IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

PATRICIA DEROSA,

Respondent.

Case No. 77704

District Court No. 18 OC 00150 1B

Appeal from Order Dismissing Petition for Judicial Review

First Judicial District Court

APPELLANT'S OPENING BRIEF

AARON D. FORD
Attorney General
Cameron P. Vandenberg (Bar. No. 4356)
Chief Deputy Attorney General
Jeffrey M. Conner (Bar No. 11543)
Deputy Solicitor General
State of Nevada
Office of the Attorney General
5420 Kietzke Lane, Ste. 202
Reno, Nevada 89511
(775) 687-2132 (phone)
(775) 688-1822 (fax)
cvandenberg@ag.nv.gov
jconner@ag.nv.gov

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF JURISDICTION

This appeal is from a final order entered by the First Judicial District Court of Carson City, Nevada, dismissing Appellant's Petition for Judicial Review with prejudice. This Court has jurisdiction pursuant to NRAP 3A(b)(1) and NRS 233B.150. The district court's Order Granting Motion to Dismiss was entered on November 21, 2018. The Notice of Entry of Order was served on November 27, 2018. The Notice of Appeal was timely filed on December 17, 2018.

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(9) as it relates to an administrative agency appeal not involving tax, water, or public utilities commission determinations. However, the principle issue in this case is an issue of first impression with statewide public importance that the Supreme Court should retain.

The principle issue in this case is whether a petition for judicial review must be personally served in accordance with NRCP 4.2(a),[1] or whether service by any means that satisfies NRCP 5(b) is sufficient to provide adequate notice of a petition for judicial review under the Administrative Procedure Act (hereinafter APA). NRS

[1] The relevant rule is now found at NRCP 4.2(a); however, Appellant will refer to the rule as NRCP 4(d)(6) throughout this brief to maintain consistency with the district court's order and all previous filings with this Court.

233B.130(2)(c) requires a private party seeking judicial review under the APA to serve the parties, the Attorney General, and the head of the named administrative agency. However, NRS 233B.130 does not provide guidance on the required method of service or whom to serve when the government seeks judicial review under the APA and the opposing party has been represented by counsel throughout the administrative proceedings.

As the rule governing service of petitions for judicial review involves an issue of statewide public importance, the Nevada Supreme Court should retain this case pursuant to NRAP 17(a)(12). Additionally, Appellant requests that the Court decide the case by published opinion pursuant to NRAP 36(c)(1)(A) and (C).

STATEMENT OF ISSUES PRESENTED

1. Whether the district court erred in dismissing NDOC's Petition for Judicial Review with prejudice for failure to personally serve the petition in accordance with NRCP 4(d)(6).

2. Whether the district court abused its discretion in refusing to grant an extension of time to personally serve the Respondent.

STATEMENT OF CASE

This appeal involves the district court's improper dismissal of Appellant's Petition for Judicial Review for failure to personally serve Respondent, Patricia DeRosa (hereinafter DeRosa) in accordance with NRCP 4(d)(6) and its refusal to

grant an extension of time for service. The district court's order is in conflict with the plain language of relevant legal authority and Nevada precedent on statutory construction, even assuming NRS 233B.130 is ambiguous. Furthermore, even assuming the district court correctly concluded that the APA requires personal service, the district court abused its discretion in denying the request for additional time to effectuate proper service.

STATEMENT OF FACTS

Effective March 14, 2018, the Nevada Department of Corrections (hereinafter NDOC) dismissed Respondent Patricia DeRosa from her position as a Program Officer I for serious misconduct. JA 32, 35. DeRosa requested a hearing regarding her dismissal to the Department of Administration Personnel Commission hearing officer in accordance with the provisions set forth in Chapter 284 of the Nevada Revised Statutes and Nevada Administrative Code. JA 35. Throughout the administrative proceeding, attorney Thomas J. Donaldson, Esq., represented DeRosa. JA 7, 80. On May 23, 2018, the hearing officer rendered a decision reversing DeRosa's dismissal despite finding that DeRosa had committed violations of agency regulations for which dismissal is the recommended level of discipline. JA 7-18. In her decision, the hearing officer recommended imposition of "any disciplinary penalty [NDOC] chooses except for dismissal." JA 17.

