

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

**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.**

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Electronically Filed  
Oct 23 2019 09:21 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Sup. Ct. Case No. 79718  
Case No. CV19-00641  
Dept. 1

**RECORD ON APPEAL**

**VOLUME 2 OF 4**

**DOCUMENTS**

**APPELLANT**

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

**RESPONDENT**

**Kevin A. Pick, Esq. SBN 11683  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
Attorney for: Nevada State Personnel  
Commission, State of Nevada Department  
of Administration, Lorna Ward, Appeals  
Officer and Department of Corrections.**

APPEAL INDEX  
 SUPREME COURT NO: 79718  
 DISTRICT CASE NO: CV19-00641  
 MICHAEL WHITFIELD vs NEVADA STATE PERSONNEL COMMISSION ETAL  
 DATE: OCTOBER 23, 2019

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DISTRICT CASE NO: CV19-00641  
MICHAEL WHITFIELD vs NEVADA STATE PERSONNEL COMMISSION ETAL  
DATE: OCTOBER 23, 2019

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APPEAL INDEX  
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 DISTRICT CASE NO: CV19-00641  
 MICHAEL WHITFIELD vs NEVADA STATE PERSONNEL COMMISSION ETAL  
 DATE: OCTOBER 23, 2019

| <b>PLEADING</b>   | <b>DATE FILED</b> | <b>VOL.</b> | <b>PAGE NO.</b> |
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1 Code: \$3550  
2 Michael Whitfield  
3 P.O. Box 18421  
4 Reno, NV 89511  
5 Email: mwhitfi2000@gmail.com  
6 Self-Represented Litigant

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

9 \* \* \*

10 IN THE MATTER OF:

Case No.

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

Dept. No.

13 Petitioner,

14 \_\_\_\_\_ /

15 **PETITION FOR JUDICIAL REVIEW**  
16

17 **NOTICE IS HEREBY GIVEN** that Petitioner, in the above-entitled action, does  
18 hereby Petition to the Second Judicial District Court for Judicial Review from the final  
19 judgment of the Nevada State Personnel Commission in this action. Said judgement  
20 was rendered on March 1, 2019, finding Petitioner ineligible for reinstatement/rehire  
21 to his position as Nevada Department of Corrections. Petitioner alleges as follows:

- 22 1. That the decision was not supported by substantial evidence;  
23 2. That the decision was arbitrary and capricious;  
24 3. That the decision was marked by an abuse of discretion; and  
25 4. That the decision was improper as a matter of law.

26 WHEREFORE, the Petition, Michael Whitfield, asks for the following relief:

- 27 1. That the decision of the Nevada State Personnel Commission be  
28

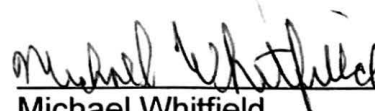
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reversed, and the Petitioner be determined to be eligible for  
reinstatement/rehire to his former position;

2. That this court grant such other and further relief as may be just, equitable,  
and proper.

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

Dated this 20 day of March, 2019

  
\_\_\_\_\_  
Michael Whitfield  
In Proper Person

Respondent in Proper Person

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

9 IN THE MATTER OF:

10  
11 MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Case No. CV19-00641

12 Dept. No. 1

13 Petitioner.  
14 \_\_\_\_\_/

15 **ORDER FOR BRIEFING SCHEDULE**

16 On March 20, 2019, Petitioner MICHAEL WHITFIELD filed a *Petition for Judicial Review*.  
17 Petitioner must serve the Petition upon the agency and every party within forty-five (45) days after  
18 the filing of the Petition. NRS 233B.130(5).

19 The Agency and any party desiring to participate must file a Statement of Intent to  
20 Participate within twenty (20) days after service of the Petition. NRS 233B.130(3).

21 Within forty-five (45) days of service of the Petition, the Petitioner must transmit to the  
22 Court a certified copy of the transcript of the evidence resulting in the final decision of the Agency  
23 and the Agency that rendered the decision must transmit the remainder of the record to the Court  
24 and shall give written notice of the transmittal. NRS 233B.131(1).

25 Pursuant to NRS 233B.133(1), Petitioner must serve and file an Opening Brief (Points and  
26 Authorities) within forty (40) days after the Agency has given written notice that the record has  
27 been filed with the Court.

28 ///

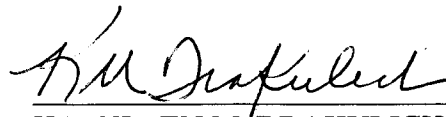
1 Respondent shall serve and file an Answering Brief (Points and Authorities) within thirty  
2 (30) days after service of Petitioner's Opening Brief. NRS 233B.133(2).

3 Petitioner may serve and file a Reply Brief (Points and Authorities) within thirty (30) days  
4 after service of Respondent's Answering Brief. NRS 233B.133(3).

5 Any party may request a hearing within seven (7) days after expiration of the time within  
6 which Petitioner is required to file a Reply Brief. If no hearing request is made, the parties shall file  
7 a Request for Submission to submit the matter to the Court for decision. NRS 233B.133(4).

8 **IT IS SO ORDERED.**

9 DATED this 21<sup>st</sup> day of March, 2019.

10 

11 KATHLEEN M. DRAKULICH  
12 District Court Judge  
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**CERTIFICATE OF SERVICE**

CASE NO. CV19-00641

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 27<sup>th</sup> day of March, 2019, I electronically filed the **ORDER FOR BRIEFING SCHEDULE** with the Clerk of the Court by using the ECF system.

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

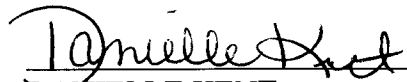
**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

MICHAEL WHITFIELD

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

NEVADA STATE PERSONNEL COMMISSION  
209 E. MUSSER STREET, SUITE 101  
CARSON CITY, NEVADA 89701

OFFICE OF THE ATTORNEY GENERAL  
100 NORTH CARSON STREET  
CARSON CITY, NV 89701

  
DANIELLE KENT  
Department 1 Judicial Assistant

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-03-27 09:40:19.195.  
**WHITFIELD**

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

03-27-2019:09:39:01

**Clerk Accepted:**

03-27-2019:09:39:44

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Ord for Briefing Schedule

**Filed By:**

Judicial Asst. DKent

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

2019-03-27 11:16:28 AM

OFFICE OF THE ATTORNEY GENERAL  
CARSON CITY, NEVADA  
Clerk of the Court  
Transaction # 7187548 : sacordag

MAR 25 2019

Code: 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOEMicheal Whitfield,  
Plaintiff / Petitioner / Joint Petitioner,Case. No. CV 19-00 641

vs.

Dept. No. 1NV Human Resource Mangagement,  
Defendant / Respondent / Joint Petitioner.**SUMMONS****TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: Petition for Judicial Review.

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this \_\_\_\_\_ day of MAR 22 2019, 20\_\_\_\_

Issued on behalf of Plaintiff(s):

JACQUELINE BRYANT  
CLERK OF THE COURTBy: T. Shields  
Deputy ClerkName: Michael WhitfieldAddress: P.O. Box 18421Reno, NV 89511Phone Number: 775-737-3493Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

AARON D. FORD  
Attorney General

CAROLINE BATEMAN  
First Assistant Attorney General

CHRISTINE JONES  
BRADY  
Second Assistant Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701

JESSICA L. ADAIR  
Chief of Staff

RACHEL J. ANDERSON  
General Counsel

HEIDI PARRY STERN  
Solicitor General

DATE RECEIVED: 3/25/19

RECEIVED BY: Diana Herrera

CASE  
NAME: Whitfield, v. NV Human Resources  
management

CASE NUMBER: CV19 00641 COURT: 2nd JD

DOCUMENT(S) RECEIVED: Summons

**NOTICE**

**NRS 41.031(2)** provides in part that, in 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. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. **Service on the Attorney General or designee does not constitute service on any individual or administrative head.**

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031(2)(a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, except the Office of the Attorney General. **Receipt of summons and complaint or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 41.**

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF NevadaCOUNTY OF W Carson CityI, Kyron Riddess, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

I was redirected from 209 Masser to Attorney  
General Office at the address below  
Petition for Judicial Review, Summons

upon Human Resource Management Dalia Diana Herrera, at the following  
(Name of Respondent/Defendant who was served) Herrera

address: 100 N. Carson Carson City, NV 89701

on the 25 day of March, 2019.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

Kyron Riddess  
(Signature of person who completed service)

Code: 4085

STATE OF NEVADA  
DEPT OF ADMINISTRATION  
HEARINGS DIVISION  
APPEALS SECTION

2019 MAR 25 04:14 PM

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

Micheal Whitfield  
Plaintiff / Petitioner / Joint Petitioner,

Case. No. CV19-00641

vs.

Dept. No. 1

State of NV Dept of Admin/Hearings Div,  
Defendant / Respondent / Joint Petitioner.

**SUMMONS**

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

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  - a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this        day of MAR 22 2019, 20      .

Issued on behalf of Plaintiff(s):

JACQUELINE BRYANT  
CLERK OF THE COURT

Name: Michael WhitfieldBy: *T. Shields*Address: P.O. Box 18421

Deputy Clerk

Reno, NV 89511

Second Judicial District Court

Phone Number: 775-737-3493

75 Court Street

Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF Nevada )  
COUNTY OF Carson City )

I, Kylon Ridders, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

Summons, Petition for Judicial Review

upon Human Resource Management, at the following  
(Name of Respondent/Defendant who was served) Tasha Eaton  
address: 1050 Williams #450 Carson City, NV

on the 25 day of March, 20 19.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

K. Ridders  
(Signature of person who completed service)

Code: 4085

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

Micheal Whitfield,  
Plaintiff / Petitioner / Joint Petitioner,

Case. No. CV19-00641

vs.

Dept. No. 1

James Dzurenda/NDOC Director,  
Defendant / Respondent / Joint Petitioner.

**SUMMONS**

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1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

**MAR 22 2019**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Issued on behalf of Plaintiff(s):

JACQUELINE BRYANT  
CLERK OF THE COURT

Name: Michael Whitfield

By: *T. Shields*

Address: P.O. Box 18421

Deputy Clerk

Reno, NV 89511

Second Judicial District Court

Phone Number: 775-737-3493

75 Court Street

Reno, Nevada 89501

CODE 1067

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

MICHEAL WHITFIELD,

Plaintiff(s),

VS.

CASE NO: CV19-00641

JAMES DZURENDA/NDOC DIRECTOR,

Defendant(s),

## DECLARATION OF SERVICE

STATE OF NEVADA

COUNTY OF CARSON CITY ss.:

SERWIND NETZLER, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **PETITION FOR JUDICIAL REVIEW; SUMMONS** On 3/26/2019 and served the same on 3/26/2019 at 2:26 PM by delivery and leaving a copy with:

By then and there personally delivering a true and correct copy of the documents into the hands of and leaving with **Nancy Sanders** whose title is **Administrative Assistant**.

Served on behalf of **JAMES DZURENDA NEVADA DEPARTMENT OF CORRECTION DIRECTOR**

Service Address: **NDOC - 5500 Snyder Ave Bldg 17 , Carson City, NV 89701-6752**

## A description of Nancy Sanders is as follows

| Gender | Color of Skin/Race | Hair | Age     | Height    | Weight      |
|--------|--------------------|------|---------|-----------|-------------|
| Female | White              | Red  | 36 - 40 | 5'1 - 5'6 | 161-180 Lbs |

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 3/27/2019

by SERWIND NETZLER

Registration: R-2018-05938

No notary is required per NRS 53.045

X

SERWIND NETZLER

Registration: R-2018-05938

Reno Carson Messenger Service, Inc #322

185 Martin St.

Reno, NV 89509

(775) 322-2424

www.renocarson.com



## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-03-27 11:20:17.512.  
**WHITFIELD**

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

03-27-2019:11:16:28

**Clerk Accepted:**

03-27-2019:11:19:45

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Summons Filed

Summons Filed

Summons Filed

**Filed By:**

Michael Whitfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

3960  
AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Deputy Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**STATEMENT OF INTENT TO PARTICIPATE  
IN PETITION FOR JUDICIAL REVIEW**

Respondent, State of Nevada, Department of Corrections (hereinafter “NDOC”), by and through its attorneys, Nevada Attorney General, Aaron D. Ford, and Deputy Attorney General, Kevin A. Pick, hereby notifies the District Court and all interested parties pursuant to NRS 233B.130(3), that it intends to participate in the Petition for Judicial Review filed in the Second Judicial District Court by Michael Whitfield on March 20, 2019.

NDOC denies the allegations of errors set forth in the Petition for Judicial Review.

By filing this Notice of Intent to Participate, NDOC does not waive any defenses, including the ability to contest subject matter jurisdiction and the Petitioner’s compliance with NRS 233B.130.

