

1 Code: 1350
2 Michael Whitfield
3 P.O. Box 18421
4 Reno, NV 89511
5 (775) 737-3493
6 Email: mwhitfi2000@gmail.com
7 Self-Represented Litigant

Electronically Filed
Oct 01 2019 11:29 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 * * *

11 IN THE MATTER OF:

Case No. CV19-00641

12 MICHAEL WHITFIELD
13 (Appeal No. 1803430-LLW)

Dept. No. 1

14 Petitioner,

15 vs.

16 NEVADA STATE PERSONNEL
17 COMMISSION, STATE OF NEVADA
18 DEPARTMENT OF ADMINISTRATION,
19 LORNA WARD, APPEALS OFFICER, and
20 JAMES DZURENDA, NEVADA
21 DEPARTMENT OF CORRECTIONS,
22 As Employer,

Respondents.
_____ /

23 **NOTICE OF APPEAL**

24 Notice is hereby given that Michael Whitfield, Petitioner above named, herby
25 appeals to the Supreme Court of Nevada from the Order Denying Motion for

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Reconsideration entered in this action on September 17, 2019.

This document does not contain the personal information of any person as defined by NRS 603A.040.

Dated this 23rd day of September, 2019

/s/ Michael Whitfield
Michael Whitfield
Petitioner in Proper Person

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am the Petitioner in the above entitled matter and that on the
3 23rd day of September, 2019, I served a copy of the foregoing **Notice of Filing Appeal Bond**
4 by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system
5 and by depositing a true copy of the same for mailing addressed as follows:

6
7 Kevin Pick, Esq.
8 Deputy Attorney General
9 5420 Kietzke Lane, Suite 202
10 Reno, NV 89511

11 Lorna L. Ward, Esq.
12 Hearing Officer
13 c/o Hearings Division
14 1050 West William Street, Suite 450
15 Carson City, NV 89701

16 /s/ Michael Whitfield
17 Michael Whitfield
18 Petitioner in Proper Person
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1 Code: 1310
2 Michael Whitfield
3 P.O. Box 18421
4 Reno, NV 89511
5 (775) 737-3493
6 Email: mwhitfi2000@gmail.com
7 Self-Represented Litigant

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

IN THE MATTER OF:

Case No. CV19-00641

MICHAEL WHITFIELD
(Appeal No. 1803430-LLW)

Dept. No. 1

Petitioner,

vs.

NEVADA STATE PERSONNEL
COMMISSION, STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION,
LORNA WARD, APPEALS OFFICER, and
JAMES DZURENDA, NEVADA
DEPARTMENT OF CORRECTIONS,
As Employer,

Respondents.

CASE APPEAL STATEMENT

1. Name of Appellant: MICHAEL WHITFIELD
2. District Court Judge: HONORABLE KATHLEEN DRAKULICH
3. Appellant: MICHAEL WHITFIELD, Petitioner in Proper Person
4. Respondents:

1 JAMES DZURENDA, NEVADA DEPARTMENT OF CORRECTIONS
2 c/o Kevin Pick, Esq., Deputy Attorney General, 5420 Kietzke Lane, Suite 202.
3 Reno, NV 89511

4 NEVADA STATE PERSONNEL COMMISSION, STATE OF NEVADA
5 DEPARTMENT OF ADMINISTRATION, LORNA WARD, APPEALS
6 OFFICER c/o Hearings Division, 1050 West William Street, Suite 450
7 Carson City, NV 89701

- 8 5. To Appellant's knowledge, all listed attorneys are licensed to practice in the
9 State of Nevada.
- 10 6. Appellant was self-represented in the district court.
- 11 7. Appellant is self-represented on appeal.
- 12 8. Appellant did not request leave to proceed in forma pauperis.
- 13 9. Petition for Judicial Review was filed on 3/20/19.
- 14 10. Appellant petitioned to the Second Judicial District Court for Judicial Review
15 from the final judgment of the Nevada State Personnel Commission that was
16 rendered on March 1, 2019, finding Petitioner ineligible for reinstatement/rehire
17 to his position as Nevada Department of Corrections. A Motion to Dismiss was
18 filed on April 4, 2019. The Order granting the Motion to Dismiss was issued on
19 June 24, 2019. Petitioner filed a Motion for Reconsideration on July 2, 2019
20 which was opposed on July 11, 2019, replied to on July 16, 2019 and denied on
21 September 17, 2019. The September 17, 2019 denial affirmed the June 24, 2019
22 Dismissal of the Petition for Judicial Review.
- 23 11. This case has not previously been the subject of an appeal.
- 24 12. This appeal does not involve child custody or visitation.
- 25 13. This appeal is subject to the possibility of settlement.

