

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WHITFIELD,

Petitioner,

vs.

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

Respondents.

Supreme Court No. 79718
Dist. Court Case No. CV19-00641
Electronically Filed
Oct 21 2019 04:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO DISMISS

AARON D. FORD
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*Attorneys for State of Nevada,
Department of Corrections*

COMES NOW, NEVADA DEPARTMENT OF CORRECTIONS, by and through its counsel, Aaron D. Ford, Attorney General, and Kevin A. Pick, Senior Deputy Attorney General, and hereby moves this Court to dismiss this appeal for lack of jurisdiction.

This Motion is made and based on the Memorandum of Points and Authorities set forth below, the record on appeal, and all other pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION AND PROCEDURAL HISTORY

Michael Whitfield (“Whitfield”) is a former-correctional officer of the Nevada Department of Corrections (“NDOC”). NDOC dismissed Whitfield for failing to maintain POST certification and for activities that were incompatible with the conditions of his employment at NDOC.

Whitfield appealed his termination pursuant to NRS 284.390 and an evidentiary hearing was held before Hearing Officer Lorna Ward. Ms. Ward affirmed Whitfield’s termination in her Findings of Fact, Conclusions of Law and Decision (“Decision”) served on the parties by regular mail on March 1, 2019.

Whitfield filed a Petition for Judicial Review (“Petition”) in the Second Judicial District Court on March 20, 2019. However, Whitfield’s Petition failed to name as respondents the agency and all parties of record to the administrative proceeding in either the caption or the body of the Petition as required by NRS 233B.130(2(a). Furthermore, the Petition failed to incorporate by reference Hearing Officer Ward’s Decision and failed to attach a copy of the Decision.

On April 4, 2019, NDOC moved to dismiss Whitfield's Petition based on (1) Whitfield's failure to comply with the mandatory and jurisdictional naming requirements of NRS 233B.130(2)(a) and (2) Whitfield's inability to amend his defective Petition outside of the 30-day filing deadline under NRS 233B.130(2)(d).

After receiving the Motion to Dismiss, Whitfield recognized his error and filed an Amended Petition for Judicial Review on April 8, 2019. For the first time, the Amended Petition added the following parties as respondents: (1) Nevada State Personnel Commission; (2) State of Nevada, Department of Administration; (3) Lorna Ward, Appeals Officer; and (4) James Dzurenda, Nevada Department of Corrections. However, the Amended Petition was filed outside the 30-day filing period, which expired on April 3, 2019 (30 days after service of the hearing officer's March 1, 2019, Decision, plus three days for mailing).

Accordingly, the Amended Petition did not relate back to the filing of the original Petition and the district court lacked jurisdiction to permit such an amendment. *See Washoe Cty. v. Otto*, 128 Nev. 424, 435, 282 P.3d 719, 727 (2012). ("Because Washoe County's original petition failed to invoke the district court's jurisdiction, it could not properly be amended outside of the filing deadline.")

The district court granted NDOC's Motion to Dismiss and found that the original Petition was noncompliant with NRS 233B.130 because Whitfield failed to "name any respondent in the caption or the body of the Petition, nor through an attachment." *See* Exhibit No. 1 (Order Granting Motion to Dismiss). The district court also held that the subsequent Amended Petition was untimely and, as a result, did not cure the jurisdictional defect in the original Petition. *Id.* at 6.

NDOC served the Notice of Entry of Order Granting Motion to Dismiss on June 24, 2019. *See* Exhibit No. 2 (Notice of Entry of Order). Whitfield then had 30 days under NRAP 4(a)(1) to appeal this final judgement. However, instead of filing a Notice of Appeal or a timely tolling motion under NRAP 4(a)(4), Whitfield filed a Motion for Reconsideration with the district court.

The district court denied the Motion for Reconsideration on September 17, 2019, on procedural grounds and because Whitfield was merely rearguing previously decided legal issues. *See* Exhibit No. 3 (Order Denying Reconsideration). The district court then reaffirmed that Whitfield “failed to strictly comply with the statutory requirements by not naming the required parties and failing to file his Amended Petition until after the 30-day deadline had passed.” *Id.* at 4.