**NOTICE IS HEREBY GIVEN** that all documents to Respondent, NDOC, should be addressed as follows: Office of the Attorney General, Attention: Kevin A. Pick, 5420 Kietzke Lane, Suite 202, Reno, Nevada, 89511.

**WHEREFORE**, Respondent State of Nevada, Department of Corrections, prays that the Court dismiss the Petition as a matter of law, affirm the decision of the Hearing Officer, and for such other and further relief as the Court may deem just and proper.

**AFFIRMATION**

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

DATED this 4th day of April 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*

**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 4th day of April 2019, I served a copy of the foregoing STATEMENT OF INTENT TO PARTICIPATE IN PETITION FOR JUDICIAL REVIEW by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

MICHAEL WHITFIELD  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-04-04 11:21:49.118.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-04-04 11:21:49.071.

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04-04-2019:11:21:19

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Statement Intent Participate

**Filed By:**

Kevin A Pick

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KEVIN A. PICK, ESQ. for NEVADA STATE  
PERSONNEL COMMISSION

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

2315  
AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Deputy Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

Respondent, State of Nevada, Department of Corrections (hereinafter “NDOC”), by and through its attorneys, Nevada Attorney General, Aaron D. Ford, and Deputy Attorney General, Kevin A. Pick, hereby moves this Court to dismiss Petitioner Michael Whitfield’s Petition for Judicial Review with prejudice, on the grounds that this Court lacks jurisdiction and that the Petition for Judicial Review fails to comply with mandatory and jurisdictional requirements of NRS 233B.130. This Motion is made and based on the Memorandum of Points and Authorities set forth below, any exhibits attached hereto and all papers and pleadings on file herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

Respectfully, this Court must dismiss with prejudice Michael Whitfield’s Petition for Judicial Review because the Court lacks jurisdiction to hear Mr. Whitfield’s appeal, due to his failure to comply

with the mandatory and jurisdictional requirements of NRS 233B.130(2). Namely, the Petition for Judicial Review fails to name any respondents, much less the agency and all parties of record to the administrative proceeding as required by NRS 233B.130(2)(a). As such, Mr. Whitfield has failed to invoke the subject matter jurisdiction of this Court and, accordingly, the Petition must be dismissed with prejudice since the deadline in which to file for judicial review has expired.

## II.

### PROCEDURAL AND FACTUAL HISTORY

Petitioner, Michael Whitfield was previously employed by NDOC as a correctional officer at Warm Springs Correctional Center. On August 2, 2017, a Domestic Violence Restraining Order was entered against Mr. Whitfield by the Superior Court of California, County of Santa Clara, which (among other provisions) specifically made it *illegal* for Mr. Whitfield to use or handle firearms until August 2, 2020. The no-firearms clause made no exceptions at all, including no exception for Mr. Whitfield's employment as a correctional officer. However, Mr. Whitfield was required by Nevada law to qualify with a firearm *biannually* in order to maintain a basic POST certificate, which allows individuals to act as peace officers. *See* NAC 289.230(5). Likewise, NDOC Administrative Regulations (AR) 362.01 and 362.03 expressly instruct that: (1) all NDOC peace officers are required to handle firearms as part their assigned duties; (2) all NDOC peace officers must meet the requirements of NAC Chapter 289 to ensure POST certification; and (3) all NDOC peace officers must maintain firearm certification under NAC Chapter 289 "as a condition of employment."

As a result of the August 2, 2017, Restraining Order, NDOC assigned Mr. Whitfield to a temporary administrative position where he would not be exposed to firearms. Over the next six months, NDOC *repeatedly* urged Mr. Whitfield to resolve the Restraining Order and complete his biannual firearm qualification requirements. Unfortunately, Mr. Whitfield ignored all of NDOC's repeated urgings; he neglected to resolve the Restraining Order; he neglected to satisfy his biannual firearm qualification requirements; and he lost his POST certification.

As a result, NDOC was forced to terminate Mr. Whitfield effective April 20, 2018, for violations of NAC 284.650(1), NAC 289.230, NDOC AR 362, and NDOC AR 339.07.15(UU) (Failure

\* \* \*

to maintain POST requirements). At the time of his termination, nearly 10 months had passed since Mr. Whitfield last satisfied his firearm qualification requirement on June 22, 2017.

On April 30, 2018, Mr. Whitfield appealed his dismissal and on December 14, 2018, an appeal hearing was conducted in this matter before Hearing Officer Lorna Ward. At the hearing, substantial evidence was introduced that Mr. Whitfield violated AR 339.07.15(UU) and NAC 284.650(1). Indeed, Mr. Whitfield conceded that he failed to maintain his POST requirements in accordance with NAC 289.230 and that it was *still illegal* for Mr. Whitfield to use firearms—which was contrary to the conditions of his employment at NDOC. These facts were undisputed and there was no debate that Mr. Whitfield committed the charged misconduct. Pursuant to NDOC AR 339, a violation of AR 339.07.15(UU) (Failure to maintain POST requirements) was a Class 5 offense and termination was the only level of discipline available to NDOC, which made this violation “serious” as a matter of law. *See O’Keefe v. Nevada Department of Motor Vehicles*, 134 Nev. Adv. Op. 92, at \*12–13 (December 6, 2018). NDOC also produced substantial evidence that Mr. Whitfield’s termination was for the good of the public service, a decision which was entitled to deference as a matter of law. *O’Keefe*, 134 Nev. Adv. Op. 92, at \*13. Namely, undisputed testimony was presented that the safety and security of the institution would be negatively affected by an officer who cannot legally use firearms; moreover, undisputed testimony was presented that Mr. Whitfield’s failure to maintain his POST requirements and his inability to legally use firearms were incompatible with his employment as a correctional officer.

On March 1, 2019, Hearing Officer Ward filed her Findings of Fact, Conclusions of Law, Decision and Order. *See Exhibit A*. As seen therein, Hearing Officer Ward found as follows:

“Officer Whitfield clearly and by a preponderance of the evidence violated AR 339.07.15(UU) and NAC 284.650(1). He failed to maintain his POST requirements as required by AR 339.07.15(UU) and his failure to qualify biannually and his inability to use a firearm violated NAC 284.650(1) because such is incompatible with an 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.”

*See Exhibit A*, at 8.

\* \* \*

\* \* \*

Next, the Hearing Officer found as follows:

“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’ offense as evidenced by the fact that NDOC determined 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.”

*Id.* at 8.

Lastly, Hearing Officer Ward found that:

“The dismissal of Officer Whitfield was for the good of the public service as determined by NDOC. The dismissal was reasonable in light of all the facts and the applicable law.”

*Id.*

Based on the foregoing factual determinations, the Hearing Officer affirmed Mr. Whitfield’s termination. *Id.* at 9. The Hearing Officer’s Decision and Order was served on the parties by regular mail on March 1, 2019. Therefore, pursuant to NRS 233B.130(2)(d) the deadline for Mr. Whitfield to file his Petition for Judicial Review was April 3, 2019.

Mr. Whitfield filed the instant Petition for Judicial Review on March 20, 2019, and (while Whitfield did not provide a Declaration of Service with regard to service on NDOC), Mr. Whitfield personally served NDOC on March 26, 2019. However, as discussed below, Mr. Whitfield did not name any respondents in his Petition for Judicial Review, which merely named Mr. Whitfield as the Petitioner and named no other parties or respondents.

## II.

### LEGAL ARGUMENT

#### A. APPLICABLE LEGAL STANDARD.

Pursuant to Nevada Rule of Civil Procedure 12(b), lack of subject matter jurisdiction and insufficient service of process are defenses properly made by motion. A district court may grant a motion to dismiss for lack of subject matter jurisdiction when the absence of jurisdiction is apparent on the face of the pleading. *See Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n. 22, 170 P.3d 989, 995 n. 22 (2007); *Giola v. Roussille*, 81 Nev. 661, 663, 408 P.2d 918, 919 (1965). A court’s lack of subject

matter jurisdiction can be raised at any time. *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011). If a district court does not have subject matter jurisdiction over an action, the judgment is rendered void. *Id.* at 179, 251 P.3d at 166. Thus, this Court must first determine whether it has statutory authority to even review the action of an administrative agency before considering the merits of the Petition for Judicial Review.

Nevada's Administrative Procedures Act, codified at NRS Chapter 233B, governs judicial review of administrative decisions. *See generally* NRS Chapter 233B; *Liberty Mut. v. Thomasson*, 130 Nev. 27, 30, 317 P.3d 831, 833 (2014).

NRS 233B.130 provides in pertinent part as follows:

2. Petitions for judicial review **must**:

- (a) **Name as respondents the agency and all parties of record to the administrative proceeding;**
- (b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred;
- (c) Be served upon:
  - (1) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and
  - (2) The person serving in the office of administrative head of the named agency; and
- (d) Be filed within 30 days after service of the final decision of the agency.

\* \* \*

6. The provisions of this chapter **are the exclusive means of judicial review** of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.

(Emphasis added).

“When a party seeks judicial review of an administrative decision, strict compliance with the statutory requirements for such review is a precondition to jurisdiction by the court of judicial review,” and “[n]oncompliance with the requirements is grounds for dismissal.” *Kame v. Employment Security Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). “To invoke a district court’s jurisdiction to consider a petition for judicial review, the petitioner **must strictly comply with the APA’s procedural requirements.**” *Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 725 (2012) (emphasis added). Indeed, the Nevada Supreme Court has specifically instructed that “pursuant to NRS 233B.130(2)(a), it

is mandatory to name all parties of record in a petition for judicial review of an administrative decision, **and a district court lacks jurisdiction to consider a petition that fails to comply with this requirement.**” *See Otto*, 128 Nev. at 432–33. Accordingly, the failure to comply with the naming requirements of NRS 233B.130(2)(a) leaves a district court without subject matter jurisdiction to even consider the subject decision of the administrative agency. *Id.* at 432–34. Furthermore, a petitioner who fails to comply with this mandatory requirement cannot properly correct any deficiency outside of the 30-day filing deadline set forth in NRS 233B.130(2)(c). *Id.*

**B. WHITFIELD’S PETITION FOR JUDICIAL REVIEW FAILED TO NAME AS RESPONDENTS ALL PARTIES OF RECORD AND MUST BE DISMISSED AS A MATTER OF LAW.**

Again, NRS 233B.130(2)(a) requires that the petition for judicial review name as respondents the agency and all parties of record to the administrative proceeding. In *Washoe County v. Otto*, the Nevada Supreme Court specifically concluded that “pursuant to NRS 233B.130(2)(a), it is **mandatory** to name all parties of record in a petition for judicial review of an administrative decision, and a district court **lacks jurisdiction** to consider a petition that fails to comply with this requirement.” *Id.* (Emphasis added). Indeed, 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; *See also Sierra Club v. State Div. of Environmental Protection*, No. 59906, 2013 WL 7158582 at 2 (Nev. Dec. 19, 2013) (unpublished) (concluding that the organization “failed to comply with the NRS 233B.130(2)(a) mandatory requirements when it failed to name the SEC as a respondent in its petition for judicial review”); *Cooper Roofing and Solar, LLC v. Chief Administrative Officer of Occupational Safety & Health Admin.* No. 67914, 2016 WL 2957129, at 2 (Nev. May 19, 2016) (unpublished) (holding that Occupational Safety and Health Review Board was an independent agency that must be named separately from Nevada OSHA in petition for judicial review).

Here, Mr. Whitfield does not name any party as a respondent in either the caption or the body of the Petition for Judicial Review. *See generally*, Petition for Judicial Review. Nor did Mr. Whitfield incorporate by reference Hearing Officer Ward’s Decision and Order or attach the Decision and Order to the Petition for Judicial Review. *Id.* In fact, Mr. Whitfield only names himself as “petitioner” and no

other party is named as a respondent. *Id.* As such, Mr. Whitfield irrefutably failed to comply with the mandatory and jurisdictional naming requirements of NRS 233B.130(2)(a) when he neglected to properly name: (1) the Department of Corrections; (2) the State of Nevada; (3) the Department of Administration; (4) the Personnel Commission; and (5) the Hearing Officer—all of whom were either the subject agency or parties of record to the administrative proceeding. *See Otto*, 128 Nev. at 430; *see also* NRS 233B.035 (defining “[p]arty” as “each person . . . named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case.”) Again, *Otto* instructs that a party must “strictly comply” with the naming requirements of NRS 233B.130(2)(a); however, Mr. Whitfield did not even substantially comply (much less strictly comply) with these statutory requirements. *Id.* at 431.

Furthermore, *Otto* instructed that a district court lacks jurisdiction to permit a petitioner to amend his/her petition for judicial review outside of the APA's 30-day time limit. *Id.* at 435. As such, Mr. Whitfield can no longer correct his defective Petition, since the APA's 30-day filing deadline expired on April 3, 2019. *See* NRS 233B.130(2)(c). Accordingly, this Court lacks subject matter jurisdiction over Mr. Whitfield's Petition for Judicial Review, which cannot be cured and must therefore be dismissed with prejudice.