26 **This document does not contain the personal information of any person as**
27 **defined by NRS 603A.040.**

28 Dated this 19th day of September, 2019

/s/ Michael Whitfield
Michael Whitfield
Petitioner in Proper Person

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am the Petitioner in the above entitled matter and that on the
3 19th day of September, 2019, I served a copy of the foregoing **CASE APPEAL**
4 **STATEMENT** by causing a true copy thereof to be filed with the Clerk of the Court using
5 the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

6
7 Kevin Pick, Esq.
8 Deputy Attorney General
9 5420 Kietzke Lane, Suite 202
10 Reno, NV 89511

11 Lorna L. Ward, Esq.
12 Hearing Officer
13 c/o Hearings Division
14 1050 West William Street, Suite 450
15 Carson City, NV 89701

16 /s/ Michael Whitfield
17 Michael Whitfield
18 Petitioner in Proper Person
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1 Code 1310

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

9

MICHAEL WHITFIELD,

10

Petitioner,

Case No. CV19-00641

11

vs.

Dept. No. 1

12

NEVADA STATE PERSONNEL
COMMISSION, STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION,
LORNA WARD, APPEALS OFFICER, and
DEPARTMENT OF CORRECTIONS, as
Employer,

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Respondents.

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CASE APPEAL STATEMENT

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This case appeal statement is filed pursuant to NRAP 3(f).

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1. Appellant is Michael Whitfield.

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2. This appeal is from an order entered by the Honorable Judge Kathleen Drakulich.

23

3. Appellant is representing himself in Proper Person on appeal, the Appellant's address is:

24

Michael Whitfield
P.O. Box 18421
Reno, Nevada 89511

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4. Respondents are: Nevada State Personnel Commission, State of Nevada Department of Administration, Lorna Ward, Appeals Officer and Department of Corrections. Respondents are represented in District Court by:

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Kevin A. Pick, Esq. SBN 11683
Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

- 5. Respondent’s attorney is not licensed to practice law in Nevada: n/a/
- 6. Appellant is not represented by retained counsel in District Court.
- 7. Appellant is not represented by retained counsel on appeal.
- 8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
- 9. Proceeding commenced by the filing of a Petition for Judicial Review on March 20th, 2019.
- 10. This is a civil proceeding and the Appellant is appealing the Order Denying Motion for Reconsideration filed September 17th, 2019.
- 11. The case has not been the subject of a previous appeals to the Supreme Court.
- 12. This case does not involve child custody or visitation.
- 13. It is unknown if the case involves the possibility of a settlement.

Dated this 25th day of September, 2019.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

**SECOND JUDICIAL DISTRICT COURT
STATE OF NEVADA
COUNTY OF WASHOE**

Case History - CV19-00641

Case Description: IN RE: MICHAEL WHITFIELD (D1)

Case Number: CV19-00641 Case Type: OTHER JUDICIAL REVIEW/APPEAL - Initially Filed On: 3/20/2019

Parties

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - KATHLEEN DRAKULICH - D1	Active
AG - Kevin A. Pick, Esq. - 11683	Active
PETR - MICHAEL WHITFIELD - @189487	Active
RESP - JAMES DZURENDA, NDOC - @1325667	Active
RESP - NEVADA STATE PERSONNEL COMMISSION - @64452	Active

Disposed Hearings

- 1 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 4/12/2019 at 11:25:00
Extra Event Text: RESPONDENT'S MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW FILED 4-4-19
Event Disposition: S200 - 6/24/2019
- 2 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 5/29/2019 at 13:32:00
Extra Event Text: RESPONDENT'S UNOPPOSED MOTION FOR EXTENSION OF TIME FILED 5--9-19
Event Disposition: S200 - 6/6/2019
- 3 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 7/19/2019 at 10:36:00
Extra Event Text: MOTION FOR RECONSIDERATION (NO ORDER)
Event Disposition: S200 - 9/17/2019

Actions

- | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|--------------------|-----------|--|
| 1 | 3/20/2019 | - \$3550 - \$Pet for Judicial Review
Additional Text: PETITION FOR JUDICIAL REVIEW - Transaction 7177318 - Approved By: YVILORIA : 03-21-2019:08:10:44 |
| 2 | 3/21/2019 | - PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC633708. |
| 3 | 3/21/2019 | - 4090 - ** Summons Issued
<i>No additional text exists for this entry.</i> |
| 4 | 3/22/2019 | - 4090 - ** Summons Issued
Additional Text: X 3 |
| 5 | 3/27/2019 | - 2880 - Ord for Briefing Schedule
Additional Text: Transaction 7187149 - Approved By: NOREVIEW : 03-27-2019:09:39:44 |
| 6 | 3/27/2019 | - NEF - Proof of Electronic Service
Additional Text: Transaction 7187155 - Approved By: NOREVIEW : 03-27-2019:09:40:45 |
| 7 | 3/27/2019 | - 4085 - Summons Filed
Additional Text: NV HUMAN RESOURCE MGMT - DIANA HERRERA 03/25/2019 - Transaction 7187548 - Approved By: SACORDAG : 03-27-2019:11:19:45 |