On September 23, 2019 (91 days after the district court’s June 24, 2019, final Order Granting Motion to Dismiss), Whitfield filed a Notice of Appeal contesting the September 17, 2019, Order Denying Motion for Reconsideration. *See* Exhibit No. 4 (Notice of Appeal). Whitfield did not file a Notice of Appeal of the district court’s final, dispositive Order Granting Motion to Dismiss.

Whitfield’s Motion for Reconsideration was not a tolling motion under NRAP 4(a)(4) and Nevada law instructs that an order denying reconsideration is not an independently appealable determination. As such, the Supreme Court lacks jurisdiction over this appeal and NDOC respectfully moves the Supreme Court to dismiss this appeal with prejudice.

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II.

LAW AND ARGUMENT

A. THE NOTICE OF APPEAL IS UNTIMELY.

This appeal cannot proceed because Whitfield's September 23, 2019, Notice of Appeal is untimely. "An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be taken as in other civil cases." NRS 233B.150. A civil appeal must be taken no later than 30 days after the date that written notice of entry of the order appealed from is served. NRAP 4(a)(1) (emphasis added). Accordingly, a party aggrieved by an order denying a petition for judicial review must file his/her notice of appeal within 30 days after service of the notice of entry of order. An untimely notice of appeal fails to vest jurisdiction in the Supreme Court. *See Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

Here, the district court issued a final, dispositive order on June 24, 2019, granting NDOC's Motion to Dismiss. *See* Exhibit No. 1. NDOC then served its Notice of Entry of Order on June 24, 2019, beginning the 30-day appeal period under NRAP 4(a)(1). *See* Exhibit No. 2. Instead of filing a timely appeal, Whitfield filed a Motion for Reconsideration, which is not among the tolling motions listed in NRAP 4(a)(4). *See Hampton v. Am. Home Mortg. Corp.*, 126 Nev. 718, 367 P.3d 777 (2010) ("a motion pursuant to NRCP 60 (b) for relief from judgment is not a tolling motion . . .") Accordingly, Whitfield's appeal is time-barred and this Court lacks jurisdiction to consider this appeal. *See Lozada*, 110 Nev. at 352.

Additionally, NDOC must also emphasize that an appeal of the Order Denying Reconsideration is nothing more than a de facto untimely appeal of the Order Granting Motion to Dismiss. As noted by the district court, Whitfield sought reconsideration via the **same** legal arguments he previously offered in opposition to NDOC's Motion to Dismiss; furthermore, the district court ultimately denied reconsideration on the **same** basis by which it had earlier granted dismissal (i.e. that Whitfield "failed to strictly comply with the statutory requirements by not naming the required parties and failing to file his Amended Petition until after the 30-day deadline had passed.") *See* Exhibit No. 3.

As such, since the Order Granting Motion to Dismiss and the Order Denying Reconsideration are inextricably intertwined, the Supreme Court cannot rule on reconsideration without also reaching the merits of the Order Granting Motion to Dismiss (and thus allowing Whitfield to proceed with an untimely appeal). Consequently, NDOC moves this Court to dismiss this appeal as untimely and jurisdictionally defective. *See* NRAP 4(a)(1); *see also* *Lozada*, 110 Nev. at 352.

B. THE DISTRICT COURT'S ORDER DENYING MOTION FOR RECONSIDERATION IS NOT AN INDEPENDENTLY APPEALABLE DETERMINATION.

NRAP 3A(b) sets forth an enumerated list of judgments and orders which are independently appealable. The list does not include an order denying reconsideration, such as the district court order at issue in Whitfield's Notice of Appeal. As such, the district court's Order Denying Motion for Reconsideration is not independently appealable under NRAP 3A(b) and the Court lacks jurisdiction to consider this appeal. *See Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 209,

* * *

678 P.2d 1152, 1153 (1984) (stating that the Supreme Court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).

This Court has repeatedly held that an order denying reconsideration is not independently or substantively appealable. *See Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) (“an order denying reconsideration is not appealable”); *see also Rico v. Rodriguez*, 121 Nev. 695, 700 n.1, 120 P.3d 812, 815 n.1 (2005) (“Ordinarily, an order denying a motion for reconsideration is not substantively appealable.”); *King v. Morgan Stanley & Co.*, No. 76463, 423 P.3d 612 (Nev. August 3, 2018) (“an order denying a motion for reconsideration is not independently appealable; the appeal must be taken from the final judgment.”) These previous decisions hold a position of permanence in this Court's jurisprudence and must be followed under the doctrine of *stare decisis*. *See Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008). Consequently, the Order Denying Reconsideration is not an independently appealable final determination and the Supreme Court lacks jurisdiction to consider this appeal. *See Taylor Constr. Co.*, 100 Nev. 207.