Lastly, as an equally-important side matter, NRS 41.031 establishes that the State of Nevada is ordinarily exempt from lawsuits under sovereign immunity but has allowed itself to be sued as a party under certain circumstances, so long as certain requirements are met. NRS 41.031(2) 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.” *See* NRS 41.031(2) (emphasis added); *see also Otto*, 128 Nev. at 432 (holding that the word “must” generally imposes a mandatory requirement). Here, Mr. Whitefield failed to name either the Department of Corrections or the State of Nevada in his Petition for Judicial Review. *See generally*, Petition for Judicial Review. Consequently, NDOC respectfully submits that Mr. Whitfield's Petition for Judicial Review has arguably failed to invoke an exception to the State's sovereign immunity, which therefore requires this matter to be dismissed as a matter of law.

\* \* \*

**III.**

**CONCLUSION**

Based on the foregoing, NDOC respectfully moves this Court to dismiss Michael Whitfield's Petition for Judicial Review with prejudice.

**AFFIRMATION**

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

DATED this 4th day of April 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*

**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 4th day of April 2019, I served a copy of the foregoing **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Michael Whitfield  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

**INDEX OF EXHIBITS**

|           |   |          |
|-----------|---|----------|
| Exhibit A | Findings of Fact, Conclusions of Law and Decision | 10 pages |
|-----------|---|----------|

# EXHIBIT A

Findings of Fact, Conclusions of Law  
and Decision

EXHIBIT A

BEFORE THE NEVADA STATE PERSONNEL COMMISSION  
HEARING OFFICER

1050 E. WILLIAM, SUITE 450  
CARSON CITY, NV 89701

FILED

MAR - 1 2019

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

MICHAEL WHITFIELD,  
Petitioner-Employee,

APPEAL NO: 1803430-LLW

vs

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

STATE OF NEVADA DEPARTMENT OF  
CORRECTIONS,  
Respondent-Employer.

This matter was set for administrative hearing before the undersigned administrative hearing officer for the Nevada State Personnel Commission on December 14, 2018 pursuant to the Petitioner-Employee's appeal of his dismissal from state service, effective April 20, 2018. The Petitioner-Employee was represented by Doug Nicholson, Esq.<sup>1</sup> The Respondent-Employer, Nevada Department of Corrections (NDOC) was represented by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada<sup>2</sup>, and Kevin A. Pick, Deputy Attorney General.

At the conclusion of the December 14, 2018 hearing this matter was submitted for decision and the record closed as of that date. However, Mr. Whitfield submitted his closing argument with several documents attached. NDOC objected. After review of the additional documents, only one

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<sup>1</sup> On January 2, 2019, prior to the submission of closing arguments, Mr. Nicholson filed a Withdrawal of Counsel. In addition, on January 2, 2019 Mr. Whitfield requested discovery. An order was issued granting Mr. Nicholson's request to withdraw as counsel and denying Mr. Whitfield's requests for discovery and a new hearing. Mr. Whitfield elected to proceed with closing argument on his own.

<sup>2</sup> Aaron D. Ford became Attorney General as of January 2019.

1 is relevant. The August 29, 2018 Superior Court of California, County of Santa Clara Order is  
2 admitted as Exhibit 2 over the objection of NDOC as it had been previously provided and it was  
3 discussed at the hearing.

4 Therefore, the evidence of record consists of the testimony of six witnesses, including Mr.  
5 Whitfield, and Employer Exhibits A-K, and Employee Exhibits 1-2.

6 Having heard the testimony and considered the exhibits and the arguments of the parties,  
7 the hearing officer finds as follows:

#### 8 FINDINGS OF FACT

9 Mr. Whitfield was employed as a correctional officer at NDOC for approximately 13  
10 years prior to his dismissal. He last qualified with a firearm on June 22, 2017. Exhibit B, page  
11 17. In August 2017 he was a correctional officer III assigned to Warm Springs Correctional  
12 Center. Exhibit B, page 3. On August 2, 2017 an Order of Protection was entered against him by  
13 the Superior Court of California, County of Santa Clara effective August 2, 2017 through August  
14 2, 2020. Exhibit C, pages 18-24. Among other provisions, the Order instructed that Whitfield  
15 "cannot own, possess, have, buy, or try to buy, receive or try to receive, or in any other way get  
16 guns, other firearms, or ammunitions" while the order is in effect. See Exhibit C, page 23. There  
17 were no exceptions to these prohibitions.

18 Whitfield was required by Nevada law to qualify with a firearm biannually in order to  
19 maintain a basic POST (Police Officer Standards & Training) certificate. In addition, an  
20 essential job function of a correctional officer includes the requirement to carry a firearm and  
21 qualify biannually with a firearm. Whitfield did not dispute that carrying a firearm was a  
22 condition of his employment.

23 Elizabeth Walsh, Associate Warden at Warm Springs Correctional Center, was notified  
24 of the Order of Protection on August 8, 2017. On September 8, 2017 Whitfield was temporarily  
25 assigned to administrative duties that did not require the use of a firearm. Exhibit E, page 31.  
26 Associate Warden Walsh testified that she was under the impression that he was going to court to  
27 resolve the TRO issue. Walsh testified that she talked to him several times and treated him fairly.  
28 She gave him extra time off and extended the time frame for him to resolve his issue with the  
California court. She further testified that she could not simply allow an officer to not qualify  
with a firearm. She testified that she had never had this situation happen before.

1 On November 17, 2017 Walsh issued a Letter of Instruction to Whitfield regarding his  
2 failure to address the Order of Protection and the firearm prohibition. Exhibit F, pages 32-33. He  
3 was given until December 17, 2017 to resolve this issue.

4 On December 27, 2017 Associate Warden Walsh issued a second letter outlining the  
5 situation and giving Whitfield until January 5, 2018 to resolve the firearm prohibition so that he  
6 could qualify with a firearm and maintain his POST requirements. She noted that compliance  
7 with mandatory firearm proficiency standards and the ability to use a firearm and ammunition  
8 are essential functions of his current position at NDOC. See Exhibit G, pages 34-35.

9 In addition, the letter stated that Whitfield had inquired several times about vocational  
10 rehabilitation and/or job re-training and Walsh gave him instructions to contact the Department  
11 of Training and Rehabilitation (DETR) with contact information. She also informed him of the  
12 procedure for applying for other positions at NDOC. Id.

13 Whitfield testified that he tried three times in the fall of 2017 to get the Protective Order  
14 modified and was unsuccessful. He testified that he requested leave without pay on several  
15 occasions in December 2017 and that it was denied. See Exhibit 1.

16 The first request was denied by Perry Russell, Warden of Warm Springs Correctional  
17 Center. Warden Russell testified that he told Whitfield that he would not grant leave for an  
18 indefinite period of time. Exhibit 1, page 1. The second request was for 3 weeks of leave,  
19 however no reason was given and was denied by Associate Warden Walsh. Exhibit 1, page 2.  
20 Whitfield noted on the third request that he had no work and "if I cannot be productive, I prefer  
21 time off". Exhibit 1, page 3. This request shows no supervisor response, and therefore, no  
22 evidence that it was submitted to NDOC.

23 Whitfield was unable to obtain modification or exception to the firearms prohibition. In  
24 fact, there was no evidence that he attempted to return to court in early 2018. NDOC kept him in  
25 the administrative position for over seven months in an effort to allow him to get his firearm  
26 privileges reinstated. On March 1, 2018 Whitfield was served with a Notice of Allegations  
27 Administrative Investigation. Exhibit B, page 14.

28 //

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On April 9, 2018 Whitfield was served with a Specificity of Charges. Exhibit B, pages 2-17. The charges are as follows:

A. NAC 284.650 Causes for disciplinary action (NRS 284.065, 284.155, 284.383).  
Appropriate disciplinary or corrective action may be taken for the following causes:

NAC 284.650(1) Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or NAC 284.738 to 284.771, inclusive.

NAC 289.230 Basic or reserved certificate: Requirements for maintaining certificate and resuming duties. (NRS 289.510, 289.590)

B. AR 339.07 CLASS OF OFFENSE GUIDELINES

AR 339.07.15 NEGLECT OF DUTY

UU. Failure to meet Peace Officer Standards & Training (POST) requirements.  
Class 5

C. AR 362 WEAPONS TRAINING AND QUALIFICATION

As a Category III Peace Officer for the State of Nevada, one of Michael Whitfield's essential job includes the ability to carry a firearm and to qualify biannually with a firearm. However, the Order of Protection entered against Michael Whitfield makes it illegal for him to use, receive, possess, or any other way get a firearm and ammunition while the Order is in effect. As such, since the issuance of the August 2, 2017, Order of Protection, Michael Whitfield has been unable to satisfy his Peace Officer Standards & Training (POST) requirements or the Weapons Training and Qualifications requirements set forth in NDOC Administrative Regulation 362. Based on the foregoing, it has been determined to be for the good of the public service to recommend that Correctional Officer Michael Whitfield be dismissed from state service.

The Specificity of Charges noted that Whitfield had one prior disciplinary action and all of his evaluations met standards. A pre-disciplinary hearing was held by Associate Warden Brian Ward on April 18, 2018. Exhibit I. Whitfield argued, among other things, that NAC

1 284.611 applied in his case.<sup>3</sup> After the hearing Associate Warden Ward recommended that the  
2 disciplinary sanction of termination from state service be upheld.

3 Officer Whitfield was dismissed from state service effective April 20, 2018. Exhibit A.  
4 He timely appealed asking "be retrained for another position". Exhibit J, page 68.

5 Over four months later, on August 29, 2018, the Superior Court of California, County of  
6 Santa Clara entered another order regarding the Protective Order. Exhibit 2. The only change  
7 was as follows:

8 Upon proof from Respondent that he has employment as a peace officer, the Court  
9 hereby grants an exemption to the firearms relinquishment requirement related to the  
10 domestic violence restraining order. This exemption is not in place until respondent  
11 has provided that proof and the Court issues a further order.

Exhibit 2.

12 Perry Russell, Warden of Warm Springs Correctional Center, testified that the safety and  
13 security of the institution would be affected by the inability of an officer to carry a firearm, and  
14 that it is a condition of employment. He testified that Officer Whitfield was treated fairly. He  
15 was given a list of jobs by human resources. In addition, he testified that NDOC was not  
16 obligated to place him in an administrative position in September 2017 and could have  
17 disciplined him at that time.

18 Warden Isidro Baca testified that the failure to qualify and maintain POST recertification  
19 was incompatible with employment and that is a minimum Category 5 offense with dismissal  
20 mandatory on the first offense.

21 Deputy Director of NDOC, Harold Wickham, also testified that a failure to maintain  
22 POST requirements was incompatible with employment as a correctional officer. He further  
23 testified that it was a Class 5 offense and the minimum level of discipline is dismissal. He noted  
24 that Whitfield was still not qualified and could not resume duties as a correctional officer. He  
25 stated that the dismissal was for the good of the public service because a correctional officer  
26 must maintain POST certification and it is essential for an officer to be able to use firearms for  
27 the safety and security of the institution.

---

28 <sup>3</sup> However, NAC 284.611 only applies to separation from state service for physical, mental or  
emotional disorders. None of which applies in this case.

1 Associate Warden Walsh, Associate Warden Ward, Warden Russell and Warden Baca  
2 and Deputy Director Wickham all testified that NDOC has never allowed officers to neglect their  
3 biannual firearms qualification requirements. POST is a separate agency and monitors firearms  
4 qualification of correctional officers.

5 At the time of the December 14, 2018 hearing the firearms prohibition was still in effect  
6 and it is still unlawful for him to use firearms. Therefore, he was and is unable to complete his  
7 biannual firearm qualification for either the second half of 2017 and all of 2018.

#### 8 ARGUMENT OF THE PARTIES

9 Officer Whitfield argues that he was a victim of domestic battery in November 2016.<sup>4</sup>  
10 He states in his closing argument that he requested advice and assistance from NDOC in  
11 handling his problem but that no one would help him. He also states that he believed other  
12 officers in similar circumstances were given time off.<sup>5</sup> He also argues that NAC 284.578(8)  
13 applies to him as a victim of domestic violence. This regulation does not apply to Officer  
14 Whitfield as there is no evidence that he is a victim. In fact, the opposite is true as he was issued  
15 an Order of Protection ordering no contact with several individuals in California.

16 Officer Whitfield cites two other regulations, NAC 284.618, and NAC 289.200, neither  
17 of which applies to his situation. He further argues that NRS 33.031 would allow the court to  
18 give him a limited exception to the firearms prohibition. However, NRS 33.031 is a Nevada  
19 statute, not valid in California, and it allows a Nevada court to include the exception, but  
20 certainly does not mandate it. In addition, the California court refused to issue an exemption  
21 without proof of current peace officer employment.