/ / /

In accordance with the hearing officer's Decision, NDOC reinstated DeRosa and then demoted her, effective June 11, 2018. JA 82. DeRosa requested a hearing regarding her demotion on June 18, 2018. JA 82. Her request for hearing indicated that Thomas Donaldson, Esq. (hereinafter "counsel" or "counsel of record") continued to represent her in the matter. JA 82-83.

On June 20, 2018, two days after receiving the request for hearing indicating that DeRosa continued to be represented by counsel, NDOC timely sought judicial review of the hearing officer's May 23, 2018 reversal decision and properly served NDOC's Petition for Judicial Review by first class mail to DeRosa's counsel of record in accordance with NRS 233B.130(5), NRCP 5(b), and Rule 4.2 of the Nevada Rules of Professional Conduct.[2] JA 1-4.

On June 27, 2018, DeRosa filed her Notice of Intent to Participate in Judicial Review Proceedings. JA 19-21.

On August 29, 2018, DeRosa stipulated, through counsel, to an extension of time for NDOC to file its Opening Brief. JA 22-24. On September 21, 2018, NDOC filed its Opening Brief. JA 25-52. Three judicial days before DeRosa's Answering Brief was due, she filed, again through counsel, her motion to dismiss. JA 53-67.

[2] In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Although DeRosa had been properly served with NDOC's Petition, out of an abundance of caution, NDOC served another copy of its Petition, along with its Opening Brief, by certified mail on October 19, 2018 to DeRosa at the address she provided on both of her requests for hearing. JA 85-87. DeRosa signed for delivery on October 30, 2018. JA 88.

The district court dismissed NDOC's Petition for Judicial Review with prejudice on November 21, 2018, finding 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). JA 96-99. In spite of the fact that DeRosa knew of the judicial review proceeding and was actively participating in the case, the district court denied NDOC's request for an extension of time to serve DeRosa, finding that there was no good cause shown "as to why service was not properly completed within the forty-five (45) days required." *Id*.

DeRosa served a Notice of Entry of Order on November 27, 2019. JA 100-102.

NDOC timely filed its Notice of Appeal on December 14, 2019. JA 108-111.

SUMMARY OF ARGUMENT

The district court clearly erred in dismissing NDOC's Petition for Judicial Review with prejudice for failure to personally serve the petition in accordance with NRCP 4(d)(6). NRCP 4(d)(6) pertains to service of a complaint and summons.

NRS 233B.130(5) does not require personal service of a petition for judicial review. There is no legal precedent holding that NRCP 4's service of process requirements apply to petitions for judicial review. NRS 233B.130 does not indicate that it requires service under NRCP 4, and NRCP 4 does not indicate that it applies to a petition for judicial review. In the absence of a clear legislative directive that personal service under NRCP 4 is required, a plain reading of relevant statutes and rules countenances application of the more liberal service requirements of NRCP 5(b) to service of petitions for judicial review. Relevant legislative history, reason, and concerns of public policy also support Appellant's position. As a result, the district court erroneously dismissed, with prejudice, the petition that Appellant timely served by mail.

Furthermore, even assuming service by mail was inadequate, the district court abused its discretion in denying NDOC's request for an extension of time to properly serve the Respondent. NDOC relied in good faith upon the provisions of NRS 233B.130(5), NRCP 5(b)(1) and (2), Rule 4.2 of the Nevada Rules of Professional Conduct, and unpublished orders of the Nevada Supreme Court in diligently serving Respondent's counsel of record by mail within 45 days of filing its Petition for Judicial Review. The district court should have allowed NDOC additional time to personally serve the Respondent, who was clearly aware of the petition for judicial review and was actively participating in the case.

This Court should reverse the district court's order dismissing the Petition for Judicial Review and remand this case for judicial review of the hearing officer's erroneous decision.

ARGUMENT

A. Standard of Review

"The issue in this case is one of statutory construction, which is a question of law, and is reviewed *de novo*, without deference to the district court's conclusions." *Southern Nevada Homebuilders Association v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) Federal courts review a dismissal for insufficient service of process under a *de novo* standard for legal questions, while applying a clear error standard to findings of fact. *Albra v. Advan, Inc.,* 490 F.3d 826, 829 (11th Cir.2007) (citing *Prewitt Enterprises., Inc. v. Org. of Petroleum Exporting Countries,* 353 F.3d 916, 920 (11th Cir.2003). This Court should follow suit and apply a *de novo* standard of review to the legal questions presented in this case.