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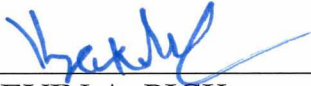
III.

CONCLUSION

Based on the foregoing, NDOC respectfully requests that the Court dismiss this appeal for lack of jurisdiction.¹

DATED this 21st day of October 2019.

AARON D. FORD
Attorney General

By: 

KEVIN A. PICK
Senior Deputy Attorney General
Nevada Bar No. 11683
Attorneys for NDOC

¹ Also, the caption now utilized by Appellant Whitfield on appeal is incorrect. The respondents named therein were never included in the Petition for Judicial Review but were added in the Amended Petition, which the district court rejected as untimely. In fact, the entire reason this case was dismissed by the district court was because these same entities *were not* named as respondents. *See* Exhibit No. 1. As such, NDOC also urges this Court to amend the caption accordingly.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this motion 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:

☒ This motion has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. font in Times New Roman; *or*

☐ This brief has been prepared in a monospaced typeface using Microsoft Word 2013 with 12 pt. font in Times New Roman.

2. I further certify that this brief complies with the page- or type- volume limitations of NRAP 27(d)(2), excluding the parts of the brief exemption by NRAP 32(a)(7)(C), it is either:

☐ Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

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

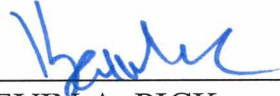
☒ Does not exceed 10 pages.

3. Finally, I hereby certify that I have read this Motion, 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 Motion 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 21st day of October 2019.

AARON D. FORD
Attorney General

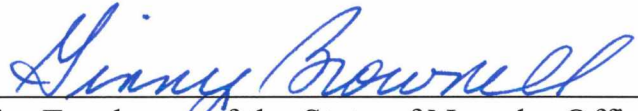
By: 

KEVIN A. PICK
Deputy Attorney General
Nevada Bar No. 11683
Attorneys for NDOC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 21st day of October 2019 I filed and served a true copy of the foregoing **MOTION TO DISMISS** through the Supreme Court Electronic Filing System or by U.S. Mail, postage prepaid, to the following:

Michael Whitfield
P.O. Box 19451
Reno, NV 89511

A handwritten signature in blue ink, reading "Ginny Brownell", is written over a horizontal line.

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

INDEX OF EXHIBITS

Exhibit No. 1	Order Granting Motion to Dismiss
Exhibit No. 2	Notice of Entry of Order Granting Motion to Dismiss
Exhibit No. 3	Order Denying Reconsideration
Exhibit No. 4	Notice of Appeal

EXHIBIT 1

EXHIBIT 1

3060

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

MICHAEL WHITFIELD,

Petitioner,

Case No.: CV19-00641

vs.

Dept. No.: 1

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

Respondents.

ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

Currently before the Court is the *Motion to Dismiss Petition for Judicial Review* filed by Respondent State of Nevada, Department of Corrections (“NDOC”) on April 4, 2019. On April 8, 2019, Petitioner Michael Whitfield (“Petitioner”) filed an *Amended Petition for Judicial Review*, and thereafter, on April 9, 2019, an *Opposition to Motion to Dismiss Petition for Judicial Review*. On April 12, 2019, NDOC filed a *Reply* and submitted the matter to the Court for decision.

Upon careful review of the record, this Court finds good cause to grant NDOC’s Motion.

I. Background

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

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

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

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

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

The violation of AR 339.07.15(UU) failure to maintain POST
requirements is a Class 5 offense with dismissal recommended for a
first offense . . . [A] violation of AR 339.07.15(UU) is a ‘serious’

1 offense as evidence by the fact that NDOC determined that a violation
2 warrants dismissal on a first offense. This determination is given
3 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.