22 NDOC argues that Officer Whitfield admitted that the August 2017 restraining order  
23 prohibited him from maintaining his POST requirement and that the ability to use a firearm was  
24

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25  
26 <sup>4</sup> There is no evidence of this assertion.

27 <sup>5</sup> There is no evidence of similar circumstances. The situation of the individual mentioned by  
28 Whitfield is not similar. That individual was apparently involved in a marriage breakup, and there is no evidence of  
a restraining order with a firearm prohibition.

1 a condition of his employment. Further NDOC notes that Officer Whitfield is required to  
2 complete biannual firearm qualification and that the last time he did so was June 2017.

3 In addition, NDOC argues that Whitfield's violations were serious because a violation of  
4 AR 339.07.15 (UU) mandates termination for a first offense. NDOC asserts that Whitfield's  
5 termination served the good of the public service and that NDOC's decision is entitled to  
6 deference.

7 Last, NDOC argues that Whitfield can not be reinstated and resume his duties as a  
8 correctional officer because he must first qualify with firearms, and he is unable to do so with the  
9 current Order of Protection.

#### 10 DISCUSSION AND CONCLUSIONS OF LAW

11  
12 Officer Whitfield's appeal was timely filed and the determination of the merits of the  
13 appeal is properly within the jurisdiction of the commission.

14 The authority granted the hearing officer is to determine the reasonableness of the  
15 disciplinary action taken against an employee and to determine whether the agency had just  
16 cause for the discipline as provided in NRS 284.385. See NRS 284.390 (1) and (6).

17 The employer has the burden of proof to present evidence and argument to prove the  
18 allegations presented in the specificity of charges. The "standard of proof is the 'degree or level  
19 of proof demanded' to prove a specific allegation." Nassiri and Johnson v. Chiropractic  
20 Physicians' Board of Nevada, 130 Nev.Ad.Op. 27 (2014) at 5. The Supreme Court of Nevada  
21 further opined "that the preponderance-of-the-evidence standard is the minimum civil standard  
22 of proof", and "that the preponderance of the evidence amounts to whether the existence of the  
contested fact is found to be more probable than not." Id. at 8 and 9.

23 In O'Keefe v. Nevada Dept of Motor Vehicles, 134 Nev.Ad.Op. 92 (2018) at 12-13, the  
24 Nevada Supreme Court held that when an employee requests a hearing to challenge an agency  
25 decision to terminate him as a first-time disciplinary measure, the hearing officer must determine  
26 the reasonableness of the agency decision by conducting a three-step process. First, the hearing  
27 officer conducts a de novo review of the evidence to determine whether a violation actually  
28 occurred. Id. at 12. Second, the hearing officer reviews whether the violation is "serious" so as

1 to warrant termination. A violation is deemed to be serious as a matter of law if termination is  
2 available as a first-time disciplinary action. Id. at 12-13. Last, the hearing officer reviews  
3 whether the termination is for the “good of the public service” giving deference to the agency’s  
4 determination. Id. at 13.

5 Officer Whitfield clearly and by a preponderance of the evidence violated  
6 AR 339.07.15 (UU) and NAC 284.650 (1). He failed to maintain his POST requirements as  
7 required by AR 339.07.15 (UU) and his failure to qualify biannually and his inability to use a  
8 firearm violated NAC 284.650 (1) because such is incompatible with an employee’s condition of  
employment established by statute and regulation.

9 Officer Whitfield failed to maintain his POST requirements in accordance with NAC  
10 Chapter 289 and AR 339.07.15 (UU) and the ability to use a firearm is a condition of  
11 employment for correctional officers. He was given more than 8 months to rectify the situation  
12 and was unable to do so. There is no question that Officer Whitfield was unable to legally use a  
13 firearm from August 2, 2017 to the present. The violation of AR 339.07.15 (UU) failure to  
14 maintain POST requirements is a Class 5 offense with dismissal recommended for a first offense.

15 There is no evidence that other officers, in the same situation as Officer Whitfield, were  
16 treated differently by NDOC. NDOC has proven by a preponderance of the evidence and  
17 Whitfield’s own admissions that he violated AR 339.07.15 (UU) and NAC 284.650 (1).  
18 Violation of AR 339.07.15 (UU) is a “serious” offense as evidenced by the fact that NDOC has  
19 determined that a violation warrants dismissal on a first offense. This determination is given  
20 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.

21 The dismissal of Officer Whitfield was for the good of the public service as determined  
22 by NDOC. The dismissal was reasonable in light of all of the facts and the applicable law.

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DECISION

Based on the foregoing Findings of Fact, Conclusions of Law and Discussion and Good Cause Appearing therefore,

IT IS HEREBY ORDERED:

That the preponderance of the evidence establishes that the dismissal of Officer Michael Whitfield has been shown to be for the good of the public service, and that the decision of the Nevada Department of Corrections to dismiss Officer Whitfield from state service is AFFIRMED.

IT IS SO ORDERED.



Lorna L. Ward  
HEARING OFFICER

NOTICE: Pursuant to NRS 233B.130 should any party desire to appeal this final decision of the Hearing Officer, a Petition for Judicial Review must be filed with the district court within thirty (30) days after service by mail of this decision.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **Decision** was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

MICHAEL WHITFIELD  
PO BOX 18421  
RENO, NV 89511

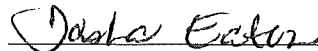
JAMES DZURENDA DIRECTOR  
DEPARTMENT OF CORRECTIONS  
3955 W RUSSELL RD  
LAS VEGAS, NV 89118

DEPARTMENT OF CORRECTIONS  
NEVADA DEPARTMENT OF CORRECTIONS  
5500 SNYDER AVE BLDG 17  
CARSON CITY NV 89702

KEVIN PICK ESQ  
OFFICE OF THE ATTORNEY GENERAL  
5420 KIETZKE LN STE 202  
RENO NV 89511

HUMAN RESOURCE MANAGEMENT  
100 N STEWART ST STE 200  
CARSON CITY NV 89701

Dated this 1 day of March, 2019.



Tasha Eaton, Supervising Legal Secretary  
Employee of the State of Nevada

Office of the Attorney General  
Reno, Nevada

MAR - 4 2019

Bureau of Information  
Personnel Services

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-04-04 16:15:30.155.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-04-04 16:15:27.956.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
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-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

04-04-2019:14:58:57

**Clerk Accepted:**

04-04-2019:16:14:45

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Mtn to Dismiss

**Filed By:**

Kevin A Pick

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KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

Code: 1110  
Michael Whitfield  
P.O. Box 18421  
Reno, NV 89511  
(775) 737-3493  
Email: mwhitfi2000@gmail.com  
Self-Represented Litigant

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.

\_\_\_\_\_ /

**AMENDED PETITION FOR JUDICIAL REVIEW**

**COMES NOW**, Petitioner, and hereby amends his Petition for Judicial Review pursuant to NRCP Rule 15(a). Petitioner served James Dzurenda, Nevada Department of Corrections, on March 26, 2019, State of Nevada Department of Administration on March 25, 2019 and the State of Nevada Human Resource Management on March 26, 2019. Petitioner is well within the time frame of 21 days to amend pursuant to Rule 15(a)(1)(A).

This amendment is necessitated to correct the Caption of said Petition. Petitioner inadvertently erred in not listing the Respondents within the caption of his petition and hereby files this amended petition in order to correct said error.

**NOTICE IS HEREBY GIVEN** that Petitioner, in the above-entitled action, does hereby Petition to the Second Judicial District Court for Judicial Review from the final judgment of the Nevada State Personnel Commission in this action. Said judgment was rendered on March 1, 2019, finding Petitioner ineligible for reinstatement/rehire to his position as Nevada Department of Corrections. Petitioner alleges as follows:

1. That the decision was not supported by substantial evidence;
2. That the decision was arbitrary and capricious;
3. That the decision was marked by an abuse of discretion; and
4. That the decision was improper as a matter of law.

WHEREFORE, the Petition, Michael Whitfield, asks for the following relief:

1. That the decision of the Nevada State Personnel Commission be reversed, and the Petitioner be determined to be eligible for reinstatement/rehire to his former position;
2. That this court grant such other and further relief as may be just, equitable, and proper.

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

Dated this 8<sup>th</sup> day of April, 2019

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**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 9<sup>th</sup> day of April 2019, I served a copy of the foregoing **AMENDED PETITION FOR JUDICIAL REVIEW** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

Department of Administration  
Hearing Division  
1050 West William Street, Suite 450  
Carson City, NV 89701

Human Resource Management  
209 East Musser Street, Suite 101  
Carson City, Nevada 89701-4204

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-04-08 15:46:48.809.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-04-08 15:46:48.419.

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**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

04-08-2019:15:23:46

**Clerk Accepted:**

04-08-2019:15:46:14

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Amended Pet

**Filed By:**

Michael Whitfield

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KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

Code: 2645  
Michael Whitfield  
P.O. Box 18421  
Reno, NV 89511  
(775) 737-3493  
Email: mwhitfi2000@gmail.com  
Self-Represented Litigant

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.

\_\_\_\_\_ /

**OPPOSITION TO MOTION TO DISMISS**

**PETITION FOR JUDICIAL REVIEW**

Petitioner, hereby submits his Opposition to Respondent's Motion to Dismiss

Petition for Judicial Review.

//

//

**MEMORANDUM OF POINTS AND AUTHORITIES****1. INTRODUCTION**

Dismissal of Petition for Judicial Review is not appropriate.

**2. FACTUAL BACKGROUND**

Petitioner was employed as a correctional officer at NDOC for approximately 13 years. On August 2, 2017 and Order of Protection was entered against Petitioner which temporarily prohibited Petitioner from carrying a firearm. Petitioner was required to qualify with a firearm biannually in order to maintain a basic POST certificate which was a mandatory requirement for his position as a correctional officer. Petitioner was “temporarily” assigned to an administrative position. Petitioner was required to resolve the Order of Protection and obtain his firearm privileges. Petitioner was dismissed from his position on April 20, 2018. Petitioner’s firearm privileges were reinstated on August 29, 2018, contingent upon his rehire with NDOC. This matter was heard on appeal, by the Nevada State Personnel Commission on December 14, 2018 with a final decision being issued on March 1, 2019. Petitioner filed his request for Judicial Review on March 20, 2019. Petitioner served James Dzurenda, Nevada Department of Corrections, on March 26, 2019, State of Nevada Department of Administration on March 25, 2019 and the State of Nevada Human Resource Management on March 26, 2019. An Amended Petition for Judicial Review was filed on April 8, 2019, pursuant to NRCP Rule 15(a)(1)(A) which correctly identifies the Respondents in this matter.

**3. ARGUMENT**

As Petitioner has corrected his inadvertent error of not identifying Respondents within the Caption of his pleading, Respondent NDOC’s motion for dismissal is moot.

Additionally, pursuant to *Prevost v. State of Nevada et. al.*, 134 Nev., Advance Opinion 42, the failure to name a party of record in the caption of a petition for judicial review is not jurisdictionally fatal under NRS 233B.130(2)(a). As such dismissal is not required.

//

**4. CONCLUSION**

Based on the foregoing, Petitioner respectfully moves this Court to deny NDOC's Motion for Dismissal of his Petition for Judicial Review.

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

Dated this 9<sup>th</sup> day of April, 2019

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**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 9<sup>th</sup> day of April 2019, I served a copy of the foregoing **OPPOSITION TO MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

Department of Administration  
Hearing Division  
1050 West William Street, Suite 450  
Carson City, NV 89701

Human Resource Management  
209 East Musser Street, Suite 101  
Carson City, Nevada 89701-4204

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

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### Recipients

**MICHAEL** - Notification received on 2019-04-09 10:12:06.376.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-04-09 10:12:06.313.

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**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

04-09-2019:09:56:31

**Clerk Accepted:**

04-09-2019:10:11:34

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Opposition to Mtn

**Filed By:**

Michael Whitfield

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**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

3795  
AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Deputy Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**REPLY IN SUPPORT OF**  
**MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

Respondent, State of Nevada, Department of Corrections (hereinafter “NDOC”), by and through its attorneys, Nevada Attorney General, Aaron D. Ford, and Deputy Attorney General, Kevin A. Pick, hereby submits its Reply in support of its Motion to Dismiss Petition for Judicial Review. This Reply is made and based on the Memorandum of Points and Authorities set forth below, any exhibits attached hereto, and all papers and pleadings on file herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

On April 4, 2019, NDOC moved this Court to dismiss with prejudice Michael Whitfield’s Petition for Judicial Review, because Mr. Whitfield had failed to comply with the mandatory and jurisdictional requirements of NRS 233B.130(2). Specifically, Mr. Whitfield failed to name any respondents whatsoever in his Petition and, as such, Mr. Whitfield failed to invoke the subject matter

jurisdiction of this Court. *See Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 725 (2012) (explaining that a district court lacks subject matter jurisdiction to consider a petition for judicial review where the petitioner fails to comply with the statutory requirements for filing the petition); *see also Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 276, 44 P.3d 506, 515–16 (2002) (providing that subject matter jurisdiction cannot be waived). Similarly, NDOC contended that Mr. Whitfield failed to invoke an exception to the State’s sovereign immunity when he neglected to name the State of Nevada, or any agency thereof, in his defective Petition for Judicial Review. *See* NRS 41.031(2).