Report Does Not Contain Sealed Cases or Confidential Information

- 8 3/27/2019 - 4085 - Summons Filed
Additional Text: STATE OF NV DEPT OF ADMIN/HEARINGS DIV - TASHA EATON 03/25/2019 - Transaction 7187548 - Approved By: SACORDAG : 03-27-2019:11:19:45
- 9 3/27/2019 - 4085 - Summons Filed
Additional Text: JAMES DZURENDA/NDOC DIRECTOR 03/26/2019 - Transaction 7187548 - Approved By: SACORDAG : 03-27-2019:11:19:45
- 10 3/27/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7187564 - Approved By: NOREVIEW : 03-27-2019:11:20:40
- 11 4/4/2019 - 3960 - Statement Intent Participate
Additional Text: STATEMENT OF INTENT TO PARTICIPATE IN PETITION FOR JUDICIAL REVIEW - Transaction 7201586 - Approved By: YVILORIA : 04-04-2019:11:21:19
- 12 4/4/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7201609 - Approved By: NOREVIEW : 04-04-2019:11:22:18
- 13 4/4/2019 - 2315 - Mtn to Dismiss ...
Additional Text: MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 7202421 - Approved By: YVILORIA : 04-04-2019:16:14:45
- 14 4/4/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7202841 - Approved By: NOREVIEW : 04-04-2019:16:15:59
- 15 4/8/2019 - 1110 - Amended Pet ...
Additional Text: AMENDED PETITION FOR JUDICIAL REVIEW - Transaction 7207153 - Approved By: YVILORIA : 04-08-2019:15:46:14
- 16 4/8/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7207309 - Approved By: NOREVIEW : 04-08-2019:15:47:16
- 17 4/9/2019 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 7208163 - Approved By: SACORDAG : 04-09-2019:10:11:34
- 18 4/9/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7208252 - Approved By: NOREVIEW : 04-09-2019:10:12:37
- 19 4/12/2019 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 7216036 - Approved By: YVILORIA : 04-12-2019:11:22:38
- 20 4/12/2019 - 3860 - Request for Submission
Additional Text: REQUEST FOR SUBMISSION - Transaction 7216043 - Approved By: YVILORIA : 04-12-2019:11:23:28
DOCUMENT TITLE: RESPONDENT'S MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW FILED 4-4-19
PARTY SUBMITTING: KEVIN PICK ESQ
DATE SUBMITTED: 4-12-19
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 21 4/12/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7216073 - Approved By: NOREVIEW : 04-12-2019:11:23:56
- 22 4/12/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7216082 - Approved By: NOREVIEW : 04-12-2019:11:24:54
- 23 4/24/2019 - 3746 - Record on Appeal
Additional Text: ORIGINAL RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT (CHAPTER 233B OF NRS) - Transaction 7235572 - Approved By: YVILORIA : 04-24-2019:11:34:59

- 24 4/24/2019 - 4195 - Transmittal of Rec. on Appeal
Additional Text: TRANSMITTAL OF RECORD ON APPEAL - Transaction 7235572 - Approved By: YVILORIA : 04-24-2019:11:34:59
- 25 4/24/2019 - 1365 - Certificate of Transmittal
Additional Text: CERTIFICATION OF TRANSMITTAL - Transaction 7235572 - Approved By: YVILORIA : 04-24-2019:11:34:59
- 26 4/24/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7235596 - Approved By: NOREVIEW : 04-24-2019:11:35:58
- 27 5/8/2019 - 1520 - Declaration
Additional Text: PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW - Transaction 7258732 - Approved By: CVERA : 05-08-2019:08:20:36
- 28 5/8/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7258743 - Approved By: NOREVIEW : 05-08-2019:08:21:44
- 29 5/9/2019 - 2075 - Mtn for Extension of Time
Additional Text: MOTION FOR EXTENSION OF TIME - Transaction 7261369 - Approved By: YVILORIA : 05-09-2019:09:36:44
- 30 5/9/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7261418 - Approved By: NOREVIEW : 05-09-2019:09:37:35
- 31 5/29/2019 - 3860 - Request for Submission
Additional Text: REQUEST FOR SUBMISSION - Transaction 7292843 - Approved By: YVILORIA : 05-29-2019:13:28:10
DOCUMENT TITLE: RESPONDENT'S UNOPPOSED MOTION FOR EXTENSION OF TIME FILED 5--9-19
PARTY SUBMITTING: KEVIN PICK ESQ
DATE SUBMITTED: 5-29-19
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 32 5/29/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7292866 - Approved By: NOREVIEW : 05-29-2019:13:29:27
- 33 6/6/2019 - 3030 - Ord Granting Extension Time
Additional Text: Transaction 7308240 - Approved By: NOREVIEW : 06-06-2019:15:11:42
- 34 6/6/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7308248 - Approved By: NOREVIEW : 06-06-2019:15:12:30
- 35 6/6/2019 - S200 - Request for Submission Complet
Additional Text: RESPONDENT'S UNOPPOSED MOTION FOR EXTENSION OF TIME FILED 5--9-19 (SEE ORDER FILED 6/6/19)
- 36 6/24/2019 - 3060 - Ord Granting Mtn ...
Additional Text: TO DISMISS PETITION FOR JUDICIAL REVIEW - Transaction 7336330 - Approved By: NOREVIEW : 06-24-2019:09:52:41
- 37 6/24/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7336337 - Approved By: NOREVIEW : 06-24-2019:09:53:52
- 38 6/24/2019 - S200 - Request for Submission Complet
Additional Text: RESPONDENT'S MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW FILED 4-4-19 (SEE ORDER FILED 6/24/19)
- 39 6/24/2019 - F135 - Adj Motion to Dismiss by DEFT
No additional text exists for this entry.
- 40 6/24/2019 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 7336695 - Approved By: NOREVIEW : 06-24-2019:11:28:58