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

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

12 **II. Relevant Legal Authority**

13 In reviewing a motion to dismiss pursuant to Nevada Rules of Civil Procedure Rule 12(b)(5)
14 for failure to state a claim upon which relief can be granted, the “court must construe the pleadings
15 liberally and accept all factual allegations in the complaint as true . . . [and] draw every fair inference
16 in favor of the non-moving party. ‘A complaint will not be dismissed for failure to state a claim unless
17 it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier
18 of fact, would entitle him or her to relief.’” *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116
19 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (citing *Simpson v. Mars. Inc.*, 113 Nev. 188, 190, 929
20 P.2d 966, 967 (1997)). As Nevada is a “notice-pleading” jurisdiction, a complaint need only set forth
21 sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party
22 has “adequate notice of the nature of the claim and relief sought.” *Hay v. Hay*, 100 Nev. 196, 198,
23 678 P.2d 672, 674 (1984); see also *Stockmeier v. Nevada Dep’t of Corrections*, 124 Nev. 313, 316,
24 183 P.3d 133, 135 (2008) (dismissal, pursuant to NRCP 12(b)(5), is proper where the allegations are
25 insufficient to establish the elements of a claim for relief).

26 **III. Analysis**

27 Respondent comes now requesting this Court to dismiss the Petition on the basis that
28 Petitioner failed to name as respondents all parties of record pursuant to NRS 233B.130(2)(a). NRS

1 233B.130 provides, in relevant part, that “[p]etitions for judicial review must: (a) Name as
2 respondents the agency and all parties of record to the administrative proceeding.” NDOC cites to
3 *Washoe County v. Otto*, wherein the Nevada Supreme Court held that “pursuant to NRS
4 233B.130(2)(a), it is mandatory to name all parties of record in a petition for judicial review of an
5 administrative decision, and a district court lacks jurisdiction to consider a petition that fails to comply
6 with this requirement. 128 Nev. 424, 431, 282 P.3d 719, 725 (2012). NDOC asserts that Petitioner
7 did not name any party as a respondent in either the caption or the body of the Petition, nor did
8 Petitioner reference Hearing Officer Ward’s Decision and Order so as to put NDOC on notice of what
9 was being challenged. Mot. at 6:25-28. As such, NDOC contends that Petitioner failed to comply
10 with the mandatory and jurisdictional naming requirements of NRS 233B.130(2)(a) by neglecting to
11 properly name: (1) the Department of Corrections; (2) the State of Nevada; (3) the Department of
12 Administration; (4) the Personnel Commission; and (5) the Hearing Officer—all of whom were either
13 the subject agency or parties of record to the administrative proceeding. *Id.* at 7:1-5.

14 In response to the Motion, Petitioner filed an *Amended Petition for Judicial Review* on April
15 8, 2019, wherein Petitioner listed in the caption, as well as the body of the Amended Petition, the
16 following parties as Respondents: (1) Nevada State Personnel Commission, (2) State of Nevada
17 Department of Administration, (3) Lorna Ward, Appeals Officer, and (4) James Dzurenda,
18 Department of Corrections. *See* Amended Pet. Petitioner alleges, through the Amended Petition, that
19 he is well within the time frame of 21 days to amend pursuant to NRCP 15(a)(1)(A). Further,
20 Petitioner filed an *Opposition* on April 9, 2019, wherein he argues that NDOC’s Motion is rendered
21 moot by the filing of the Amended Petition. Petitioner cites to *Prevost v. State Dep’t of Admin.*, 134
22 Nev. Adv. Op. 42, 418 P.3d 675, 677 (2018), to support the assertions that the failure to name a party
23 of record in the caption of a petition for judicial review is not jurisdictionally fatal under NRS
24 233B.130(2)(a). Opp. at 2:24-28.

25 However, in the *Reply*, NDOC asserts that the filing of the Amended Petition does not cure
26 Petitioner’s failure, as the Amended Petition is untimely, pursuant to NRS 233B.130(2)(d), as the
27 Amended Petition was not filed within 30 days from when Petitioner was served with the
28 administrative decision at issue. Reply at 2:13-15. Contending that the Amended Petition was

untimely, NDOC further asserts that it cannot relate back to the original Petition, as the APA 30-day time limit expired on April 3, 2019, prior to the filing of the Amended Petition. *Id.* at 5:24-26. Further, NDOC contends that the case cited by Petitioner, *Prevost*, is not binding in this case as Petitioner failed to simply name the respondents in the caption of the Petition. *Id.* at 5:2-8. Rather, NDOC asserts, Petitioner failed to name any respondents anywhere in the entire Petition. *Id.* Lastly, NDOC alleges that Petitioner failed to comply with NRS 41.031(2) governing governmental exceptions for sovereign immunity. *Id.* at 6:14-16. Specifically, NDOC cites to NRS 41.031(2), which provides that “[i]n any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit.” Here, NDOC alleges that Petitioner failed to name the Department of Corrections or the State of Nevada in the Petition, and thus, failed to invoke the exception to the State’s sovereign immunity rule. *Id.* at 6:21-24.