After receiving the underlying Motion, Mr. Whitfield ostensibly recognized his error and filed an Amended Petition for Judicial Review on April 8, 2019. The Amended Petition added the following parties as respondents, none of which were identified as respondent in the original Petition: (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. *See* Amended Petition for Judicial Review, at 1. However, as discussed below, that Amended Petition was untimely and filed more than 30 days after Mr. Whitfield was served with the administrative decision at issue on March 1, 2019. *See* NRS 233B.130(2)(d). Accordingly, the Amended Petition does not relate back to the filing of the original Petition and this Court lacks jurisdiction to even permit such an amendment, since the 30-day filing deadline had already expired.

On April 9, 2019, Mr. Whitfield filed an Opposition to Motion to Dismiss. However, instead of contesting the legal arguments made in NDOC’s Motion, Mr. Whitfield downplays his failure to strictly comply with NRS 233B.130(2) and argues that dismissal is not required. *See* Opposition, at 2 (citing *Prevost v. State Dep’t of Admin.*, 134 Nev. Adv. Op. 42, 418 P.3d 675, 677 (2018)). However, binding Nevada Supreme Court precedent does not allow Mr. Whitfield to downplay his defective petition or ignore the mandatory and jurisdictional requirements of NRS 233B.130(2). Nor can Mr. Whitfield avoid dismissal by misconstruing an already-inapplicable Nevada case (*Prevost*). As such, Mr. Whitfield failed to strictly comply with NRS 233B.130(2) and, therefore, this Court lacks subject matter jurisdiction over this Petition, which must be dismissed as a matter of law.

\* \* \*

\* \* \*

## II.

## LEGAL ARGUMENT

## A. THE PETITION FOR JUDICIAL REVIEW FAILED TO COMPLY WITH NRS 233B.130(2)(a) AND MUST BE DISMISSED AS A MATTER OF 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.*; *see also Kame v. Employment Security Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989).

As such, in order to invoke this Court’s jurisdiction to consider his Petition for Judicial Review, Mr. Whitfield must have “strictly complied” with the APA’s procedural requirements. These procedural requirements are set forth in NRS 233B.130, which provide in pertinent part that all petitions for judicial review “must . . . [n]ame as respondents the agency and all parties of record to the administrative proceeding.” (Emphasis added). *See* NRS 233B.130(2)(a). The Supreme Court in *Otto* specifically held that “it is **mandatory** to name all parties of record in a petition for judicial review” and that a district court “**lacks jurisdiction** to consider a petition that fails to comply with this requirement.” *See Otto*, 128 Nev. at 432–33 (emphasis added).

Here, pursuant to NRS 233B.130(2)(a), Mr. Whitfield was required to name numerous respondents in his Petition for Judicial Review, including: (1) the Department of Corrections; (2) the State of Nevada; (3) the Department of Administration; (4) the Personnel Commission; (5) the Division of Hearings and Appeals; and (6) Hearing Officer Lorna Ward. *See Otto*, 128 Nev. at 430; *see also* NRS 233B.035 (defining “[p]arty” as “each person . . . named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case.”) In fact, the Hearing Officer’s Decision and Order clearly identified the “STATE OF NEVADA, DEPARTMENT OF CORRECTIONS” as the “Respondent-Employer.” *See* Motion, Exhibit No. 1 (Decision and Order Affirming Termination). Furthermore, the Certificate of Service attached to the Hearing Officer’s

\* \* \*

Decision and Order identified the following parties: (1) James Dzerunda, Director Department of Corrections; (2) Department of Corrections; and (3) Human Resource Management. *Id.*

Nevertheless, Mr. Whitfield's Petition for Judicial Review failed to identify even a single respondent in either the caption or the body of the Petition. *See generally*, Petition for Judicial Review. Nowhere is NDOC, Director Dzerunda, the Department of Administration, Hearing Officer Ward, the Hearings Division, Human Resource Management, or the State of Nevada identified as a respondent. *Id.* Indeed, the word "respondent" appears nowhere in the entire Petition for Judicial Review, except on the second page where Mr. Whitfield erroneously refers to himself as the "Respondent in Proper Person." *Id.* Nor did Mr. Whitfield incorporate by reference the Hearing Officer's Decision and Order. *Id.* Nor did Mr. Whitfield attach a copy of the Decision and Order to the Petition for Judicial Review. *Id.*

NDOC must strongly emphasize that a party must "strictly comply" with the naming requirements of NRS 233B.130(2)(a). *See Otto*, 128 Nev. at 431 (emphasis added). However, Mr. Whitfield failed to name a multitude of necessary respondents in either the caption of his Petition for Judicial Review, in the body of the Petition, or in any attachment to the Petition (there were no attachments). *Id.* at 430 (Holding that Washoe County 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.") In fact, the Amended Petition is an outright admission that the original Petition failed to comply with NRS 233B.130(2)(a); otherwise, Mr. Whitfield would not have needed to amend his Petition and identify five different respondents that were not identified in the original Petition. *See Amended Petition for Judicial Review*. As such, Mr. Whitfield irrefutably failed to comply (either strictly or even substantially) with the mandatory and jurisdictional naming requirements of NRS 233B.130(2)(a). Accordingly, this Court lacks subject matter jurisdiction over Mr. Whitfield's Petition for Judicial Review. *See Otto*, 128 Nev. at 432–33.

In his Opposition, Mr. Whitfield cites the case of *Prevost v. State Dep't of Admin.*, 134 Nev. Adv. Op. 42, 418 P.3d 675, 677 (2018), and argues that the "failure to name a party of record in the caption of a petition for judicial review is not jurisdictionally fatal under NRS 233B.130(2)(a)" and that

\* \* \*

dismissal is not required. *See* Opposition, at 2. However, Mr. Whitfield distorts the content of his own Petition and Mr. Whitfield relies on a gross mischaracterization of *Prevost*.

First, Mr. Whitfield did not merely omit respondents from the *caption* of his Petition, but failed to name *any* respondents *anywhere* in his entire Petition. *See generally*, Petition for Judicial Review. Nor did Mr. Whitfield attach any documents naming the required respondents. *Id.* Nor did Mr. Whitfield incorporate by reference and attach a copy of the Hearing Officer's Decision and Order. *Id.* Therefore, it is simply untrue for Mr. Whitfield to argue that his errors were limited to the *caption* of his Petition, when Mr. Whitfield's *entire* Petition failed to comply with NRS 233B.130(2)(a).

Second, Mr. Whitfield's reliance on *Prevost* is completely misplaced. In *Prevost*, the petitioner (Prevost) failed to name a required respondent (CCMSI) in the caption of the petition for judicial review; however, the appeals officer's order and decision, *which did identify CCMSI*, was attached and was specifically incorporated by reference into the body of the petition. *Prevost*, 418 P.3d at 676. Therefore, the Nevada Supreme Court excused Prevost's failure to name CCMSI in the caption of the Petition because "Prevost named CCMSI in the body of the petition through incorporation by reference of the administrative decision, which Prevost also attached as an exhibit to the petition." *Id.* Here, however, Mr. Whitfield **did not** name any respondent in the body of his Petition; the Petition **did not** incorporate by reference the Hearing Officer's Decision and Order; and the Petition **did not** include an attached copy of the Decision and Order. *See generally*, Petition for Judicial Review. As such, *Prevost* is completely inapplicable to this matter and provides no legal basis to excuse Mr. Whitfield's failure to comply with NRS 233B.130(2)(a). Consequently, this Court lacks jurisdiction to even consider Mr. Whitfield's Petition for Judicial Review. *See Otto*, 128 Nev. at 434.

**B. THE (UNTIMELY) AMENDED PETITION DOES NOT RELATE BACK AND CANNOT CURE THE JURISDICTIONAL DEFECTS IN MR. WHITFIELD'S ORIGINAL PETITION.**

On April 8, 2019, Mr. Whitfield attempted to cure his defective Petition by filing an untimely "Amended Petition for Judicial Review" after the APA's 30-day time limit had expired on April 3, 2019.<sup>1</sup> As seen in the Amended Petition, Mr. Whitfield readily concedes that he violated NRS

<sup>1</sup> Under NRS 233B.130(2)(d), petitions for judicial review must be filed within 30 days after service of the final decision of the agency. Since Hearing Officer Ward's Decision and Order was

233B.130(2)(a) by not listing the following required respondents in his caption: Nevada State Personnel Commission; State of Nevada, Department of Administration; Lorna Ward, Appeals Officer; and James Dzurenda, Nevada Department of Corrections. *See* Amended Petition.

However, as noted above, Mr. Whitfield did not merely omit respondents from the *caption* of his Petition for Judicial Review, but failed to identify any respondents in his *entire* Petition for Judicial Review or in *any* attached documents. *See generally*, Petition for Judicial Review. Furthermore, because Mr. Whitfield’s original Petition failed to comply with the mandatory naming requirements of NRS 233B.130(2)(a), the original Petition failed to invoke this Court’s jurisdiction and the original Petition cannot be amended outside of the 30-day deadline for filing a petition. *See Otto*, 128 Nev. at 435 (“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.”). As such, Mr. Whitfield’s Amended Petition does not relate back to the filing of the original Petition and this Court must disregard Mr. Whitfield’s Amended Petition.

**C. MR. WHITFIELD FAILED TO COMPLY WITH NRS 41.031(2) AND ARGUABLY FAILED TO INVOKE AN EXCEPTION TO NEVADA’S SOVEREIGN IMMUNITY.**

As discussed in NDOC’s underlying Motion, NRS 41.031 establishes that the State of Nevada is ordinarily exempt from lawsuits under sovereign immunity but has allowed itself to be sued as long as certain requirements are met. NRS 41.031(2) 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.” *See* NRS 41.031(2). However, Mr. Whitefield failed to name either the Department of Corrections or the State of Nevada (or indeed any respondents) in his Petition for Judicial Review. *See generally*, Petition for Judicial Review. Consequently, NDOC submits that Mr. Whitfield failed to invoke an exception to the State’s sovereign immunity and that this matter must be dismissed.

Mr. Whitfield’s April 9, 2019, Opposition to Motion to Dismiss does not even address the foregoing legal issues or explain why sovereign immunity does not apply due to Mr. Whitfield’s

served by regular mail on March 1, 2019, Mr. Whitfield had until April 3, 2019, (30 days, plus 3 days for mailing) in which to file his Petition. *See* Motion, Exhibit No. 1.

noncompliance with NRS 41.031(2). Since Mr. Whitfield chose not to contest the foregoing issue, it is undisputed that Mr. Whitfield failed to comply with NRS 41.031(2), that Mr. Whitfield has not invoked an exception to the State's sovereign immunity, and that this Petition must therefore be dismissed.

**III.**

**CONCLUSION**

Based on the foregoing, NDOC respectfully moves this Court to dismiss Michael Whitfield's Petition for Judicial Review with prejudice.

**AFFIRMATION**

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

DATED this 12th day of April 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*

**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 12th day of April 2019, I served a copy of the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Michael Whitfield  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

3860  
AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Deputy Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**REQUEST FOR SUBMISSION**

Respondent, State of Nevada, Department of Corrections (hereinafter "NDOC"), by and through its attorneys, Nevada Attorney General, Aaron D. Ford, and Deputy Attorney General, Kevin A. Pick, hereby respectfully request that the Respondent's Motion to Dismiss Petition for Judicial Review filed with the Court on April 4, 2019, be submitted for decision.

**AFFIRMATION**

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

DATED this 12th day of April 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*

**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 12th day of April 2019, I served a copy of the foregoing REQUEST FOR SUBMISSION by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

MICHAEL WHITFIELD  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-04-12 11:23:10.335.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-04-12 11:23:10.288.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
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**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

04-12-2019:11:10:44

**Clerk Accepted:**

04-12-2019:11:22:38

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Reply

**Filed By:**

Kevin A Pick

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-04-12 11:24:16.485.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-04-12 11:24:16.438.

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**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

04-12-2019:11:13:06

**Clerk Accepted:**

04-12-2019:11:23:28

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Request for Submission

**Filed By:**

Kevin A Pick

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**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

1 CASE NO. CV19-00641

2 DEPT NO. 1

3

4

5

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

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 IN THE MATTER OF:

10 MICHAEL WHITFIELD  
11 (Appeal No. 1803430-LLW)

12 Petitioner,

13 \_\_\_\_\_/  
TRANSMITTAL OF RECORD ON APPEAL

14 TO: The Clerk of the Second Judicial District Court

15 Pursuant to NRS 233B.140, the transmittal of the  
16 entire record on appeal in accordance with the Nevada  
17 Administrative Procedure Act (Chapter 233B of NRS) is hereby  
18 made as follows:

19 1. The entire record herein, including each and every  
20 pleading, document, affidavit, order, decision, and exhibit now  
21 on file with the Office of the Appeals Officer under the Nevada  
22 Industrial Insurance Act, 1050 East William Street, Suite 450,  
23 Carson City, Nevada, in the above-entitled action.