- 41 6/24/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7336698 - Approved By: NOREVIEW : 06-24-2019:11:29:58
- 42 7/2/2019 - 2175 - Mtn for Reconsideration
Additional Text: MOTION FOR RECONSIDERATION - Transaction 7350959 - Approved By: YVILORIA : 07-02-2019:09:15:44
- 43 7/2/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7351203 - Approved By: NOREVIEW : 07-02-2019:09:16:46
- 44 7/11/2019 - 2645 - Opposition to Mtn ...
Additional Text: Opposition to Petitioner's Motion for Reconsideration - Transaction 7367268 - Approved By: CSULEZIC : 07-11-2019:10:55:37
- 45 7/11/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7367498 - Approved By: NOREVIEW : 07-11-2019:10:56:42
- 46 7/16/2019 - 3790 - Reply to/in Opposition
Additional Text: REPLY TO OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERTATION - Transaction 7376076 - Approved By: CSULEZIC : 07-16-2019:14:44:35
- 47 7/16/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7376193 - Approved By: NOREVIEW : 07-16-2019:14:45:49
- 48 7/19/2019 - 3860 - Request for Submission
Additional Text: Transaction 7382577 - Approved By: NOREVIEW : 07-19-2019:10:30:54
DOCUMENT TITLE: MOTION FOR RECONSIDERATION (NO ORDER)
PARTY SUBMITTING: MICHAEL WHITFIELD
DATE SUBMITTED: 7/19/19
SUBMITTED BY: AZAMORA
DATE RECEIVED JUDGE OFFICE:
- 49 7/19/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7382597 - Approved By: NOREVIEW : 07-19-2019:10:33:18
- 50 9/17/2019 - 2842 - Ord Denying Motion
Additional Text: FOR RECONSIDERATION - Transaction 7488771 - Approved By: NOREVIEW : 09-17-2019:14:33:44
- 51 9/17/2019 - S200 - Request for Submission Complet
Additional Text: MOTION FOR RECONSIDERATION (SEE ORDER FILED 9/17/19)
- 52 9/17/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7488781 - Approved By: NOREVIEW : 09-17-2019:14:35:05
- 53 9/17/2019 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 7489040 - Approved By: NOREVIEW : 09-17-2019:15:24:11
- 54 9/17/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7489046 - Approved By: NOREVIEW : 09-17-2019:15:25:13
- 55 9/23/2019 - 1310 - Case Appeal Statement
Additional Text: CASE APPEAL STATEMENT - (NOT COMPLETE) Transaction 7497400 - Approved By: YVILORIA : 09-23-2019:10:12:50
- 56 9/23/2019 - 1310 - Case Appeal Statement
Additional Text: CASE APPEAL STATEMEN T- Transaction 7497412 - Approved By: NOREVIEW : 09-23-2019:10:12:46
- 57 9/23/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7497414 - Approved By: NOREVIEW : 09-23-2019:10:13:43

- 58 9/23/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7497416 - Approved By: NOREVIEW : 09-23-2019:10:13:51

- 59 9/23/2019 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Transaction 7498636 - Approved By: YVILORIA : 09-23-2019:14:36:48

- 60 9/23/2019 - PAYRC - **Payment Received
Additional Text: A Payment of \$34.00 was made on receipt DCDC646311.

- 61 9/23/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7498683 - Approved By: NOREVIEW : 09-23-2019:14:40:46

- 62 9/25/2019 - SAB - **Supreme Court Appeal Bond
Additional Text: Transaction 7502443 - Approved By: YVILORIA : 09-25-2019:09:07:18

- 63 9/25/2019 - PAYRC - **Payment Received
Additional Text: A Payment of \$500.00 was made on receipt DCDC646471.

- 64 9/25/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7502511 - Approved By: NOREVIEW : 09-25-2019:09:08:36

- 65 9/25/2019 - 1310E - Case Appeal Statement
Additional Text: CASE APPEAL STATEMENT - Transaction 7503400 - Approved By: NOREVIEW : 09-25-2019:12:12:17

- 66 9/25/2019 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7503400 - Approved By: NOREVIEW : 09-25-2019:12:12:17

- 67 9/25/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7503402 - Approved By: NOREVIEW : 09-25-2019:12:13:08

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**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

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MICHAEL WHITFIELD,

10

Petitioner,

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Case No.: CV19-00641

12

vs.

