means of ... judicial action concerning a final decision in a contested
case involving an agency" Chapter 233B does not contain any specific
language authorizing the award of attorney's fees in actions involving petitions
for judicial review of agency action. *Fowler* at 785. Because Chapter 233B does
not contain any specific language authorizing the award of attorney's fees and
Chapter 233B is the exclusive means of judicial action concerning final decision
in a contested case involving an agency the court cannot make an award of

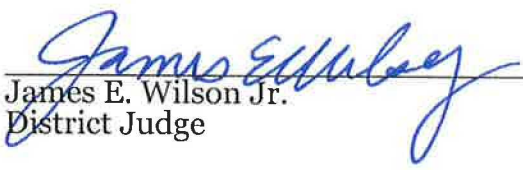
1 attorney's fees.

2 Mr. Zenor's arguments regarding NRS 18.010(2)(b) and the fact that no
3 Nevada cases bar an award of attorney's fees under these circumstances are not
4 persuasive for the foregoing reasons.

5 IT IS ORDERED:

6 The Motion for Attorney's Fees is denied.

7 September 16, 2016.

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James E. Wilson Jr.
District Judge

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2016 OCT 18 PM 3:14

SUSAN MENRIWETHER
CLERK

BY  DEPUTY

ADAM PAUL LAXALT
Attorney General
DOMINIKA J. BATTEN
Deputy Attorney General
Nevada Bar No. 12258
Bureau of Litigation, Personnel Division
5420 Kietzke Lane, Suite 202
Reno, NV 89511
Tel: 775-687-2103
Fax: 775-688-1822
dbatten@ag.nv.gov

Attorneys for Petitioner
STATE OF NEVADA ex rel. its
DEPARTMENT OF TRANSPORTATION

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

STATE OF NEVADA, ex rel. its
DEPARTMENT OF TRANSPORTATION

Case No. 15 OC 00275 1B

Dept. No. 2

Petitioner,

vs.

CHAD ZENOR,


Respondent.

NOTICE OF ENTRY OF ORDER

TO: Petitioner Chad Zenor and Mark Forsberg of Oshinski & Forsberg, Ltd., his counsel of record:
PLEASE TAKE NOTICE that on September 16, 2016, the Court entered an Order Denying
Motion for Attorney's Fees, a true and correct copy of which is attached to this notice as Exhibit 1.

DATED this 18th day of October, 2016.

ADAM PAUL LAXALT
Attorney General

By:  for
DOMINIKA J. BATTEN
Deputy Attorney General
Nevada Bar No. 12258

Attorneys for Petitioner

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AFFIRMATION
Pursuant to NRS 239B.030/603A.040

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person pursuant to NRS 239B.030.

DATED this 18th day of October, 2016.

ADAM PAUL LAXALT
Attorney General

By 
DOMINIKA J. BATTEN
Deputy Attorney General
Nevada Bar No. 12258

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the State of Nevada, Office of the Attorney General and that on the 18th day of October, 2016, I served a true copy of the foregoing

NOTICE OF ENTRY OF ORDER by U.S. Mail and/or email to the following:

Mark Forsberg, Esq.
Rick Oshinski, Esq.
OSHINSKI & FORSBERG, LTD.
504 E. Musser Street, Suite 302
Carson City, NV 89701

(Via Email and U.S. Mail)
Mark@OshinskiForsberg.com
Rick@OshinskiForsberg.com

Kristie Fraser
Department of Administration
Hearings Division
1050 E. Williams Street, Suite 450
Carson City, Nevada 89701

(Via Email: kfraser@admin.nv.gov)

Kevin Ranft
Labor Representative
AFSCME Local 4041
504 E. Musser St. #300
Carson City, Nevada 89701

(Via Email: Kevin@afscme.org)


An Employee of the Office of the Attorney General

INDEX OF EXHIBITS

Exhibit 1 Order Denying Motion for Attorney's Fees 3 pages

EXHIBIT 1

EXHIBIT 1

REC'D & FILED

2016 SEP 16 PM 4:47

SUSAN MERRIWETHER
CLERK

BY SW DEPUTY

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

STATE OF NEVADA, ex rel.
its DEPARTMENT OF
TRANSPORTATION,

Plaintiff,

vs.

CHAD ZENOR,

Defendant.

15 cc 00275
CASE NO. 16-DR1-00322 1B

DEPT. 2

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case involving an agency" Chapter 233B does not contain any specific
language authorizing the award of attorney's fees in actions involving petitions
for judicial review of agency action. *Fowler* at 785. Because Chapter 233B does
not contain any specific language authorizing the award of attorney's fees and
Chapter 233B is the exclusive means of judicial action concerning final decision
in a contested case involving an agency the court cannot make an award of

1 attorney's fees.

2 Mr. Zenor's arguments regarding NRS 18.010(2)(b) and the fact that no
3 Nevada cases bar an award of attorney's fees under these circumstances are not
4 persuasive for the foregoing reasons.

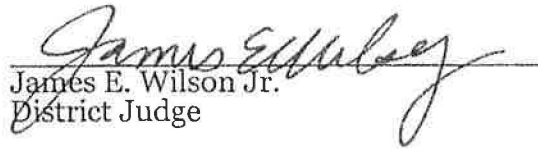
5 IT IS ORDERED:

6 The Motion for Attorney's Fees is denied.

7 September 16, 2016.

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James E. Wilson Jr.
District Judge

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Dominika Batton, DAG
5420 Kietzke Lane
Reno, NV 89511

Gina Winder
Judicial Assistant