

REC'D & FILED

2018 DEC 14 PM 3:20

SUSAN MERRIWETHER

Electronically Filed
BY A. BROWN
Dec 20 2018 10:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 ADAM PAUL LAXALT
Attorney General
2 CAMERON P. VANDENBERG
Chief Deputy Attorney General
3 Nevada Bar No. 4356
Nevada Office of the Attorney General
4 Bureau of Business and State Services
Personnel Division
5 5420 Kietzke Lane, Suite 202
Reno, NV 89511
6 Tel: 775-687-2132
Fax: 775-688-1822
7 cvandenberg@ag.nv.gov
Attorneys for Petitioner
8 *State of Nevada Department of Corrections*

9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR CARSON CITY**

11 STATE OF NEVADA, *ex rel.* its
12 DEPARTMENT OF CORRECTIONS,

Case No. 18 OC 00150 1B
Dept. No. 1

13 Petitioner/Appellant,

14 vs.

15 PATRICIA DEROSA, an individual, AND
16 STATE OF NEVADA *ex rel.* its
17 DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION, DIVISION OF
HEARINGS AND APPEALS,

18 Respondents.
19

20 **NOTICE OF APPEAL**

21 Notice is hereby given that the State of Nevada, *ex rel.* its Department of Corrections,
22 Petitioner/Appellant above-named, hereby appeals to the Supreme Court of Nevada from the District

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1 Court's final Order Granting Motion to Dismiss entered in this action on the 21st day of November,
2 2018.

3 DATED this 17th day of December, 2018.

4 ADAM PAUL LAXALT
5 Attorney General

6 By: 
7 CAMERON P. VANDENBERG
8 Chief Deputy Attorney General
9 *Attorneys for Petitioner/Appellant*
10 *Nevada Department of Corrections*

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DATED this 17th day of December, 2018.

By: Cameron Vandenberg
CAMERON P. VANDENBERG
Chief Deputy Attorney General
Attorneys for Petitioner/Appellant
Nevada Department of Corrections

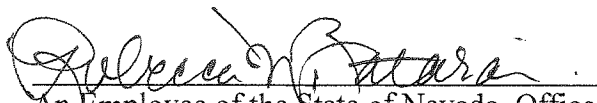
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General,
3 and that on this 17th day of December, 2018, in accordance with NRAP 3(d)(1), I served a copy of the
4 foregoing **NOTICE OF APPEAL**, by causing said document to be placed in the United States Mail,
5 first class postage prepaid, addressed to:

6
7 Thomas J. Donaldson, Esq.
8 Dyer Lawrence Flaherty Donaldson & Prunty
9 2805 Mountain St.
10 Carson City, Nevada 89703

11 Department of Administration
12 State of Nevada Personnel Commission
13 Division of Hearings and Appeals
14 1050 E. William Street, Suite 450
15 Carson City, Nevada 89701

16 Lorna L. Ward
17 Appeals Officer
18 Department of Administration
19 State of Nevada Personnel Commission
20 1050 E. William Street, Suite 450
21 Carson City, Nevada 89701

22
23
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25
26
27
28

An Employee of the State of Nevada, Office
of the Attorney General

ADAM PAUL LAXALT
Attorney General
CAMERON P. VANDENBERG
Chief Deputy Attorney General
Nevada Bar No. 4356
Nevada Office of the Attorney General
Bureau of Business and State Services
Personnel Division
5420 Kietzke Lane, Suite 202
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Fax: 775-688-1822
cvandenberg@ag.nv.gov
Attorneys for Petitioner
State of Nevada Department of Corrections

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SUSAN MERRIWETHER
CLERK
BY CTD
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

STATE OF NEVADA, *ex rel.* its
DEPARTMENT OF CORRECTIONS,

Case No. 18 OC 00150 1B
Dept. No. 1

Petitioner/Appellant,

vs.

PATRICIA DEROSA, an individual, AND
STATE OF NEVADA *ex rel.* its
DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION, DIVISION OF
HEARINGS AND APPEALS,

Respondents.