Upon review of the arguments presented, the Court finds (1) that Petitioner’s original Petition is noncompliant with NRS 233B.130, and (2) that the APA controls regarding the filing of an Amended Petition, and thus the Amended Petition does not relate back to the original Petition and does not cure the defect. Under Nevada law, district courts have jurisdiction to review administrative decisions under the APA, but only when they “fall within the APA’s terms and [are] challenged according to the APA’s procedures.” *Otto*, 128 Nev. at 431. To invoke a district court’s jurisdiction, parties seeking judicial review of an administrative decision must strictly comply with all statutory requirements for such review, and thus, noncompliance is grounds for dismissal. *Id.* In *Otto*, the Nevada Supreme Court specifically found that petitioner Washoe County had failed to comply with NRS 233B.130(2)(a) because Washoe County did not “name any [respondent] taxpayer individually in the caption, in the body of the amended petition, or in an attachment.” *Id.* at 430. Here, the facts are analogous. Petitioner failed to name any respondent in the caption or the body of the Petition, nor through an attachment. As such, the Court finds that the original Petition was not compliant with NRS 233B.130, warranting dismissal.

Further, as to the Amended Petition, NRS 233B.130(2)(d) provides that “[p]etitions for judicial review must: (d) Be filed within 30 days after service of the final decision of the agency.”

1 Despite Petitioner's assertion that the Amended Petition was filed in compliance with NRCP 15, the
2 Amended Petition was not filed in compliance with NRS 233B.130(2)(d). As a result, this Court
3 finds that the Amended Petition does not cure Petitioner's jurisdictional defect.

4 Accordingly, and good cause appearing,

5 IT IS HEREBY ORDERED that the *Motion to Dismiss Petition for Judicial Review* filed by
6 Respondent State of Nevada, Department of Corrections is GRANTED.

7 DATED this 24th day of June, 2019.

8 
9 KATHLEEN DRAKULICH
10 DISTRICT JUDGE
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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 24th day of June, 2019, I electronically
5 filed the **ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**
6 with the 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 notice**
10 **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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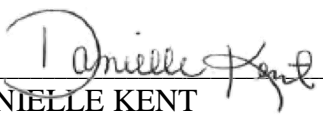
19 
20 DANIELLE KENT
21 Department 1 Judicial Assistant
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EXHIBIT 2

EXHIBIT 2

2540
AARON D. FORD
Attorney General
KEVIN A. PICK
Deputy Attorney General
State of Nevada
Office of the Attorney General
Nevada Bar No. 11683
5420 Kietzke Lane, Suite 202
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Email: kpick@ag.nv.gov
Attorneys for Respondent State of Nevada
ex rel. Department of Corrections

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,

NOTICE OF ENTRY OF ORDER

TO: Petitioner Michael Whitfield:

PLEASE TAKE NOTICE that on June 24, 2019, the Court entered an Order Granting Motion to Dismiss Petition for Judicial Review, a true and correct copy of which is attached to this Notice as Exhibit 1.

AFFIRMATION

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

DATED this 24th day of June 2019.

AARON D. FORD
Attorney General

By: /s/ Kevin A. Pick

Kevin A. Pick (Bar. No. 11683)
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 24th day of June 2019, I served a copy of the foregoing NOTICE OF ENTRY OF
4 ORDER 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 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

Exhibit 1	Order Granting Motion to Dismiss Petition for Judicial Review	7 pages
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EXHIBIT 1

Order Granting Motion to Dismiss Petition for
Judicial Review

EXHIBIT 1

3060

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

MICHAEL WHITFIELD,

Petitioner,

Case No.: CV19-00641

vs.

Dept. No.: 1

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

Respondents.

ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

Currently before the Court is the *Motion to Dismiss Petition for Judicial Review* filed by Respondent State of Nevada, Department of Corrections (“NDOC”) on April 4, 2019. On April 8, 2019, Petitioner Michael Whitfield (“Petitioner”) filed an *Amended Petition for Judicial Review*, and thereafter, on April 9, 2019, an *Opposition to Motion to Dismiss Petition for Judicial Review*. On April 12, 2019, NDOC filed a *Reply* and submitted the matter to the Court for decision.