Dept. No.: 1

13

NEVADA STATE PERSONNEL
COMMISSION, STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION,
LORNA WARD, APPEALS OFFICER, and
DEPARTMENT OF CORRECTIONS, as
Employer,

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16

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Respondents.

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ORDER DENYING MOTION FOR RECONSIDERATION

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Currently before the Court is Petitioner Michael Whitfield's *Motion for Reconsideration* filed July 2, 2019. The State of Nevada, Department of Corrections ("NDOC") filed an *Opposition to Petitioner's Motion for Reconsideration* on July 11, 2019. On July 16, 2019, Petitioner filed a *Reply to Opposition to Petitioner's Motion for Reconsideration* and submitted the Motion to the Court for consideration.

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I. Background

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Petitioner was previously employed by NDOC as a correctional officer at Warm Springs Correctional Center. Mot. at 2:8-9. On August 2, 2017, a Domestic Violence Restraining Order ("Restraining Order") was entered against Petitioner by the Superior Court of California, County of

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1 Santa Clara, which specifically made it illegal for Petitioner to use or handle firearms until August 2,
2 2020. *Id.* at 2:9-12. However, the NDOC Administrative Regulations (AR) 362.01 and 362.03
3 expressly instruct that (1) all NDOC peace officers are require to handle firearms as part of their
4 assigned duties; (2) all NDOC peace officers must meet the requirements of NAC Chapter 289 to
5 ensure POST certification; and (3) all NDOC peace officers must maintain firearm certification under
6 NAC Chapter 289 “as a condition of employment.” *Id.* at 2:15-19. Following the issuance of the
7 Restraining Order entered against Petitioner, NDOC assigned him to a temporary administrative
8 position, where he would not be exposed to firearms. *Id.* at 2:20-21. Over the following six months,
9 NDOC allegedly urged Petitioner to resolve the Restraining Order and complete his biannual firearm
10 qualification requirements. *Id.* at 2:21-23. Petitioner allegedly failed to satisfy his biannual firearm
11 qualification requirements and he lost his POST certification. *Id.* at 2:24-25. As a result, NDOC
12 terminated Petitioner effective April 20, 2018, for violations of NAC 284.650(1), NAC 289.230,
13 NDOC AR 362, and NDOC AR 339.07.15(UU) (Failure to maintain POST requirements). *Id.* at
14 1:26-3:1.

15 On April 30, 2018, Petitioner appealed his dismissal and on December 14, 2018, an appeal
16 hearing was conducted in this matter before Hearing Officer Lorna Ward. *Id.* at 3:3-4. On March 1,
17 2019, Hearing Officer Ward filed her Findings of Fact, Conclusions of Law, Decision and Order.
18 Mot. Ex. A. Hearing Officer Ward found:

19 Officer Whitfield clearly and by a preponderance of the evidence violated AR
20 339.07.15(UU) and NAC 284.650(1). He failed to maintain his POST requirements as
21 required by AR 339.07.15(UU) and his failure to qualify biannually and his inability
22 to use a firearm violated NAC 284.650(1) because such is incompatible with an
23 employee’s condition of employment established by statute and regulation . . . There
is no question that Officer Whitfield was unable to legally use a firearm from August
2, 2017 to the present.

24 Mot. at Ex. A, 8. The Hearing Officer further held:

25 The violation of AR 339.07.15(UU) failure to maintain POST requirements is a Class
26 5 offense with dismissal recommended for a first offense . . . [A] violation of AR
27 339.07.15(UU) is a ‘serious’ offense as evidence by the fact that NDOC determined
28 that a violation warrants dismissal on a first offense. This determination is given
deference. In addition, the ability of a correctional officer to use a firearm is a condition
of employment and the inability to do so is incompatible with such employment.

1 *Id.* at 8. Lastly, Hearing Officer Ward found that “the dismissal was reasonable in light of all the
2 facts and the applicable law.” *Id.*

3 After Hearing Officer Ward issued her findings on March 1, 2019, Petitioner in pro per filed
4 the present Petition for Judicial Review (“Petition”), seeking to challenge the final judgment of the
5 Nevada State Personnel Commission (“Commission”). Pet. at 1:17-21. Petitioner contends that the
6 Commission’s decision was: (1) not supported by substantial evidence; (2) arbitrary and capricious;
7 (3) marked by an abuse of discretion; and (4) improper as a matter of law. *Id.* at 1:22-25.

8 Thereafter, on March 20, 2019, Petitioner Whitfield filed his *Petition for Judicial Review*. On
9 April 4, 2019, Respondent NDOC filed a *Motion to Dismiss Petition for Judicial Review*. On April
10 8, 2019, Petitioner Whitfield filed an *Amended Petition for Judicial Review*, and thereafter, on April
11 9, 2019, an *Opposition to Motion to Dismiss Petition for Judicial Review*. On April 12, 2019, NDOC
12 filed a *Reply* and submitted the matter to the Court for decision. This Court issued an *Order Granting*
13 *Motion to Dismiss Petition for Judicial Review* on June 24, 2019. Petitioner now brings the instant
14 Motion seeking reconsideration of this Court’s June 24, 2019 *Order Granting Motion to Dismiss*
15 *Petition for Judicial Review*.