CASE APPEAL STATEMENT

Pursuant to NRAP 3(f), Petitioner/Appellant State of Nevada, Department of Corrections,
hereby files its Case Appeal Statement:

1. The name of the judge who entered the order or judgment being appealed:

Hon. James T. Russell.

2. The name of each appellant and the name and address of counsel for each appellant:

Appellant: State of Nevada, Department of Corrections, c/o Cameron P. Vandenberg, Chief
Deputy Attorney General, Office of the Attorney General, 5420 Kietzke Lane, Suite 202, Reno,
Nevada 89511, Tel: (775) 687-2132, Fax: (775) 688-1822.

- 1 **3. The name of each respondent and the name and address of appellate counsel, if known,**
2 **for each respondent, but if the name of a respondent's appellate counsel is not known,**
3 **then the name and address of that respondent's trial counsel:**

4 Respondent: Patricia DeRosa.

5 Counsel for Respondent in the district court proceeding: Thomas J. Donaldson, Esq., Law
6 Office of Dyer, Lawrence, Flaherty, Donaldson & Prunty, 2805 Mountain St., Carson City, Nevada
7 89703. Tel: (775) 885-1896, Fax: (775) 885-8728.

8 Counsel for Petitioner/Appellant is without information as to whether or not Respondent has
9 retained or will retain the same counsel for the appellate proceeding.

- 10 **4. Whether an attorney identified in response to subparagraph 3 is not licensed to practice**
11 **law in Nevada, and if so, whether the district court granted that attorney permission to**
12 **appear under SCR 42, including a copy of any district court order granting that**
13 **permission:**

14 N/A.

- 15 **5. Whether the appellant was represented by appointed counsel in the district court, and**
16 **whether the appellant is represented by appointed counsel on appeal:**

17 Appellant was represented by retained counsel in the district court and is represented by
18 retained counsel on appeal.

- 19 **6. Whether the district court granted the appellant leave to proceed in forma pauperis, and**
20 **if so, the date of the district court's order granting that leave:**

21 N/A.

- 22 **7. The date that the proceedings commenced in the district court:**

23 Petitioner/Appellant commenced the district court proceedings by filing a Petition for Judicial
24 Review on June 20, 2018.

- 25 **8. A brief description of the nature of the action and result in the district court, including**
26 **the type of judgment or order being appealed and the relief granted by the district**
27 **court:**

28 Effective March 14, 2018, Respondent, then a NDOC Program Officer I with the Nevada
Department of Corrections, was dismissed for engaging in unbecoming conduct, computer use
violations, and neglect of duty by removing and/or copying official Departmental documents
maintained by the State and using a state computer to send emails outside of the NDOC, containing

1 confidential information that compromised inmate affairs in violation of state and agency regulations.
2 At least two of the violations of agency regulations are considered “Class 5” violations for which
3 termination is the minimum recommended level of discipline for a first offense.

4 Respondent appealed her termination to a State administrative hearing officer in accordance
5 with NRS 284.390. Hearing Officer Lorna Ward issued her Findings of Fact, Conclusions of Law,
6 and Decision on May 23, 2018, wherein she found that Respondent’s conduct technically violated
7 agency regulations and acknowledged that termination was the recommended level of discipline for a
8 violation of one of the agency regulations, which was a Class 5 violation according to agency
9 guidelines. Despite these determinations, the hearing officer found that “[Respondent]’s actions do
10 not rise to the level of a Class 5 dismissal violation” and that “dismissal is not warranted in this
11 specific case and is not for the good of the public service.” The hearing officer reversed Respondent’s
12 termination and prescribed that “NDOC may impose any disciplinary penalty it chooses except for
13 dismissal.” Nowhere in her reversal Decision did the hearing officer determine there was no just cause
14 for the dismissal or that said dismissal was not reasonable, as required by NRS 284.390(1) and (7).

15 On June 20, 2018, Petitioner/Appellant filed a Petition for Judicial Review of the hearing
16 officer’s Findings of Fact, Conclusions of Law and Decision and served the Petition by mail to
17 Respondent’s counsel of record in accordance with NRS 233B.130(5) and NRCP 5.