24 2. Transcript of proceedings.

25 3. This transmittal.

26 APPEALS OFFICER

27 

28 Lorna L. Ward

1 CASE NO. CV19-00641

2 DEPT NO. 1

3

4

5

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

7 IN AND FOR THE COUNTY OF WASHOE

8

\* \* \* \* \*

9 IN THE MATTER OF:

10 MICHAEL WHITFIELD  
11 (Appeal No. 1803430-LLW)

12 Petitioner,

13

**AFFIRMATION**

**Pursuant to NRS 239B.030**

14

15 The undersigned does hereby affirm that the following  
16 document **DOES NOT** contain the social security number of any  
17 person:

18

19 1. Transmittal of Record on Appeal

20

21

APPEALS OFFICER

22

*Lorna L. Ward*

23

Lorna L. Ward

24

25

26

27

28

29

30

APPEALS OFFICE

1050 E. WILLIAMSON #450  
CARSON CITY NV 89710

1 CASE NO. CV19-00641

2 DEPT NO. 1

3

4

5

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

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 IN THE MATTER OF:

10 MICHAEL WHITFIELD  
11 (Appeal No. 1803430-LLW)

12 Petitioner,

13 \_\_\_\_\_/  
CERTIFICATION OF TRANSMITTAL

14 I, Lorna L. Ward, Appeals Officer under the Department  
15 of Administration, Hearing-Appeals Division, for the State of  
16 Nevada, do hereby certify that the hereto attached record  
17 contains and is a full, true, and correct original record of all  
18 entries made in my docket, as more particularly set forth in the  
19 Index, relating to that certain cause heretofore pending  
20 before me as such Appeals Officer, and that the annexed and  
21 attached papers are all the process and other papers and  
22 exhibits relating to the above-entitled action filed with me.

23 APPEALS OFFICER

24   
25 Lorna L. Ward

26

27

28

1 CASE NO. CV19-00641

2 DEPT NO. 1

3

4

5

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

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 IN THE MATTER OF:

10 MICHAEL WHITFIELD  
11 (Appeal No. 1803430-LLW)

12 Petitioner,

13 \_\_\_\_\_/

**AFFIRMATION**

**Pursuant to NRS 239B.030**

14  
15 The undersigned does hereby affirm that the following  
16 document **DOES NOT** contain the social security number of any  
17 person:

18 1. Certification of Transmittal

19 APPEALS OFFICER

20 *Lorna L. Ward*

21 \_\_\_\_\_  
22 Lorna L. Ward

23

24

25

26

27

28

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-04-24 11:35:33.075.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-04-24 11:35:33.028.

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**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

04-24-2019:11:29:41

**Clerk Accepted:**

04-24-2019:11:34:59

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Record on Appeal

- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation

Transmittal of Rec. on Appeal

Certificate of Transmittal

**Filed By:**

Edward L. Oueilhe, III

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**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-05-08 08:21:12.919.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-05-08 08:21:12.857.

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**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

05-08-2019:08:17:56

**Clerk Accepted:**

05-08-2019:08:20:36

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Declaration

- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation

**Filed By:**

Michael Whitfield

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KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Deputy Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**MOTION FOR EXTENSION OF TIME**

Respondent, State of Nevada, Department of Corrections (hereinafter “NDOC”), by and through its attorneys, Nevada Attorney General, Aaron D. Ford, and Deputy Attorney General, Kevin A. Pick, hereby moves this Court, in accordance with NRS 233B.133(6), to extend the deadline for NDOC to file its Answering Memorandum of Points and Authorities until 30 days after this Court has ruled on NDOC’s Motion to Dismiss which is currently pending decision. Good cause exists for such an extension, particularly since the central basis for NDOC’s Motion to Dismiss is a lack of subject matter jurisdiction over Mr. Whitfield’s Petition for Judicial Review. Such a continuance would allow this fundamental jurisdictional issue to be resolved before the parties are forced to incur the time and expense of fully briefing the merits of Mr. Whitfield’s Petition for Judicial Review. This Motion for Extension of Time is made and based on the Memorandum of Points and Authorities set forth below, any exhibits attached hereto, and all papers and pleadings on file herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

On April 20, 2018, Petitioner, Michael Whitfield, was terminated from NDOC after a California Domestic Violence Restraining Order was issued against him, which made it illegal for

Mr. Whitfield to qualify with a firearm and thereby maintain a basic POST certificate to act as a peace officer in Nevada. Mr. Whitfield appealed his termination and on March 1, 2019, Hearing Officer Lorna Ward affirmed Mr. Whitfield's termination from NDOC, following a lengthy evidentiary hearing.

Mr. Whitfield then filed the instant Petition for Judicial Review on March 20, 2019, but did not name any respondents in his Petition for Judicial Review, which merely named Mr. Whitfield as the Petitioner. As a result, NDOC filed a Motion to Dismiss on April 4, 2019, asking the Court to dismiss the Petition with prejudice. Specifically, Mr. Whitfield's failure to identify any respondents in his Petition violated the mandatory and jurisdictional naming requirement of NRS 233B.130(2)(a) and, as a result, Mr. Whitfield failed to invoke the subject matter jurisdiction of this Court. *See Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 725 (2012) (explaining that a district court lacks subject matter jurisdiction to consider a petition for judicial review where the petitioner fails to comply with the statutory requirements for filing the petition).

Mr. Whitfield recognized his error and filed an Amended Petition for Judicial Review on April 8, 2019, in which he named the following respondents: (1) the Nevada State Personnel Commission; (2) the State of Nevada, Department of Administration; (3) Lorna Ward, Appeals Officer; and (4) James Dzurenda, Nevada Department Of Corrections. However, Mr. Whitfield's Amended Petition was untimely and filed more than 30 days after Mr. Whitfield was served with the administrative decision at issue on March 1, 2019. *See* NRS 233B.130(2)(d). As such, binding Supreme Court precedent dictates that this Court lacks jurisdiction to even permit such an amendment. *See Otto*, 128 Nev. at 435.

Thereafter, the parties briefed NDOC's Motion to Dismiss, which was submitted to the Court for decision on April 12, 2019, and is currently pending before the Court.

On May 8, 2019, Mr. Whitfield filed his Opening Memorandum of Points and Authorities in support of his Petition for Judicial Review, which included nine (9) new documents that are not part of the record on appeal and are in clear violation of NRS 233B.135(1)(b).

At present, NDOC's Answering Memorandum of Points and Authorities is due on or about Monday, June 10, 2019. *See* NRS 233B.133(2). However, because NDOC's Motion to Dismiss is

still pending and since that Motion pertains to the central requirement of subject matter jurisdiction, NDOC submits that good cause exists to extend the deadline for NDOC's Answering Memorandum of Points and Authorities until 30 days after this Court rules on NDOC's Motion to Dismiss.

Under NRS 233B.133(6), "[t]he court, for good cause, may extend the times allowed in this section for filing memoranda." Here, a temporary extension of NDOC's answering deadline would allow the Court to render a decision on whether it even has subject matter jurisdiction over this Petition. As emphasized by the United States Supreme Court, a court should first resolve doubts regarding its subject matter jurisdiction before proceeding to the merits of the litigation. *See Ruhrgas AG v. Marathon Oil Company*, 526 U.S. 574, 577, 119 S. Ct. 1563 (1999). Furthermore, a temporary extension will conserve the parties' resources and will promote judicial economy in the event that the Court grants NDOC's Motion to Dismiss. Otherwise, the parties will be forced to expend valuable resources to prepare lengthy briefs, when such efforts may be unnecessary if the Court ultimately dismisses this matter for lack of subject matter jurisdiction. If the Court denies NDOC's Motion to Dismiss, then the briefing schedule can simply be reset without any resulting prejudice to Mr. Whitfield. To alleviate this issue, the instant motion is being presented.

Based on the foregoing, the Defendant respectfully requests that this Honorable Court GRANT Defendant's Motion for Extension of Time and extend the June 10, 2019, due date for NDOC's Answering Memorandum of Points and Authorities until 30 days after the Court enters its decision on NDOC's Motion to Dismiss. Logically, the Petitioner's subsequent Reply Memorandum of Points and Authorities would also be extended accordingly.

#### **AFFIRMATION**

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

DATED this 9th day of May 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*

**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 9th day of May 2019, I served a copy of the foregoing **MOTION FOR EXTENSION OF TIME** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Michael Whitfield  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-05-09 09:37:17.548.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-05-09 09:37:17.486.

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**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

05-09-2019:09:22:53

**Clerk Accepted:**

05-09-2019:09:36:44

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Mtn for Extension of Time

**Filed By:**

Kevin A Pick

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**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

3860  
AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Deputy Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**REQUEST FOR SUBMISSION**

Respondent, State of Nevada, Department of Corrections (hereinafter "NDOC"), by and through its attorneys, Nevada Attorney General, Aaron D. Ford, and Deputy Attorney General, Kevin A. Pick, hereby respectfully request that the Respondent's unopposed Motion for Extension of Time filed with the Court on May 9, 2019, be submitted for decision.

**AFFIRMATION**

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

DATED this 29th day of May 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*

**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 29th day of May 2019, I served a copy of the foregoing REQUEST FOR SUBMISSION by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

MICHAEL WHITFIELD  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

Lorna L. Ward, Esq.  
Hearing Officer  
c/o Hearings Division  
1050 West William Street, Suite 450  
Carson City, Nevada 89701

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-05-29 13:28:46.715.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-05-29 13:28:46.652.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

05-29-2019:13:25:04

**Clerk Accepted:**

05-29-2019:13:28:10

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Request for Submission

**Filed By:**

Kevin A Pick

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

CODE: 3030

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

IN THE MATTER OF:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Case No. CV19-00641  
Dept. No. 1

Petitioner.

---

**ORDER GRANTING MOTION FOR EXTENSION OF TIME**

Currently before the Court is Respondent, State of Nevada, Department of Corrections' ("NDOC") *Motion for Extension of Time* ("Motion") filed on May 9, 2019. No opposition was filed by Petitioner and the Motion was submitted to the Court for consideration on May 29, 2019.

In the Motion, NDOC requests an extension of the deadline to file an Answering Memorandum of Points and Authorities until thirty (30) days after the Court has reached a decision on NDOC's *Motion to Dismiss Petition for Judicial Review* filed April 4, 2019 and submitted to the Court for consideration on April 12, 2019. Petitioner Michael Whitfield did not file an Opposition to the Motion. Pursuant to D.C.R. 13(3), "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same."

Based on the foregoing and good cause appearing,

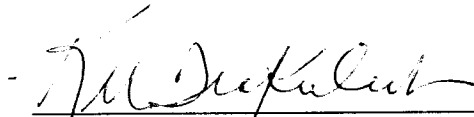
IT IS HEREBY ORDERED that Respondent's *Motion for Extension of Time* is GRANTED. Should this Court deny NDOC's *Motion to Dismiss Petition for Judicial Review*, Respondent shall

1 have thirty (30) days from date of the Order to file an Answering Brief (Points and Authorities).  
2 Petitioner may serve and file a Reply Brief (Points and Authorities) within thirty (30) days after  
3 service of Respondent's Answering Brief.

4 Any party may request a hearing within seven (7) days after expiration of the time within  
5 which Petitioner is required to file a Reply Brief. If no hearing request is made, the parties shall  
6 file a Request for Submission to submit the matter to the Court for decision. NRS 233B.133(4).

7 IT IS SO ORDERED.

8 DATED this 6<sup>th</sup> day of June, 2019.

9   
10 \_\_\_\_\_  
11 KATHLEEN M. DRAKULICH  
12 District Court Judge  
13  
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**CERTIFICATE OF SERVICE**

CASE NO. CV19-00641

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 6<sup>th</sup> day of June, 2019, I electronically filed the **ORDER GRANTING MOTION FOR EXTENSION OF TIME** with the Clerk of the Court by using the ECF system.


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

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

KEVIN PICK, ESQ. for JAMES DZURENDA, NDOC

MICHAEL WHITFIELD

**Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**  
**[NONE]**

  
DANIELLE KENT  
Department 1 Judicial Assistant

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-06-06 15:12:11.601.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-06-06 15:12:11.554.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

06-06-2019:15:11:14

**Clerk Accepted:**

06-06-2019:15:11:42

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Ord Granting Extension Time

**Filed By:**

Judicial Asst. DKent

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

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NEVADA STATE PERSONNEL COMMISSION

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

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

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

Officer Whitfield clearly and by a preponderance of the evidence violated AR 339.07.15(UU) and NAC 284.650(1). He failed to maintain his POST requirements as required by AR 339.07.15(UU) and his failure to qualify biannually and his inability to use a firearm violated NAC 284.650(1) because such is incompatible with an 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.