16 **II. Relevant Legal Authority**

17 Pursuant to DCR 13(7), no motion once heard and disposed of shall be renewed in the same
18 cause, nor shall the same matters therein embraced be reheard, unless by leave of the court upon
19 motion therefor, after notice of such motion to the adverse parties. Although this Court has inherent
20 authority to reconsider its prior orders, it will only do so if a party subsequently introduces
21 substantially different evidence or establishes that the decision is clearly erroneous. *Masonry and*
22 *Tile Contractors Ass’n of So. Nev. v. Jolley Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,
23 589 (1997). Furthermore, arguments not raised in the original motion practice cannot be maintained
24 or considered in a motion for reconsideration. *See, Achrem v. Expressway Plaza, Ltd.*, 112 Nev. 737,
25 742, 917 P.2d 447, 450 (1996); *Chowdhry v. NLVH, Inc.*, 111 Nev. 560, 562-63, 893 P.2d 385, 387
26 (1995). “Only in very rare instances in which new issues of fact or law are raised supporting a ruling
27 contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. City of*
28

1 *Las Vegas*, 92 Nev. 402,405, 551 P.2d 244, 246 (1976). Additionally, WDCR 12(8) provides in
2 relevant part:

3 The rehearing of motions must be done in conformity with D.C.R. 13, Section 7. A
4 party seeking reconsideration of a ruling of the court, other than an order which may
5 be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion
6 for such relief within 10 days after service of written notice of entry of the order or
judgment, unless the time is shortened or enlarged by order.

7 **III. Analysis**

8 A motion for reconsideration is not an opportunity to reargue a previously decided motion.
9 *See Moore*, 92 Nev. at 405, 551 P.2d at 246 (upholding a district court’s denial of a second motion
10 for rehearing on the basis that the second motion “raised no new issues of law and made reference to
11 no new or additional facts”). Petitioner’s Motion for Reconsideration reiterates an attempt to
12 analogize the facts of this case to *Prevost* and a reference to NRCP 15 to argue his Amended Petition
13 was permitted. Mot. at 2–3; *Prevost v. State Dep’t of Admin.*, 134 Nev. Adv. Op. 42, 418 P.3d 675,
14 677 (2018). Petitioner has not presented new issues of fact or law to overrule the Court’s findings in
15 the Order.

16 Here, the Court found that the Petition was noncompliant with the requirements of NRS
17 223B.130 because: (1) it failed to name all of the subject agencies and parties of record in either the
18 caption or the body of the original Petition, and (2) it failed to name the subject agencies and parties
19 of record through attachment. Order Granting Mot. Dismiss Pet. Jud. Rev. (“Order”) at 5.
20 Furthermore, this Court held that the APA governs the filing of an Amended Petition, not the NRCP.
21 *Id.* Under the APA, Petitioners Amended Petition was invalid as untimely as it was filed after the
22 APA 30-day time limit which expired April 3, 2019. *Id.* As this Court held, to invoke a district
23 court’s jurisdiction to review an administrative decision, the petitioner must strictly comply with all
24 statutory requirements and non-compliance is grounds for dismissal. *Id.*; *Washoe Cty. v. Otto*, 128
25 Nev. 424, 431, 282 P.3d 719, 725 (2012). As discussed above, Petitioner in this case failed to strictly
26 comply with the statutory requirements by not naming the required parties and failing to file his
27 Amended Petition until after the 30-day deadline had passed.

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Further, Petitioner failed to seek leave of the Court to request reconsideration of this Court's Order. Pursuant to DCR 13(7), "[n]o motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." Thus, Petitioner's motion is similarly denied on a procedural basis.

Accordingly, and good cause appearing,

IT IS HEREBY ORDERED that Petitioner's *Motion for Reconsideration* is DENIED.

DATED this 17th day of September, 2019.


KATHLEEN DRAKULICH
DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-00641

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 17th day of September, 2019, I
5 electronically filed the **ORDER DENYING MOTION FOR RECONSIDERATION** with the
6 Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the
8 method(s) noted below:

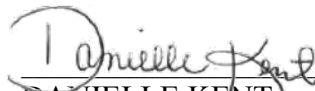
9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**
10 **notice of electronic filing to the following:**

11 KEVIN PICK, ESQ. for JAMES DZURENDA, NDOC

12 MICHAEL WHITFIELD

13 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
14 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

15 NONE

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21 DANIELLE KENT
22 Department 1 Judicial Assistant
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1 2540
2 AARON D. FORD
3 Attorney General
4 KEVIN A. PICK
5 Sr. Deputy Attorney General
6 Sate of Nevada
7 Office of the Attorney General
8 Nevada Bar No. 11683
9 5420 Kietzke Lane, Suite 202
10 Reno, Nevada 89511
11 (775) 687-2100
12 Email: kpick@ag.nv.gov
13 *Attorneys for Respondent State of Nevada*
14 *ex rel. Department of Corrections*