18 On or about October 17, 2018, three days before Respondent’s Answering Brief was due,
19 Respondent filed a Motion to Dismiss requesting that the district court dismiss the Petition for Judicial
20 Review on the basis that Petitioner/Appellant failed to personally serve Respondent in accordance
21 with the requirements of NRCP 4(d)(6) within forty-five (45) days of filing the Petition. After
22 receiving the Motion, out of an abundance of caution, Petitioner/Appellant served the Petition and
23 Petitioner/Appellant’s Opening Brief by certified mail to Respondent’s home address on October 19,
24 2018.

25 Ignoring the Nevada Supreme Court’s rulings in the unpublished decisions of *Metz v. Nev. Div.*
26 *of Ins.*, 122 Nev. 1704, 178 P.3d 782 (2006) and *BAC Home Loans Servicing, LP v. Eighth Judicial*
27 *District Court*, 126 Nev. 691 (2010), which both state that NRCP 4’s service of process requirements
28 do not apply to petitions for judicial review, the district court found that NRS 233B.130(5) and NRCP

81 require that a Petition for Judicial Review be personally served in accordance with NRCP 4(d)(6).
On November 21, 2018, the district court entered its Order Granting Motion to Dismiss, dismissing
the Petition for Judicial Review with prejudice.

9. Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and docket number of the prior proceeding:

N/A.

10. Whether this appeal involves child custody or visitation:

N/A.

11. Whether this appeal involves the possibility of settlement:


This appeal may involve the possibility of settlement.

AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239.030 that the preceding Case Appeal Statement does not contain the personal information of any person.

DATED this 17th day of December, 2018.

ADAM PAUL LAXALT
Attorney General

By: 
CAMERON P. VANDENBERG
Chief Deputy Attorney General
Attorneys for Petitioner/Appellant
Nevada Department of Corrections

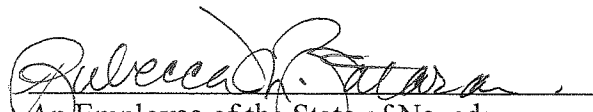
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General,
3 and that on this 17th day of December, 2018, in accordance with NRAP 3(d)(1), I served a copy of the
4 foregoing **CASE APPEAL STATEMENT**, by causing said document to be placed in the United
5 States Mail, first class postage prepaid, addressed to:

6 Thomas Donaldson, Esq.
7 Dyer Lawrence Flaherty Donaldson & Prunty
8 2805 Mountain Street
9 Carson City, Nevada 89703

10 Department of Administration
11 State of Nevada Personnel Commission
12 Division of Hearings and Appeals
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14 Carson City, Nevada 89701

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16 Appeals Officer
17 Department of Administration
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19 1050 E. William Street, Suite 450
20 Carson City, Nevada 89701

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An Employee of the State of Nevada,
Office of the Attorney General

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 18 OC 00150 1B

Ticket No.
CTN:

STATE OF NEVADA et al

By:

-vs-

DEPARTMENT OF
ADMINISTRATION

DRSPND

By:

Dob:
Lic:
DEROSA, PATRICIASex:
Sid:
DRSPND

By:

Dob:
Lic:
DIVISION OF HEARINGS AND
APPEALSSex:
Sid:
DRSPND

By:

Dob:
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PERSONNEL COMMISSIONSex:
Sid:
DRSPND

By:

Dob:
Lic:
STATE OF NEVADASex:
Sid:
DRSPND

By:

Dob:
Lic:
Sex:
Sid:Plate#:
Make:
Year:
Type:
Venue:
Location:
Accident:DEPARTMENT OF CORRECTIONS PLNTPET
STATE OF NEVADA PLNTPETBond:
Type:Set:
Posted:

Charges:

Ct.

Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct.

Offense Dt: Cvr:
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Arrest Dt:
Comments:

Ct.

Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	12/14/18	CASE APPEAL STATEMENT	1BCTORRES	0.00	0.00
2	12/14/18	NOTICE OF APPEAL FILED	1BCTORRES	24.00	0.00
3	11/27/18	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
4	11/21/18	MOTION TO DISMISS BY DEFENDANT	1BJHIGGINS	0.00	0.00
5	11/21/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
6	11/21/18	ORDER GRANTING MOTION TO DISMISS	1BJHIGGINS	0.00	0.00
7	11/16/18	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
8	11/16/18	RESPONDENT PATRICIA DEROSA'S REPLY TO PETITIONER'S OPPOSITION TO MOTION TO DISMISS	1BVANESSA	0.00	0.00
9	11/05/18	PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT PATRICIA DEROSA'S MOTION TO DISMISS PURSUANT TO NRCP 4 & 12 OR, IN THE ALTERNATIVE, MOTION TO EXTEND SERVICE PERIOD	1BCTORRES	0.00	0.00
10	10/24/18	STIPULATION AND ORDER EXTENDING TIME FOR FILING RESPONDENT PATRICIA DEROSA'S ANSWERING BRIEF	1BCCOOPER	0.00	0.00
11	10/17/18	RESPONDENT PATRICIA DEROSA'S MOTION TO DISMISS PURSUANT TO NRCP 4 & 12	1BVANESSA	0.00	0.00
12	09/21/18	PETITIONERS OPENING BRIEF	1BCCOOPER	0.00	0.00
13	08/31/18	NOTICE OF ENTRY OF ORDER	1BVANESSA	0.00	0.00
14	08/29/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
15	08/29/18	STIPULATION AND ORDER FOR EXTENSION OF TIME FOR PETITIONER TO FILE OPENING BRIEF	1BCCOOPER	0.00	0.00
16	07/25/18	CERTIFICATION OF TRANSMITTAL	1BVANESSA	0.00	0.00
17	07/25/18	TRANSMITTAL OF RECORD ON APPEAL	1BVANESSA	0.00	0.00
18	07/25/18	AFFIRMATION PURSUANT TO NRS 239.030	1BVANESSA	0.00	0.00
19	07/25/18	RECORD ON APPEAL	1BVANESSA	0.00	0.00
20	06/27/18	RESPONDENT PATRICIA DEROSA'S NOTICE OF INTENT TO PARTICIPATE IN JUDICIAL REVIEW PROCEEDING	1BCCOOPER	0.00	0.00
21	06/21/18	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCTORRES	0.00	0.00
22	06/21/18	ORDER FOR BRIEFING SCHEDULE	1BCTORRES	0.00	0.00
23	06/20/18	PETITION FOR JUDICIAL REVIEW	1BCTORRES	0.00	0.00
Total:				24.00	0.00
Totals By: COST				24.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

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

REC'D & FILED
21 NOV 21 AM 8:44
SUSAN MERRIWETHER
CLERK

3
4 STATE OF NEVADA, *ex rel.* its
5 DEPARTMENT OF CORRECTIONS,

6 Petitioner,

7 vs.

8 PATRICIA DEROSA, an individual, and
9 STATE OF NEVADA, *ex rel.* its
10 DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION and DIVISION
OF HEARINGS AND APPEALS,

11 Respondents.
12

BY [Signature] DEPUTY
CASE NO.: 18 OC 00150 1B

DEPT NO.: 1

13 **ORDER GRANTING MOTION TO DISMISS**

14 This matter comes before the Court pursuant to a Motion to Dismiss Pursuant to NRCP 4 &
15 NRCP 12 ("Motion") filed by Respondent PATRICIA DEROSA ("Employee") on October 17, 2018.
16 An Opposition to Respondent DeRosa's Motion to Dismiss was filed by Petitioner on or about
17 November 5, 2018. A Reply to Petitioner's Opposition to Motion to Dismiss was filed by Employee
18 on November 16, 2018. This matter was submitted to the Court for consideration and decision on
19 November 16, 2018.