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’

offense as evidence by the fact that NDOC determined 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.

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

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

## **II. Relevant Legal Authority**

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

## **III. Analysis**

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

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

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

However, in the *Reply*, NDOC asserts that the filing of the Amended Petition does not cure Petitioner’s failure, as the Amended Petition is untimely, pursuant to NRS 233B.130(2)(d), as the Amended Petition was not filed within 30 days from when Petitioner was served with the 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.”

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

Accordingly, and good cause appearing,

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

DATED this 24<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
KATHLEEN DRAKULICH  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

CASE NO. CV19-00641

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 24<sup>th</sup> day of June, 2019, I electronically filed the **ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** with the Clerk of the Court by using the ECF system.


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

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

KEVIN PICK, ESQ. for JAMES DZURENDA, NDOC  
MICHAEL WHITFIELD

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

NONE

  
\_\_\_\_\_  
DANIELLE KENT  
Department 1 Judicial Assistant

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-06-24 09:53:20.753.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-06-24 09:53:19.583.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

06-24-2019:09:52:10

**Clerk Accepted:**

06-24-2019:09:52:41

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Ord Granting Mtn

**Filed By:**

Judicial Asst. DKent

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

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  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**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*

**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 24th day of June 2019, I served a copy of the foregoing NOTICE OF ENTRY OF ORDER by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

MICHAEL WHITFIELD  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

**INDEX OF EXHIBITS**

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

# 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

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

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Officer Whitfield clearly and by a preponderance of the evidence violated AR 339.07.15(UU) and NAC 284.650(1). He failed to maintain his POST requirements as required by AR 339.07.15(UU) and his failure to qualify biannually and his inability to use a firearm violated NAC 284.650(1) because such is incompatible with an 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.

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’

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

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

## **II. Relevant Legal Authority**

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

## **III. Analysis**

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

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

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

However, in the *Reply*, NDOC asserts that the filing of the Amended Petition does not cure Petitioner’s failure, as the Amended Petition is untimely, pursuant to NRS 233B.130(2)(d), as the Amended Petition was not filed within 30 days from when Petitioner was served with the 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.”

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

Accordingly, and good cause appearing,

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

DATED this 24<sup>th</sup> day of June, 2019.

  
KATHLEEN DRAKULICH  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

CASE NO. CV19-00641

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 24<sup>th</sup> day of June, 2019, I electronically filed the **ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** with the Clerk of the Court by using the ECF system.


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

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

KEVIN PICK, ESQ. for JAMES DZURENDA, NDOC  
MICHAEL WHITFIELD

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

NONE

  
\_\_\_\_\_  
DANIELLE KENT  
Department 1 Judicial Assistant

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**MICHAEL** - Notification received on 2019-06-24 11:29:29.172.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-06-24 11:29:29.11.

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**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

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**Filed By:**

Kevin A Pick

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NDOC

MICHAEL WHITFIELD

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NEVADA STATE PERSONNEL COMMISSION

Code: 2175  
Michael Whitfield  
P.O. Box 18421  
Reno, NV 89511  
(775) 737-3493  
Email: mwhitfi2000@gmail.com  
Self-Represented Litigant

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.

**MOTION FOR RECONSIDERATION**

COMES NOW, Petitioner, MICHAEL WHITEFIELD, in proper person, and  
respectfully requests reconsideration of the Court's Order, dated June 24, 2019.

This Motion is based on the Memorandum of Points and Authorities as referenced  
and attached hereto, as well as all other pleadings and papers on file with this Court.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**1. ARGUMENTS**

Respectfully, and with all deference to the Court, the Court's Order, granting the Defendants' Motion to Dismiss, is erroneous and unsupported by the evidence.

In reviewing a motion to dismiss, the court should determine whether the pleading states allegations sufficient to make out the elements of a right to relief. *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985). In determining whether the pleadings are sufficient, the court is bound to accept all the factual allegations in the complaint as true. *Marcoz v. Summa Corporation*, 106 Nev. 737, 739, 801 P.2d 1346, 1347 (1990). Most importantly, a claim should not be dismissed unless it appears to a certainty that the plaintiff/petitioner is not entitled to relief under any set of facts which could be proved in support of the claim. *Hale v. Burkhardt*, 104 Nev. 632, 636, 764 P.2d 866, 868 (1988).

In *Prevost v. State of Nevada et. al.*, 134 Nev., Advance Opinion 42, Prevost named CCMSI in the body of the petition through incorporation by reference of the administrative decision, which Prevost also attached as an exhibit to the petition. See NRCP 10(c) ("Statements in a pleading may be adopted by reference in a different part of the same pleading. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."). The court concludes that this is sufficient to satisfy NRS 233B.130(2)(a), which requires that "the agency and all parties of record to the administrative proceeding" be named as respondents, but does not explicitly require that the parties be named in the caption of the petition. Petitioner's failure to name a party of record in the caption of a petition for judicial review **is not jurisdictionally fatal under NRS 233B.130(2)(a)**. As such dismissal is not required, unwarranted and in this case, does not serve justice.

1 Plaintiff's claims have significant merit and Defendants' Motion to Dismiss was  
2 based on a mere technicality.

### 3 **Defendants' Motion to Dismiss Lacked Merit**

4 As previously asserted, Petitioner argues that he has in fact complied with NRS 233B  
5 by properly naming the Respondents within the body of his Petition for Judicial Review and  
6 therefore Defendants' Motion to Dismiss should be denied.  
7

### 8 **Deficiencies were corrected via the Amended Petition**

9 Additionally, even if the court continues to find merit in Defendants' arguments, the  
10 Court's order was erroneous for failing to accept Petitioner's Amended Petition which fully  
11 corrected the caption's deficiencies and was filed well within the time frame of 21 days to  
12 amend pursuant to Rule 15(a)(1)(A). "Leave to amend should be freely given when justice  
13 requires, and a request to amend should not be denied simply because it was made in open  
14 court rather than by formal motion." *Weiler v. Ross*, 80 Nev. 380, 382, 395 P.2d 323, 324  
15 (1964). Additionally, if a complaint can be amended to state a claim for relief, leave to  
16 amend, rather than dismissal, is the preferred remedy. *Cohen v. Mirage Resorts, Inc.*, 62  
17 P.3d 720, 734 (Nev.,2003).  
18  
19

20 In the instant case, the Petition for Judicial Review has merit and Petitioner timely  
21 filed his Amended Petition pursuant to Rule 15(a)(1)(A).

## 22 **2. CONCLUSION**

23 Based on the foregoing, Petitioner respectfully moves this Court to reconsider its  
24

25 //

26 //

27 //

28

Order for Dismissal and Reinstate the Briefing Schedule for this matter.

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

Dated this 2<sup>nd</sup> day of July, 2019

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

## 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 2<sup>ND</sup> day of July, 2019, I served a copy of the foregoing **MOTION FOR RECONSIDERATION** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

Department of Administration  
Hearing Division  
1050 West William Street, Suite 450  
Carson City, NV 89701

Human Resource Management  
209 East Musser Street, Suite 101  
Carson City, Nevada 89701-4204

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-07-02 09:16:18.546.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-07-02 09:16:18.5.

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**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Mtn for Reconsideration

**Filed By:**

Michael Whitfield

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KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

2645  
AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Deputy Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner.

Case No. CV19-00641

Dept. No. 1

**OPPOSITION TO PETITIONER'S  
MOTION FOR RECONSIDERATION**

Respondent, State of Nevada, Department of Corrections (hereinafter "NDOC"), by and through its attorneys, Nevada Attorney General, Aaron D. Ford, and Deputy Attorney General, Kevin A. Pick, hereby submits its Opposition to Petitioner's Motion for Reconsideration. This Opposition is made and based on the Memorandum of Points and Authorities set forth below, any exhibits attached hereto, and all papers and pleadings on file herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

On April 4, 2019, NDOC moved this Court to dismiss with prejudice Michael Whitfield's Petition for Judicial Review, because Mr. Whitfield had failed to comply with the mandatory and jurisdictional requirements of NRS 233B.130(2). Specifically, Mr. Whitfield failed to name any respondents in his Petition and thereby failed to invoke the subject matter jurisdiction of this Court.

*See Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 725 (2012) (explaining that a district court lacks subject matter jurisdiction to consider a petition for judicial review where the petitioner fails to comply with the statutory requirements for filing the petition); *see also Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 276, 44 P.3d 506, 515–16 (2002) (providing that subject matter jurisdiction cannot be waived). Similarly, NDOC contended that Mr. Whitfield failed to invoke an exception to the State’s sovereign immunity when he neglected to name the State of Nevada, or any agency thereof, in his defective Petition for Judicial Review. *See* NRS 41.031(2).

In response to NDOC’s Motion to Dismiss, Mr. Whitfield recognized his error and filed an Amended Petition for Judicial Review on April 8, 2019, in which he named four new respondents that were omitted from the original Petition for Judicial Review. However, the Amended Petition was untimely and filed more than 30 days after Mr. Whitfield was served with the administrative decision at issue. *See* NRS 233B.130(2)(d).

On April 9, 2019, Mr. Whitfield filed an Opposition to NDOC’s Motion to Dismiss, in which Mr. Whitfield attempted to downplay his failure to comply with NRS 233B.130(2). Mr. Whitfield argued that his failure to name any respondents in his Petition was not jurisdictionally fatal and that he did not need to strictly comply with NRS 233B.130(2), citing the recent case of *Prevost v. State Dep’t of Admin.*, 134 Nev. Adv. Op. 42, 418 P.3d 675, 677 (2018). *See* Opposition, at 2. Nowhere did the Opposition dispute that Mr. Whitfield failed to invoke an exception to the State’s sovereign immunity under NRS Chapter 41. *Id.* at 2–3.

In its Reply, NDOC re-emphasize that Whitfield must “strictly comply” with the naming requirements of NRS 233B.130(2)(a). *See Otto*, 128 Nev. at 431. Moreover, the Petition did not merely fail to name any respondents *in the caption*, as Whitfield argues in his Opposition, but Mr. Whitfield failed to name any respondents anywhere *in either the caption or body* of the Petition. Nor did the Petition attach or incorporate by reference any documents whatsoever. As such, this case was readily distinguishable from *Prevost*, where the petitioner incorporated by reference and attached a copy of the underlying administrative decision for purposes of satisfying the naming requirements of NRS 233B.130(2)(a). *See Prevost*, 418 P.3d at 676. Accordingly, Mr. Whitfield did not “strictly comply” with NRS 233B.130(2)(a) and Mr. Whitfield’s reliance on *Prevost* was misplaced.

Furthermore, NDOC also emphasized that the Supreme Court in *Otto* had expressly held that if an “original petition fail[s] to invoke the district court's jurisdiction, [then] it could not properly be amended outside of the filing deadline.” *See Otto*, 128 Nev. at 435. Therefore, since the filing deadline for Mr. Whitfield’s Petition was April 3, 2019<sup>1</sup>, the Petition could not, as a matter of law, be amended.

NDOC’s Motion to Dismiss was then submitted for decision and on June 24, 2019, this Court issued its Order Granting Motion to Dismiss Petition for Judicial Review. As seen therien, the Court found as follows: (1) that the original Petition failed to comply with the naming requirements of NRS 233B.130(2)(a); and (2) that the Amended Petition failed to cure Petitioner’s jurisdictionally defective Petition, because the Amended Petition was not filed within 30 days after service of the final decision of the agency. *See Order Granting Motion to Dismiss*, at 5–6. As a result of these findings, the Court granted NDOC’s Motion to Dismiss. *Id.*

Mr. Whitfield now asks the Court to reconsider its June 24, 2019, Order based on the exact same arguments which Mr. Whitfield offered in his April 9, 2019, Opposition. However, as discussed below, this sort of motion is barred by Nevada case law governing reconsideration, the law-of-the-case doctrine, and DCR 13(7). Even if the Court were to reconsider Mr. Whitfield’s previously-rejected arguments, these arguments still lack merit and Mr. Whitfield still failed to strictly comply with the naming requirements of NRS 233B.130(2)(a). As such, the Petition failed to vest jurisdiction with this Court and the untimely Amended Petition was incapable, as a matter of law, of curing the defective Petition. Accordingly, NDOC respectfully urges the Court to deny this Motion to Reconsider and to once again affirm the legal conclusions reached in this Court’s June 24, 2019, Order Granting Motion to Dismiss Petition for Judicial Review.