B. The Plain Language of Relevant Statutes and Rules, Legislative History, and Public Policy Favor Application of NRCP 5(b) to Petitions for Judicial Review.

This Court gives statutes "their plain meaning unless this violates the spirit of the act." *McKay v. Board of Supervisors of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). "Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent." *Id.* "[I]t

is the duty of [courts], when possible, to interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *Southern Nev. Homebuilder's Ass'n*, 121 Nev. 446, 449, 117 P.3d 171, 173. Where the meaning of a statute is not clear on its face, courts are to determine legislative "intent by evaluating the legislative history and construing the statute in a manner that conforms to reason and public policy." *Great Basin Water Network v. State Engineer*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010).

Without citing any relevant, supporting authority, DeRosa argued in her Motion to Dismiss that NRS 233B.130 required NDOC to personally serve her with its Petition for Judicial Review in this matter in accordance with NRCP 4(d)(6), *i.e.*, in the same manner that a complaint and summons must be served. In contrast, the text of relevant legal authority, supporting legislative history, reason, and public policy countenance application of the more liberal service standard of NRCP 5(b), which includes service by mail, for purposes of serving a petition for judicial review.

1. The plain language of NRS 233B.130 does not support a requirement for personal service.

Where the Legislature omits specific language from a statute, courts presume the Legislature did so intentionally. *See Diamond v, Swick,* 117 Nev. 671, 676, 28 P.2d 1087, 1090 (2001) (noting that the business of Nevada's courts "does not

include 'fill[ing] in alleged legislative omissions based on conjecture as to what the legislature would or should have done.'"); s*ee also, Department of Taxation v. Daimler Chrysler Services North America, LLC,* 121 Nev. 541, 548, 119 P.3d 135, 139 (2005) ("[O]missions of subject matters from statutory provisions are presumed to have been intentional."); *Galloway v. Truesdell,* 83 Nev. 13, 26, 422 P.2d 237, 246 (1967); and 2A Norman J. Singer & J.D. Shambie Singer, *Statutes & Statutory Construction* § 47:23 (7th ed. 2014) ("The maxim *expressio unius est exclusio alterius* . . . instructs that, where a statute designates a form of conduct, the manner of its performance and operation, and the persons and things to which it refers, courts should infer that all omissions were intentional exclusions."). The absence of a specific legislative directive in NRS 233B.130 that a petition for judicial review must be served in the same manner as a summons and complaint demonstrates that the APA does not require personal service of the petition.

A petition for judicial review is not a complaint. A complaint commences a civil action. NRCP 3. A petition for judicial review, on the other hand, results in the continuation of existing legal proceedings by invoking the jurisdiction of Nevada's district courts established by the APA. "Courts have no inherent appellate jurisdiction over official acts of administrative agencies except where the legislature has made some statutory provision for judicial review." *Crane v. Continental Telephone*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989).

NRS 284.390 sets forth the statutory provision for judicial review of a State personnel hearing officer's decision. It requires the employee (i.e., aggrieved party) to file a petition for judicial review in accordance with the provisions of chapter 233B of NRS. *See* NRS 284.390(9). Under the provisions of chapter 233B of NRS, judicial review of a hearing officer's decision is commenced upon the filing of a petition for judicial review within 30 days after service of the hearing officer's decision. NRS 233B.130(2)(d). Nothing within NRS 233B.130 envisions the initiation of judicial review by the filing of a complaint, to which Nevada's service of process requirements would apply under NRCP 4.

Further, while NRS 233B.130(5) requires that a petition for judicial review be "served," the statute makes no reference to personal service, service of process, or NRCP 4. However, the Legislature knows how to mandate such service when that is its intent. *See*, *e.g.*, NRS 34.080 (requiring writ of certiorari "to be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court or judge issuing the writ"); NRS 34.280(1) (requiring same for writ of mandamus). So, the omission of the term "personal," a reference to NRCP 4, or language similar to that appearing in statutes like NRS 34.080 and NRS 34.280(1) from the text of NRS 233B.130(5) creates the presumption that the Legislature did not intend to require personal service or service in accordance with NRCP 4(d)(6).