20 In Employee's Motion, she requested that the Court dismiss the Petition for Judicial Review
21 ("Petition") on the basis that Petitioner failed to personally serve Employee in accordance with the
22 requirements of NRCP 4(d)(6) within forty-five (45) days of filing the Petition as is required by
23 NRS 233B.130(5). Further, Employee argued that Petitioner cannot show good cause for its failure
24 to serve Employee.

25 ///

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27 ///

1 In Petitioner's Opposition, NDOC asserted that NRCP 4 does not apply to a petition for
2 judicial review under NRS Chapter 233B, that service of the Petition on Employee's legal counsel
3 and, subsequently, on Employee by mail was sufficient and, in the alternative, that there is good
4 cause for the Court to extend Petitioner's time for serving Employee.

5 According to NRCP 81, to the extent that the NRCP do not conflict with special legislation
6 specifying otherwise, the NRCP are fully applicable in all proceedings in a Nevada District Court.
7 This includes special statutory proceedings like a petition for judicial review. *See, Prevost v. State,*
8 *Dept. of Admin.*, 134 Nev. Adv. Op. 42, footnote 3 (2018). Therefore, under NRCP 12(b)(4), a
9 petition for the review of an administrative agency's action may be dismissed for insufficiency of
10 service of process. Under NRCP 4(d)(6), service of process is insufficient where a petitioner fails
11 to serve an individual respondent either in person or by leaving the summons and complaint with a
12 resident of his home who is of "suitable age and discretion." Here, Petitioner filed its Petition on
13 June 20, 2018, and sent a copy of the Petition via U.S. Mail to Employee's counsel in the underlying
14 administrative action. Petitioner subsequently served copies of the Petition and NDOC's Opening
15 Brief on Employee by Certified Mail on October 19, 2018, one hundred and twenty-one days after
16 filing its Petition. Petitioner has not served Employee with the Summons or Petition in person or
17 left copies with anyone at Employee's home. Therefore, Petitioner failed to comply with NRCP
18 4(d)(6). Moreover, the time to effectuate service under NRS 233B.130(5) has already passed.
19 According to *Civil Serv. Comm'n v. Dist. Ct.*, 118 Nev. 186, 190, 42 P.3d 268 (2002), "dismissal is
20 not mandatory when a party substantially complies with the technical requirements of NRS
21 233B.130, save the jurisdictional filing requirement." The Court has determined that Petitioner has
22 failed to substantially comply with the technical requirements of NRS 233B.130(5), namely that
23 Petitioner failed to properly serve Employee. Failure to effectuate service is more than a technicality.
24 The service requirement of NRS 233B.130(5) is mandatory and jurisdictional. *See, Heat & Frost*
25 *Insulators v. Labor Comm'r*, 134 Nev. Adv. Op. 1 (2018); *Washoe County v. Otto*, 128 Nev. 424,
26 432, 282 P.3d 719 (2012). Furthermore, this Court determines that there was no good cause shown
27 by Petitioner in its Opposition as to why service was not properly completed within the forty-five
28 (45) days required.

1 Therefore, based on the foregoing and good cause appearing,

2 IT IS HEREBY ORDERED that Respondent DeRosa's Motion to Dismiss Pursuant to
3 NRCP 4 & 12 is GRANTED and this matter is DISMISSED WITH PREJUDICE.

4 **IT IS SO ORDERED.**

5 Dated this 21st day of November, 2018.

6 
7 DISTRICT JUDGE
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CERTIFICATE OF MAILING


Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 21 day of November, 2018, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Cameron Vandenberg
Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

Lorna L. Ward, Esq.
Hearing Officer
State of Nevada Div. of Admin. Appeals
1050 E. Williams St., Ste. 450
Carson City, NV 89710

Tasha Eaton
Supervising Legal Secretary
State of Nevada Div. of Admin. Appeals
1050 E. Williams St., Ste. 450
Carson City, NV 89710

Thomas Donaldson, Esq.
2805 Mountain St.
Carson City, NV 89703



Daniel Judd, Esq.
Law Clerk, Dept. 1

THOMAS J. DONALDSON
Nevada Bar No. 5283
DYER LAWRENCE, LLP
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896 telephone
(775) 885-8728 facsimile
tdonaldson@dyerlawrence.com

Attorneys for Respondent PATRICIA DEROSA

REC'D & FILED
2018 NOV 27 PM 3:13
SUSAN MERRIWETHER
CLERK
BY CTC
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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STATE OF NEVADA, *ex rel.* its
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Petitioner,

vs.