Upon careful review of the record, this Court finds good cause to grant NDOC’s Motion.

I. Background

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

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

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

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

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

The violation of AR 339.07.15(UU) failure to maintain POST
requirements is a Class 5 offense with dismissal recommended for a
first offense . . . [A] violation of AR 339.07.15(UU) is a ‘serious’

1 offense as evidence by the fact that NDOC determined that a violation
2 warrants dismissal on a first offense. This determination is given
3 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.

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

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

12 **II. Relevant Legal Authority**

13 In reviewing a motion to dismiss pursuant to Nevada Rules of Civil Procedure Rule 12(b)(5)
14 for failure to state a claim upon which relief can be granted, the “court must construe the pleadings
15 liberally and accept all factual allegations in the complaint as true . . . [and] draw every fair inference
16 in favor of the non-moving party. ‘A complaint will not be dismissed for failure to state a claim unless
17 it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier
18 of fact, would entitle him or her to relief.’” *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116
19 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (citing *Simpson v. Mars. Inc.*, 113 Nev. 188, 190, 929
20 P.2d 966, 967 (1997)). As Nevada is a “notice-pleading” jurisdiction, a complaint need only set forth
21 sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party
22 has “adequate notice of the nature of the claim and relief sought.” *Hay v. Hay*, 100 Nev. 196, 198,
23 678 P.2d 672, 674 (1984); see also *Stockmeier v. Nevada Dep’t of Corrections*, 124 Nev. 313, 316,
24 183 P.3d 133, 135 (2008) (dismissal, pursuant to NRCP 12(b)(5), is proper where the allegations are
25 insufficient to establish the elements of a claim for relief).

26 **III. Analysis**

27 Respondent comes now requesting this Court to dismiss the Petition on the basis that
28 Petitioner failed to name as respondents all parties of record pursuant to NRS 233B.130(2)(a). NRS

1 233B.130 provides, in relevant part, that “[p]etitions for judicial review must: (a) Name as
2 respondents the agency and all parties of record to the administrative proceeding.” NDOC cites to
3 *Washoe County v. Otto*, wherein the Nevada Supreme Court held that “pursuant to NRS
4 233B.130(2)(a), it is mandatory to name all parties of record in a petition for judicial review of an
5 administrative decision, and a district court lacks jurisdiction to consider a petition that fails to comply
6 with this requirement. 128 Nev. 424, 431, 282 P.3d 719, 725 (2012). NDOC asserts that Petitioner
7 did not name any party as a respondent in either the caption or the body of the Petition, nor did
8 Petitioner reference Hearing Officer Ward’s Decision and Order so as to put NDOC on notice of what
9 was being challenged. Mot. at 6:25-28. As such, NDOC contends that Petitioner failed to comply
10 with the mandatory and jurisdictional naming requirements of NRS 233B.130(2)(a) by neglecting to
11 properly name: (1) the Department of Corrections; (2) the State of Nevada; (3) the Department of
12 Administration; (4) the Personnel Commission; and (5) the Hearing Officer—all of whom were either
13 the subject agency or parties of record to the administrative proceeding. *Id.* at 7:1-5.

14 In response to the Motion, Petitioner filed an *Amended Petition for Judicial Review* on April
15 8, 2019, wherein Petitioner listed in the caption, as well as the body of the Amended Petition, the
16 following parties as Respondents: (1) Nevada State Personnel Commission, (2) State of Nevada
17 Department of Administration, (3) Lorna Ward, Appeals Officer, and (4) James Dzurenda,
18 Department of Corrections. *See* Amended Pet. Petitioner alleges, through the Amended Petition, that
19 he is well within the time frame of 21 days to amend pursuant to NRCP 15(a)(1)(A). Further,
20 Petitioner filed an *Opposition* on April 9, 2019, wherein he argues that NDOC’s Motion is rendered
21 moot by the filing of the Amended Petition. Petitioner cites to *Prevost v. State Dep’t of Admin.*, 134
22 Nev. Adv. Op. 42, 418 P.3d 675, 677 (2018), to support the assertions that the failure to name a party
23 of record in the caption of a petition for judicial review is not jurisdictionally fatal under NRS
24 233B.130(2)(a). Opp. at 2:24-28.