If the Legislature had intended to require petitions for judicial review to be served under NRCP 4(a)(6), it would have indicated as such in NRS 233B.130(5), just as it set forth the requirement in NRS 233B.133(5) that briefs be in the form provided for appellate briefs in NRAP 28. But it did not. Thus, NRCP 4(a)(6) does not control service of a petition for judicial review; if the Nevada Rules of Civil Procedure apply in this context, the plain text of the relevant statutes and rules demonstrates that the requirements for service of other pleadings and papers under NRCP 5(b) should control. *See* NRCP 81(a) ("These rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute.")

2. Legislative history supports Appellant's position.

Even assuming the existence of an ambiguity in which rule for service should control, relevant legislative history does not indicate the intent that NRS 233B.130 require personal service. The original version of NRS 233B.130(2) stated that "the petition shall be served upon the agency and all other parties of record." 1965 Nev. Stat., ch. 362, § 14 at 966. In 1989, the Legislature amended NRS 233B.130, moving the service requirement from NRS 233B.130(2) to NRS 233B.130(5). 1989 Nev. Stat., ch. 716, § 6 at 1652. The current form of NRS 233B.130(5) remains consistent with the 1989 amendment. While the 1989 amendment to NRS 233B.130(5) does not identify what form of service is required; in the very same legislative session,

the Legislature expressly required other kinds of documents to be served "in the manner prescribed for service of summons in a civil action or by certified mail, return receipt requested, with proof of actual receipt." 1989 Nev. Stat., ch. 425, § 7 at 1634.

The Legislature added additional clarification to the service requirements in NRS 233B.130 in 2015. 2015 Nev. Stat., ch. 160, § 9 at 709. Concerned by circumstances where the Attorney General and various state agencies only learned of a petition for judicial review after expiration of the time to respond to the petition, the Attorney General requested an amendment to the APA that would require a private party pursuing judicial review to serve the Attorney General *and* the head of the named agency. Assembly Committee on Goverment Affairs, 78th Leg. Sess., at 17, 21-22 (Feb. 13, 2015) (noting that the intent behind the amendment is to require service on both the agency and the Attorney General to ensure the Attorney General receives notice of the need to respond and identifying circumstances where the petition was *mailed* to the agency but not the Attorney General).[3]

While the Attorney General requested that the language of the statute mirror NRS 41.031(2), which addresses service of a summons and complaint against the State, there is no indication of an intention that NRCP 4(a)(6) control the method of

[3] The minutes for this hearing can be found at https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/GA/Final/144.pdf (last viewed on June 5, 2019).

service. *Id*. at 17. The Attorney General's concern was ensuring that the State receives adequate notice of a petition by requiring service on both the Attorney General and the relevant agency head. *Id*. at 17, 21-22.

In light of the foregoing, the legislative history on NRS 233B.130(2)(c) and NRS 233B.130(5) supports Appellant's reading of the statute. When the Legislature amended the service requirement under NRS 233B.130(5) in 1989, if it had intended to require the petition to be served in the same manner as a summons and complaint, it would have said so. And when the Legislature provided additional clarification on service requirements at the request of the Attorney General, the Legislature could have, but did not, indicate that such service is controlled by NRCP 4(a)(6). As a result, relevant legislative history suggests that this Court should default to rule for service of other pleadings and papers under NRCP 5(b).

3. Reason and public policy favor a more liberal standard for service.

Reason and public policy favor application of a more liberal standard for service unless the Legislature directs otherwise. Service of a summons and complaint is not logically analogous to service of a petition for judicial review. The policy for requiring personal service of a summons and complaint is obviously to ensure that a defendant actually receives notice of the need to defend against an action and to avoid entry of a default judgement. Once the defendant has received personal notice, however, the more liberal standard of NRCP 5(b) controls service

of other pleadings and papers. Because the filing of a petition for judicial review results in the continuation of existing legal proceedings of which the parties already have notice, service under NRCP 5(b) should suffice.

Here, having appeared at her administrative hearing with counsel, DeRosa was clearly already aware of this matter and was not required to be personally served in order to provide her "with notice of an action against [her] and to require [her] presence in court to defend the action." In fact, DeRosa's presence in this judicial review proceeding is not required. A respondent may allow judicial review to proceed without her appearance or defense, and need only file a statement of intent to participate in the judicial review if she desires to participate. *See* NRS 233B.130(3). If she doesn't participate or file a statement of intent to participate, there is no provision in NRS 233B providing that judgment by default will be rendered against her as it would for failure to appear and defend after being served with a summons. *See* NRCP 4(a)(1)(E); NRCP 55.