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STATE OF NEVADA, *ex rel.* its
DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION and DIVISION
OF HEARINGS AND APPEALS,

Respondents.

CASE NO.: 18 OC 00150 1B

DEPT NO.: 1

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 21st day of November, 2018, the Court entered its Order
Granting Motion to Dismiss. A copy of the Order is attached and incorporated herein as Exhibit

1.

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AFFIRMATION

Pursuant to NRS 239B.030 the undersigned does hereby affirm that the preceding document and any attachments do not contain any personal information.

DATED this 27th day of November, 2018.

DYER LAWRENCE, LLP

By: 

Thomas J. Donaldson
Nevada Bar No. 5283
2805 Mountain Street
Carson City, NV 89703
(775) 885-1896
Attorneys for Respondent,
PATRICIA DEROSA

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Dyer Lawrence, LLP, and that on the 27th day of November, 2018, I caused a true and correct copy of the within **NOTICE OF ENTRY OF ORDER**, to be deposited in the U.S. Mail addressed to the following persons:

Cameron Vandenberg
Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

Lorna L. Ward, Esq.
Hearing Officer
State of Nevada Div. of Admin. Appeals
1050 E. Williams St., Ste. 450
Carson City, NV 89710

Tasha Eaton
Supervising Legal Secretary
State of Nevada Div. of Admin. Appeals
1050 E. Williams St., Ste. 450
Carson City, NV 89710


Debora McEachin

EXHIBIT "1"

EXHIBIT "1"

1 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR CARSON CITY
3
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14 Respondents.

BY [Signature] DEPT
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18 An Opposition to Respondent DeRosa's Motion to Dismiss was filed by Petitioner on or about
19 November 5, 2018. A Reply to Petitioner's Opposition to Motion to Dismiss was filed by Employee
20 on November 16, 2018. This matter was submitted to the Court for consideration and decision on
21 November 16, 2018.

22 In Employee's Motion, she requested that the Court dismiss the Petition for Judicial Review
23 ("Petition") on the basis that Petitioner failed to personally serve Employee in accordance with the
24 requirements of NRCP 4(d)(6) within forty-five (45) days of filing the Petition as is required by
25 NRS 233B.130(5). Further, Employee argued that Petitioner cannot show good cause for its failure
26 to serve Employee.

27 ///

28 ///

///

1 In Petitioner's Opposition, NDOC asserted that NRCP 4 does not apply to a petition for
2 judicial review under NRS Chapter 233B, that service of the Petition on Employee's legal counsel
3 and, subsequently, on Employee by mail was sufficient and, in the alternative, that there is good
4 cause for the Court to extend Petitioner's time for serving Employee.