25 However, in the *Reply*, NDOC asserts that the filing of the Amended Petition does not cure
26 Petitioner’s failure, as the Amended Petition is untimely, pursuant to NRS 233B.130(2)(d), as the
27 Amended Petition was not filed within 30 days from when Petitioner was served with the
28 administrative decision at issue. Reply at 2:13-15. Contending that the Amended Petition was

untimely, NDOC further asserts that it cannot relate back to the original Petition, as the APA 30-day time limit expired on April 3, 2019, prior to the filing of the Amended Petition. *Id.* at 5:24-26. Further, NDOC contends that the case cited by Petitioner, *Prevost*, is not binding in this case as Petitioner failed to simply name the respondents in the caption of the Petition. *Id.* at 5:2-8. Rather, NDOC asserts, Petitioner failed to name any respondents anywhere in the entire Petition. *Id.* Lastly, NDOC alleges that Petitioner failed to comply with NRS 41.031(2) governing governmental exceptions for sovereign immunity. *Id.* at 6:14-16. Specifically, NDOC cites to NRS 41.031(2), which provides that “[i]n any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit.” Here, NDOC alleges that Petitioner failed to name the Department of Corrections or the State of Nevada in the Petition, and thus, failed to invoke the exception to the State’s sovereign immunity rule. *Id.* at 6:21-24.

Upon review of the arguments presented, the Court finds (1) that Petitioner’s original Petition is noncompliant with NRS 233B.130, and (2) that the APA controls regarding the filing of an Amended Petition, and thus the Amended Petition does not relate back to the original Petition and does not cure the defect. Under Nevada law, district courts have jurisdiction to review administrative decisions under the APA, but only when they “fall within the APA’s terms and [are] challenged according to the APA’s procedures.” *Otto*, 128 Nev. at 431. To invoke a district court’s jurisdiction, parties seeking judicial review of an administrative decision must strictly comply with all statutory requirements for such review, and thus, noncompliance is grounds for dismissal. *Id.* In *Otto*, the Nevada Supreme Court specifically found that petitioner Washoe County had failed to comply with NRS 233B.130(2)(a) because Washoe County did not “name any [respondent] taxpayer individually in the caption, in the body of the amended petition, or in an attachment.” *Id.* at 430. Here, the facts are analogous. Petitioner failed to name any respondent in the caption or the body of the Petition, nor through an attachment. As such, the Court finds that the original Petition was not compliant with NRS 233B.130, warranting dismissal.

Further, as to the Amended Petition, NRS 233B.130(2)(d) provides that “[p]etitions for judicial review must: (d) Be filed within 30 days after service of the final decision of the agency.”

1 Despite Petitioner's assertion that the Amended Petition was filed in compliance with NRCP 15, the
2 Amended Petition was not filed in compliance with NRS 233B.130(2)(d). As a result, this Court
3 finds that the Amended Petition does not cure Petitioner's jurisdictional defect.

4 Accordingly, and good cause appearing,

5 IT IS HEREBY ORDERED that the *Motion to Dismiss Petition for Judicial Review* filed by
6 Respondent State of Nevada, Department of Corrections is GRANTED.

7 DATED this 24th day of June, 2019.

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9 KATHLEEN DRAKULICH
10 DISTRICT JUDGE
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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 24th day of June, 2019, I electronically
5 filed the **ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**
6 with the 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 notice**
10 **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
16
17
18

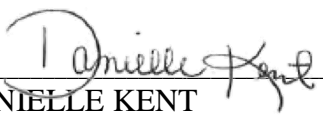
19 
20 DANIELLE KENT
21 Department 1 Judicial Assistant
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EXHIBIT 3

EXHIBIT 3

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

MICHAEL WHITFIELD,

Petitioner,

Case No.: CV19-00641

vs.

Dept. No.: 1

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

Respondents.

ORDER DENYING MOTION FOR RECONSIDERATION

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.

I. Background

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
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.

28 ///

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

6 Accordingly, and good cause appearing,

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

8 DATED this 17th day of September, 2019.

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11 KATHLEEN DRAKULICH
12 DISTRICT JUDGE
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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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EXHIBIT 4

EXHIBIT 4

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

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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.

NOTICE OF APPEAL

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

//

//

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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