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 IN THE MATTER OF:

Case No. CV19-00641

12 MICHAEL WHITFIELD
13 (Appeal No. 1803430-LLW)

Dept. No. 1

14 Petitioner,

15
16 **NOTICE OF ENTRY OF ORDER**

17 TO: Petitioner Michael Whitfield:

18 PLEASE TAKE NOTICE that on September 17, 2019, the Court entered an Order Denying
19 Motion for Reconsideration, a true and correct copy of which is attached to this Notice as Exhibit 1.

20 **AFFIRMATION**

21 The undersigned hereby affirms that the preceding document does not contain the social
22 security number of any person.

23 DATED this 17th day of September 2019.

24 AARON D. FORD
25 Attorney General

26 By: /s/ Kevin A. Pick

27 Kevin A. Pick (Bar. No. 11683)
28 Sr. Deputy Attorney General
Attorneys for Respondent, State of Nevada
ex rel. 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 the 17th day of September 2019, I served a copy of the foregoing NOTICE OF ENTRY
4 OF ORDER by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex
5 system and by depositing a true copy of the same for mailing addressed as follows:

6 MICHAEL WHITFIELD
7 PO Box 18421
8 Reno, NV 89511
Petitioner-Employee

9 Lorna L. Ward, Esq.
10 Hearing Officer
11 C/O Hearings Division
12 1050 West William Street, Suite 450
13 Carson City, Nevada 89701

14 Department of Administration
15 Hearings Division
16 1050 West William Street, Suite 450
17 Carson City, Nevada 89701

18 */s/ Ginny Brownell*
19 An employee of the State of Nevada,
20 Office of the Attorney General
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INDEX OF EXHIBITS

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Exhibit 1 Order Denying Motion for Reconsideration

6 pages

EXHIBIT 1

EXHIBIT 1

1 2840

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**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

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MICHAEL WHITFIELD,

10

Petitioner,

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Case No.: CV19-00641

12

vs.

Dept. No.: 1

13

NEVADA STATE PERSONNEL
COMMISSION, STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION,
LORNA WARD, APPEALS OFFICER, and
DEPARTMENT OF CORRECTIONS, as
Employer,

14

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16

17

Respondents.

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ORDER DENYING MOTION FOR RECONSIDERATION

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Currently before the Court is Petitioner Michael Whitfield's *Motion for Reconsideration* filed July 2, 2019. The State of Nevada, Department of Corrections ("NDOC") filed an *Opposition to Petitioner's Motion for Reconsideration* on July 11, 2019. On July 16, 2019, Petitioner filed a *Reply to Opposition to Petitioner's Motion for Reconsideration* and submitted the Motion to the Court for consideration.

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I. Background

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Petitioner was previously employed by NDOC as a correctional officer at Warm Springs Correctional Center. Mot. at 2:8-9. On August 2, 2017, a Domestic Violence Restraining Order ("Restraining Order") was entered against Petitioner by the Superior Court of California, County of

1 Santa Clara, which specifically made it illegal for Petitioner to use or handle firearms until August 2,
2 2020. *Id.* at 2:9-12. However, the NDOC Administrative Regulations (AR) 362.01 and 362.03
3 expressly instruct that (1) all NDOC peace officers are require to handle firearms as part of their
4 assigned duties; (2) all NDOC peace officers must meet the requirements of NAC Chapter 289 to
5 ensure POST certification; and (3) all NDOC peace officers must maintain firearm certification under
6 NAC Chapter 289 “as a condition of employment.” *Id.* at 2:15-19. Following the issuance of the
7 Restraining Order entered against Petitioner, NDOC assigned him to a temporary administrative
8 position, where he would not be exposed to firearms. *Id.* at 2:20-21. Over the following six months,
9 NDOC allegedly urged Petitioner to resolve the Restraining Order and complete his biannual firearm
10 qualification requirements. *Id.* at 2:21-23. Petitioner allegedly failed to satisfy his biannual firearm
11 qualification requirements and he lost his POST certification. *Id.* at 2:24-25. As a result, NDOC
12 terminated Petitioner effective April 20, 2018, for violations of NAC 284.650(1), NAC 289.230,
13 NDOC AR 362, and NDOC AR 339.07.15(UU) (Failure to maintain POST requirements). *Id.* at
14 1:26-3:1.

15 On April 30, 2018, Petitioner appealed his dismissal and on December 14, 2018, an appeal
16 hearing was conducted in this matter before Hearing Officer Lorna Ward. *Id.* at 3:3-4. On March 1,
17 2019, Hearing Officer Ward filed her Findings of Fact, Conclusions of Law, Decision and Order.
18 Mot. Ex. A. Hearing Officer Ward found:

19 Officer Whitfield clearly and by a preponderance of the evidence violated AR
20 339.07.15(UU) and NAC 284.650(1). He failed to maintain his POST requirements as
21 required by AR 339.07.15(UU) and his failure to qualify biannually and his inability
22 to use a firearm violated NAC 284.650(1) because such is incompatible with an
23 employee’s condition of employment established by statute and regulation . . . There
is no question that Officer Whitfield was unable to legally use a firearm from August
2, 2017 to the present.