5 According to NRCP 81, to the extent that the NRCP do not conflict with special legislation
6 specifying otherwise, the NRCP are fully applicable in all proceedings in a Nevada District Court.
7 This includes special statutory proceedings like a petition for judicial review. *See, Prevost v. State,*
8 *Dept. of Admin.*, 134 Nev. Adv. Op. 42, footnote 3 (2018). Therefore, under NRCP 12(b)(4), a
9 petition for the review of an administrative agency's action may be dismissed for insufficiency of
10 service of process. Under NRCP 4(d)(6), service of process is insufficient where a petitioner fails
11 to serve an individual respondent either in person or by leaving the summons and complaint with a
12 resident of his home who is of "suitable age and discretion." Here, Petitioner filed its Petition on
13 June 20, 2018, and sent a copy of the Petition via U.S. Mail to Employee's counsel in the underlying
14 administrative action. Petitioner subsequently served copies of the Petition and NDOC's Opening
15 Brief on Employee by Certified Mail on October 19, 2018, one hundred and twenty-one days after
16 filing its Petition. Petitioner has not served Employee with the Summons or Petition in person or
17 left copies with anyone at Employee's home. Therefore, Petitioner failed to comply with NRCP
18 4(d)(6). Moreover, the time to effectuate service under NRS 233B.130(5) has already passed.
19 According to *Civil Serv. Comm'n v. Dist. Ct.*, 118 Nev. 186, 190, 42 P.3d 268 (2002), "dismissal is
20 not mandatory when a party substantially complies with the technical requirements of NRS
21 233B.130, save the jurisdictional filing requirement." The Court has determined that Petitioner has
22 failed to substantially comply with the technical requirements of NRS 233B.130(5), namely that
23 Petitioner failed to properly serve Employee. Failure to effectuate service is more than a technicality.
24 The service requirement of NRS 233B.130(5) is mandatory and jurisdictional. *See, Heat & Frost*
25 *Insulators v. Labor Comm'r*, 134 Nev. Adv. Op. 1 (2018); *Washoe County v. Otto*, 128 Nev. 424,
26 432, 282 P.3d 719 (2012). Furthermore, this Court determines that there was no good cause shown
27 by Petitioner in its Opposition as to why service was not properly completed within the forty-five
28 (45) days required.

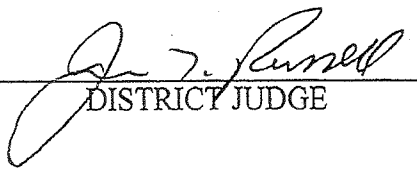
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Therefore, based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that Respondent DeRosa's Motion to Dismiss Pursuant to
NRCp 4 & 12 is GRANTED and this matter is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated this 21st day of November, 2018.


DISTRICT JUDGE

CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 21 day of November, 2018, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Cameron Vandenberg
Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

Lorna L. Ward, Esq.
Hearing Officer
State of Nevada Div. of Admin. Appeals
1050 E. Williams St., Ste. 450
Carson City, NV 89710

Tasha Eaton
Supervising Legal Secretary
State of Nevada Div. of Admin. Appeals
1050 E. Williams St., Ste. 450
Carson City, NV 89710

Thomas Donaldson, Esq.
2805 Mountain St.
Carson City, NV 89703



Daniel Judd, Esq.
Law Clerk, Dept. 1

DISTRICT COURT CIVIL COVER SHEET

Carson City

County, Nevada

Case No.

18000015018
(Assigned by Clerk's Office)

REC'D & FILED

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

2018 JUN 20 PM 4:07

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

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

State of Nevada ex rel. its Department of Corrections

SUSAN MERRIWETHER

Patricia DeRosa, an individual; State of Nevada ex rel. its Department

Administration, Personnel Commission and Division of Hearings and Appeals

see Petition for addresses - NV State of Admin. (775) 687-5289

Attorney (name/address/phone):

Attorney (name/address/phone):

for Patricia DeRosa

Chief Deputy Attorney General Cameron P. Vandenberg

Thomas J. Donaldson, Esq.

5420 Kietzke Lane, Suite 202

2805 Mountain Street

Reno, NV 89511 (775) 687-2132

Carson City, NV 89703 (775) 885-8728

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Foreclosure Mediation Assistance</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Torts</p> <p>Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p>Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p>Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p style="text-align: center;">Probate</p> <p>Probate (select case type and estate value)</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Greater than \$300,000</p> <p><input type="checkbox"/> \$200,000-\$300,000</p> <p><input type="checkbox"/> \$100,001-\$199,999</p> <p><input type="checkbox"/> \$25,001-\$100,000</p> <p><input type="checkbox"/> \$20,001-\$25,000</p> <p><input type="checkbox"/> \$2,501-20,000</p> <p><input type="checkbox"/> \$2,500 or less</p>	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p>Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p>Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input checked="" type="checkbox"/> Other Nevada State Agency</p> <p>Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input checked="" type="checkbox"/> Other Judicial Review/Appeal</p>
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <p><input type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>		<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>

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

6/20/2018

Date

Cameron Vandenberg
Signature of initiating party or representative

See other side for family-related case filings.