Additional concerns of public policy favor a more liberal service requirement without a clear legislative directive to the contrary. This Court has repeatedly held that strict compliance with the APA is necessary to invoke the district court's jurisdiction to review administrative rulings, regardless of whether the party seeking judicial review is the government or a private party. *K-Kel, Inc. v. State Department of Taxation*, 134 Nev. __, __, 412 P.3d 15, 17-18 (2018) (*discussing Washoe County*

v. Otto, 128 Nev. 424, 282 P.3d 719 (2012). In the absence of express language indicating a clear legislative directive that the APA requires personal service, requiring personal service to comply with the APA could create a trap for the unwary *pro se* litigant that does not understand the difference between personal service of a summons and complaint under NRCP 4 and service of other pleadings and papers under NRCP 5. Without an express legislative directive that a petition for judicial review is to be served in the same manner as a summons and complaint, as the Legislature has done in other areas, this Court's default should be to protect accessibility to the judicial process for litigants that have otherwise complied with the requirements of the APA.

4. Other state courts are in agreement with Appellant's position.

Courts from jurisdictions outside of Nevada agree with Appellant's position. In *Hilands Golf Club v. Ashmore,* 922 P.2d 469, 473-474 (Mont. 1996), the court held that, for purposes of an administrative appeal to the district court, the service requirement of the Montana Administrative Procedure Act is satisfied by mailing copies of a petition for judicial review to the parties under MRCP 5, a rule analogous to NRCP 5, rather than by personal service of summons under MRCP 4, a rule analogous to NRCP 4. The Court found that MRCP 5 was "the more logical choice for effecting service" in proceedings concerning petitions for judicial review, which is analogous to an appeal, because "[b]y the time the matter is before the district

court for judicial review, the parties have already been defined through their appearance at, and participation in, the administrative proceedings. There is no more need to acquire Rule 4, M.R. Civ. P., personal jurisdiction over these parties than there would be in an appeal from district court to the Supreme Court." *Id.* *See also Douglas Asphalt Company v. Georgia Public Service Commission,* 589 S.E.2d 292, 293 (Ga. Ct. App. 2003) (wherein the Court held that, since the Georgia Administrative Procedure Act did not expressly require personal service or otherwise specify how to perfect service, service by mail sufficed.)

There is no legal precedent requiring that NDOC personally serve DeRosa with the Petition and that service by mail to her attorney is legally insufficient. Because NRS 233B.130 does not expressly require personal service or otherwise specify how to perfect service, service by mail sufficed. *Douglas Asphalt*, 589 S.E. 2d at 293. It is undisputed that NDOC timely served DeRosa by mail to her counsel of record within 45 days of the filing of NDOC's petition in accordance with NRS 233B.130(5) and NRCP 5(b)(1) and (2).[4] After being timely and properly served, DeRosa actively participated in the judicial review proceeding, through her counsel of record, by filing a Notice of Intent to Participate on or about June 26, 2018 and

[4] Similarly, when a party invokes the appellate jurisdiction of the Supreme Court, "[s]ervice on a party represented by counsel shall be made on counsel." NRAP 3(d)(1). Logic dictates that it should not be any different when invoking the appellate jurisdiction of the district court when the party is represented by counsel.

stipulating to an extension of time for NDOC to file its Opening Brief. Clearly, DeRosa suffered absolutely no prejudice in this case.

C. The District Court Abused its Discretion in Refusing to Grant an Extension of Time to Personally Serve DeRosa.

Once the district court found that DeRosa was required to be personally served, NDOC's request for an extension of time to serve DeRosa should have been granted. "NRS 233B.130(5) does not preclude a petitioner from moving for an extension of time after the 45-day period has passed. Thus, the district court may exercise its authority to extend the service period either before or after the 45-day period has run" upon a showing of good cause. *Heat & Frost Insulators and Allied Workers Local 16 v. Labor Commissioner,* ____ Nev. ____, 408 P.3d 156, 158 (Nev. 2018). The determination of good cause is within the district court's discretion:

> [A] number of considerations may govern a district court's analysis of good cause . . ., and we emphasize that no single consideration is controlling. Appropriate considerations include: (1) difficulties in locating the defendant, (2) the defendant's efforts at evading service or concealment of improper service until after the 120–day period has lapsed, (3) the plaintiff's diligence in attempting to serve the defendant, (4) difficulties encountered by counsel, (5) the running of the applicable statute of limitations, (6) the parties' good faith attempts to settle the litigation during the 120–day period, (7) the lapse of time between the end of the 120–day period and the actual service of process on the defendant, (8) the prejudice to the defendant caused by the plaintiff's delay in serving process, (9) the defendant's knowledge of the existence of the lawsuit, and (10) any extensions of time for service granted by the district court.

Scrimer v. Eighth Judicial District Court ex rel., County of Clark, 116 Nev. 507, 516, 998 P.2d 1190, 1195-96 (2000).

Here, good cause existed for NDOC's extension request because it relied in good faith upon the provisions of NRS 233B.130(5), NRCP 5(b)(1) and (2), and Rule 4.2 of the Nevada Rules of Professional Conduct in diligently serving DeRosa's attorney by mail within 45 days of filing its Petition. Additionally, counsel for Appellant relied in good faith on two unpublished orders of this Court, which indicate that NRCP 5(b) governs service of petitions for judicial review. The district court should have found good cause in this case to prevent the inequity of case-concluding consequences for NDOC[5] for the service error found by the court, as clearly any error was in good faith and unintentional. While NDOC acknowledges that notice is not a substitute for proper service, DeRosa nevertheless clearly had knowledge of the petition for judicial review by service to her known attorney, who actively represented DeRosa in the district court proceeding as well as in the continued administrative proceedings below.

Additionally, if NDOC erred by serving the petition by mail, NDOC did not intend to create undue delay. NDOC immediately served DeRosa by mail at her place of residence upon receipt of her Motion to Dismiss, just over two months after the 45-day period elapsed. Prior to that, NDOC moved the case along by drafting

[5] Denying the extension and ending the case without disposition on the merits, as the district court did here, is contrary to what the law and public policy favors. *See Stubli v. Big D International Trucks, Inc.*, 107 Nev. 309, 316, 810 P.2d 785, 789 (1991); *Moore v. Cherry*, 90 Nev. 390, 393, 528 P.2d 1018, 1021 (1974).

and filing NDOC's Opening Brief, expending a great deal of time and effort.[6] DeRosa on the other hand, purposely delayed the case by waiting until a month after the Opening Brief was filed before filing her motion to dismiss.

Lastly, DeRosa would have suffered absolutely no prejudice by a retroactive extension of time for service. She remains employed with NDOC in accordance with the terms of the hearing officer's May 23, 2018 decision, and she has not credibly asserted any actual or risk of prejudice to her by retroactively extending time for service and allowing disposition of this case on the merits.

CONCLUSION

The district court erred in dismissing NDOC's Petition for Judicial Review with prejudice for failure to personally serve the petition in accordance with NRCP 4(d)(6). The district court abused its discretion in refusing to grant an extension of

/ / /

/ / /

/ / /

/ / /

/ / /

[6] It is undisputed that DeRosa received NDOC's brief.

time to serve the Respondent. Therefore, this Court should reverse the district court's Order Granting Motion to Dismiss and remand for further proceedings.

DATED this 18th day of June, 2019.

AARON D. FORD
Attorney General

By: /s/ *Cameron P. Vandenberg*
Cameron P. Vandenberg (Bar No. 4356)
Chief Deputy Attorney General
Jeffrey M. Conner (Bar No. 11543)
Deputy Solicitor General

Attorneys for Appellant
State of Nevada *ex rel.* Department of Corrections

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 pt. Times New Roman; or

[ ] This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 4,684 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[X] Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable

Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 18th day of June, 2019.

AARON D. FORD
Attorney General

By: /s/ *Cameron P. Vandenberg*
Cameron P. Vandenberg (Bar. No. 4356)

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on June 18, 2019, I electronically filed the foregoing document via this Court's electronic filing system. I certify that the following participants in this case are registered electronic filing systems users and will be served electronically and by U.S. Mail first class postage prepaid:

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

/s/ *Rebecca M. Zatarain*
Rebecca M. Zatarain, an employee
of the State of Nevada,
Office of the Attorney General