24 Mot. at Ex. A, 8. The Hearing Officer further held:

25 The violation of AR 339.07.15(UU) failure to maintain POST requirements is a Class
26 5 offense with dismissal recommended for a first offense . . . [A] violation of AR
27 339.07.15(UU) is a ‘serious’ offense as evidence by the fact that NDOC determined
28 that a violation warrants dismissal on a first offense. This determination is given
deference. In addition, the ability of a correctional officer to use a firearm is a condition
of employment and the inability to do so is incompatible with such employment.

1 *Id.* at 8. Lastly, Hearing Officer Ward found that “the dismissal was reasonable in light of all the
2 facts and the applicable law.” *Id.*

3 After Hearing Officer Ward issued her findings on March 1, 2019, Petitioner in pro per filed
4 the present Petition for Judicial Review (“Petition”), seeking to challenge the final judgment of the
5 Nevada State Personnel Commission (“Commission”). Pet. at 1:17-21. Petitioner contends that the
6 Commission’s decision was: (1) not supported by substantial evidence; (2) arbitrary and capricious;
7 (3) marked by an abuse of discretion; and (4) improper as a matter of law. *Id.* at 1:22-25.

8 Thereafter, on March 20, 2019, Petitioner Whitfield filed his *Petition for Judicial Review*. On
9 April 4, 2019, Respondent NDOC filed a *Motion to Dismiss Petition for Judicial Review*. On April
10 8, 2019, Petitioner Whitfield filed an *Amended Petition for Judicial Review*, and thereafter, on April
11 9, 2019, an *Opposition to Motion to Dismiss Petition for Judicial Review*. On April 12, 2019, NDOC
12 filed a *Reply* and submitted the matter to the Court for decision. This Court issued an *Order Granting*
13 *Motion to Dismiss Petition for Judicial Review* on June 24, 2019. Petitioner now brings the instant
14 Motion seeking reconsideration of this Court’s June 24, 2019 *Order Granting Motion to Dismiss*
15 *Petition for Judicial Review*.

16 **II. Relevant Legal Authority**

17 Pursuant to DCR 13(7), no motion once heard and disposed of shall be renewed in the same
18 cause, nor shall the same matters therein embraced be reheard, unless by leave of the court upon
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8 A motion for reconsideration is not an opportunity to reargue a previously decided motion.
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Accordingly, and good cause appearing,

IT IS HEREBY ORDERED that Petitioner’s *Motion for Reconsideration* is DENIED.

DATED this 17th day of September, 2019.


KATHLEEN DRAKULICH
DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-00641

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 17th day of September, 2019, I
5 electronically filed the **ORDER DENYING MOTION FOR RECONSIDERATION** with the
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7 I further certify that I transmitted a true and correct copy of the foregoing document by the
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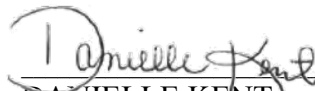
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10 **notice of electronic filing to the following:**

11 KEVIN PICK, ESQ. for JAMES DZURENDA, NDOC

12 MICHAEL WHITFIELD

13 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
14 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

15 NONE

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21 DANIELLE KENT
22 Department 1 Judicial Assistant
23
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1 Code 1350
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3

4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE

6 MICHAEL WHITFIELD,
7

Case No. CV19-00641

8 Petitioner,

Dept. No. 1

9 vs.

10 NEVADA STATE PERSONNEL
11 COMMISSION, STATE OF NEVADA
12 DEPARTMENT OF ADMINISTRATION,
13 LORNA WARD, APPEALS OFFICER, and
14 DEPARTMENT OF CORRECTIONS, as
15 Employer,

16 Respondents.
17 _____ /

18 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

19 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
20 County of Washoe; that on the 25th day of September, 2019, I electronically filed the Notice of
21 Appeal in the above entitled matter to the Nevada Supreme Court.

22 I further certify that the transmitted record is a true and correct copy of the original
23 pleadings on file with the Second Judicial District Court.

24 Dated this 25th day of September, 2019

25 Jacqueline Bryant
26 Clerk of the Court

27 By /s/ Yvonne Vilorio
28 Yvonne Vilorio
Deputy Clerk

MICHAEL WHITFIELD

PO BOX 18421

RENO, NV 89511-0421

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94-72/1224 NV
51078

25 Sept 2019 Date

Pay to the Order of Neveda Supreme Court

\$ 250.00

Two Hundred Fifty and 00/100

Dollars



Photo Safe Deposit®
Details on back

Bank of America 

ACH R/T 122400724

For CV19-00641

Michael Whitfield

MP

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