\* \* \*

\* \* \*

\* \* \*

\* \* \*

<sup>1</sup> Under NRS 233B.130(2)(d), petitions for judicial review must be filed within 30 days after service of the final decision of the agency. Hearing Officer Ward’s Decision and Order was served by regular mail on March 1, 2019; therefore, Mr. Whitfield had until April 3, 2019, (30 days, plus 3 days for mailing) in which to file his Petition. *See Motion*, Exhibit No. 1.

## II.

## LEGAL ARGUMENT

A. **Reconsideration is not appropriate, as a matter of law.**

NDOC must initially emphasize that Mr. Whitfield's Motion for Reconsideration does not cite any new facts or new legal arguments, but is merely a point-by-point rehash of the exact same failed arguments which were already analyzed and rejected in this Court's June 24, 2019, Order Granting Motion to Dismiss Petition for Judicial Review. In the Motion at bar, Whitfield again argues that his failure to name any respondents in the caption of his Petition was not jurisdictionally fatal under NRS 233B.130(2)(a) and Whitfield again argues the applicability of *Prevost*. See Motion, at 2. Furthermore, Whitfield again argues that his untimely Amended Petition adequately cured his earlier non-compliance with NRS 233B.130(2)(a) and that under NRCP 15 the filing date of the untimely Amended Petition should relate back to the filing of the original Petition. *Id.* at 3.

However, this effort by Mr. Whitfield to rehash previously rejected legal arguments runs contrary to established case law governing reconsideration, as well as DCR 13(7), and the law-of-the-case doctrine.

As a general matter, a motion for reconsideration must direct the court to some controlling legal or factual matter that the court has overlooked or misapprehended. *In re Matter of Ross*, 99 Nev. 657, 668 P.2d 1089 (1983). For reconsideration to be appropriate, some new issue of fact or law, or an error of law or fact must be raised supporting a contrary result to that which is already reached. *Moore v. City of Las Vegas*, 92 Nev. 402, 551 P.2d 244 (1976). Again, the Court previously analyzed the very same legal arguments that are re-asserted in the Motion for Reconsideration; furthermore, Mr. Whitfield fails to cite any new legal authority or new factual matter, which this Court either overlooked or which support Mr. Whitfield's arguments. As such, this Motion runs afoul of Nevada law governing reconsideration.

Additionally, DCR 13(7) also clearly instructs that "[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." Here, however, Mr. Whitfield not only reasserts the exact same legal issues which this Court

previously rejected, but Mr. Whitfield fails to seek leave of the Court prior to renewing these arguments in his Motion for Reconsideration. As such, NDOC respectfully submits that Whitfield's Motion for Reconsideration violates the plain language and spirit of DCR 13(7).

Lastly, under the law-of-the-case doctrine, "a court is generally precluded from reconsidering an issue previously decided by the same court, or a higher court in the identical case." *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000). This law-of-the-case doctrine has developed to "maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." 18B Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* 2d § 4478, at 637–38 (2002). When applied to the matter at bar, the law-of-the-case doctrine bars Whitfield from re-asserting the same arguments made in his Opposition to Motion to Dismiss; furthermore, the law-of-the-case doctrine also arguably precludes this Court from reconsidering these same issues which were previously analyzed and explicitly rejected in the June 24, 2019, Order Granting Motion to Dismiss Petition for Judicial Review. Frankly, Mr. Whitfield has a remedy under NRS 233B.150 and that remedy is not to repeatedly ask the Court to reconsider the same previously decided legal issues.

**B. Reconsideration is not appropriate because the Court correctly dismissed this Petition for lack of subject matter jurisdiction.**

In his Motion for Reconsideration, Mr. Whitfield initially argues that the dismissal of his Petition was erroneous because (in the general context of a civil action) courts are "bound to accept all the factual allegations in the complaint as true" and that a civil complaint cannot be dismissed unless the "petitioner/plaintiff is not entitled to relief under any set of facts . . ." *See* Motion, at 2. In making this argument, Whitfield cites the following civil cases: *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985) (Litigating a claim under 42 U.S.C. § 1983, seeking damages for deprivation of due process); *Marcoz v. Summa Corp.*, 106 Nev. 737, 801 P.2d 1346 (1990) (Litigating claims for breach of employment contract, bad faith discharge, and tortious discharge); and *Hale v. Burkhardt*, 104 Nev. 632, 764 P.2d 866 (1988) (Real estate broker sued developer to recover commissions and fees).

\* \* \*

Simply put, general rules applicable to civil actions do not apply to petitions brought under NRS 233B.130. As explained by the Supreme Court in *Washoe County. v. Otto*, the Nevada Legislature “enacted the APA to govern judicial review of many administrative decisions, permitting an aggrieved party to petition the district court for judicial review of a final agency decision in a contested case.” *Otto*, 128 Nev. at 431. However, “[p]ursuant to the [APA] . . . , not every administrative decision is reviewable.” *Id.* (citing *Private Inv. Licensing Bd. v. Atherley*, 98 Nev. 514, 515, 654 P.2d 1019, 1019 (1982)). Instead, “only those decisions falling within the APA's terms and challenged according to the APA's procedures invoke the district court's jurisdiction.” *Id.* Accordingly, “pursuant to NRS 233B.130(2)(a), it is mandatory to name all parties of record in a petition for judicial review of an administrative decision, and a district court lacks jurisdiction to consider a petition that fails to comply with this requirement.” *Id.*

Therefore, since Whitfield’s Petition was brought pursuant to NRS 233B.130 and not as a civil action under NRCP 3 *et seq.*, strict compliance with NRS 233B.130(2)(a) applies and not the liberal notice-pleading standard applicable under NRCP 8(a). What is more, *Edgar*, *Marcoz*, and *Hale* (which are all civil actions) are not remotely applicable to this Petition for Judicial Review. As such, Mr. Whitfield cannot use inapplicable case law and an inapplicable notice-pleading standard to circumvent strict compliance with NRS 233B.130(2)(a). It is undisputed that Whitfield’s original Petition failed to comply with the naming requirements of NRS 233B.130(2)(a) and, accordingly, this Court correctly held that the Petition failed to vest subject matter jurisdiction in this Court.

Next, Mr. Whitfield makes a second attempt to apply *Prevost* as an exception to his non-compliance with NRS 233B.130(2)(a). Specifically, Whitfield argues that his failure to name any respondents “in the caption of the petition” is not fatal under NRS 233B.130(2)(a). *See* Motion, at 2. However, Mr. Whitfield again mischaracterizes the true extent of his failure to comply with NRS 233B.130(2)(a). The original Petition not only failed to name any respondents in the caption, but failed to name any respondents in either the caption or the body of the Petition. *See* Petition for Judicial Review. Furthermore, the Petition also failed to attached or incorporate by reference any documents, including the underlying administrative decision. *Id.* Again, the Supreme Court in *Prevost* overlooked the petitioner’s failure to name a respondent in the caption because the underlying

administrative decision (which did name the missing respondent) was specifically incorporated by reference in the body of the petition *and* attached to the petition. *Prevost*, 418 P.3d at 676. As such, *Prevost* is completely inapplicable to this case and actually underscores Mr. Whitfield's non-compliance with NRS 233B.130(2)(a).

Lastly, Mr. Whitfield again argues that his Amended Petition successfully corrected the deficiencies in his original Petition and that, pursuant to NRCP 15(a), the filing date of the Amended Petition relates back to the filing date of the original Petition. *See* Motion, at 3. However, this same argument was rejected by the Supreme Court in *Otto*, which held that “[b]ecause Washoe County's original petition failed to invoke the district court's jurisdiction, it could not properly be amended outside of the filing deadline.” *See Otto*, 128 Nev. at 435. Here, the filing deadline for Mr. Whitfield's Petition was April 3, 2019; therefore, the April 8, 2019, Amended Petition could not (as a matter of law) cure the jurisdictional defects in the original Petition. *See id.* Accordingly, this Court was correct in previously finding that the Amended Petition “does not relate back to the original Petition” and “does not cure Petitioner's jurisdictional defect.” *See* Order, at 5, 6. What is more, NRCP 15(a) arguably applies to civil actions and not judicial review of administrative decisions under NRS 233B.130. Furthermore, to the extent NRCP 15(a) could be read as allowing a petitioner to amend a defective petition outside the APA's 30-day filing period, then these rules are inconsistent and NRS 233B.130 takes precedent over NRCP 15(a). *See* Nev. R. Civ. P. 81(a) (“[t]hese rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute.”)

### III.

#### CONCLUSION

It is undisputed that Whitfield was required by NRS 233B.130(2)(a) to name certain respondents in his Petition. It is also undisputed that Whitfield failed to name any of these required respondents anywhere in his Petition or in any attached document (there were none). Under these circumstances, *Otto* commands that such a petition is fatally defective and must be dismissed for lack of subject matter jurisdiction. *Otto*, 128 Nev. at 434. Moreover, *Otto* also commands that a defective petition can only be amended within the APA's 30-day time limit; however, Whitfield's Amended

Petition was filed *after* the expiration of the APA's 30-day time limit. As a result, this Court lacks jurisdiction to even consider Mr. Whitefield's Petition and this Court correctly dismissed this case in its June 24, 2019, Order Granting Motion to Dismiss Petition for Judicial Review. Mr. Whitfield has not provided this Court with any new facts, new arguments, or new legal authority that would allow this Court's June 24, 2019, Order to be second-guessed. Therefore, NDOC respectfully moves this Court to DENY Mr. Whitfield's Motion for Reconsideration and thereby reaffirm the dismissal of this matter with prejudice.

**AFFIRMATION**

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

DATED this 11th day of July 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*

**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 11th day of July 2019, I served a copy of the foregoing **OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Michael Whitfield  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-07-11 10:56:15.804.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-07-11 10:56:15.742.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

07-11-2019:10:12:15

**Clerk Accepted:**

07-11-2019:10:55:37

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Opposition to Mtn

**Filed By:**

Kevin A Pick

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

Code: 3790  
Michael Whitfield  
P.O. Box 18421  
Reno, NV 89511  
(775) 737-3493  
Email: mwhitfi2000@gmail.com  
Self-Represented Litigant

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.

\_\_\_\_\_ /

**REPLY TO OPPOSITION TO PETITIONER'S MOTION FOR**  
**RECONSIDERATION**

Petitioner hereby submits his Reply to Respondent's Opposition to Petitioner's

Motion for Reconsideration.

//

//

## MEMORANDUM OF POINTS AND AUTHORITIES

### LEGAL ARGUMENT

Respondent states that NRC 15(a) does not apply as it is “a liberal notice-pleading standard”. Petitioner believes that the rules of NRC have been set in place to provide guidance for individuals in order to access to their legal system. As such, all parties are required to comply with said rules.

Petitioner, in his reliance upon these rules, additionally looked to NRC 15(c)1,

**Relation Back to Amendments.** which states:

An amendment to a pleading relates back to the date of the original pleading when:

- (1) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading;

In *Techansky v. Wilson*, 83 Nev. 263, 428 P.2d 375 (1967), the court found that a motion to amend under NRC 15( a), made after the statute of limitations had run, should be granted and given retroactive effect under NRC 15(c) to the date of the original proceeding to cure the defective pleading.

In this matter, Petitioner corrected the caption of his Petition via his Amended Petition. A correction that clearly addressed a technical defect and does not vitiate this action.

Respondent places great emphasis on the timing of Petitioner’s Amended Petition and incorrectly advises this Court that “The original Petition not only failed to name any respondents in either the caption or the body of Petition”. That is simply not true. Within the body of the Petition, Nevada Department of Corrections and Nevada State Personnel Commission were both referenced and identified in the body of his petition. Additionally, it must be noted that all Parties were served **before** April 3, 2019.

This is apparent by the filing of the Motion to Dismiss which began “Respondent, State of Nevada, Department of Corrections (hereinafter “NDOC”)...”. That is clear acknowledgment of NDOC that it was a properly named/identified “Respondent”.

This is further supported by the summons issued on March 22, 2019, which named James Dzurenda/NDOC Director as “Defendant/Respondent/Joint Petitioner” and was served on 3/26/19. (Exhibit 1). The Summons for Defendant/Respondent/Joint Petitioner State of

Nevada Depart of Admin/Hearing Divisions was issued and March 22, 2019 and served on March 25, 2019. (Exhibit 2). The Summons for Defendant/Respondent/Joint Petitioner Nevada Human Resource Management was issued on March 22, 2019 and also served on March 25, 2019. Therefore, the intent of notifying a party that an action is being appealed was met. Service of the Respondents must be considered when determining whether they have been “named” in the Petition. In this case, it is undeniable all interested parties, Nevada State Personnel Commission, State of Nevada Administration, and NDOC were well aware of the filing of Petition for Judicial Review.

In *Prevost* the Supreme Court reversed, holding that Appellant’s failure to name CCMSI in the caption of the petition did not render the petition jurisdictionally defective **because the body of the petition named CCMSI through incorporation by reference of the attached administrative decision and CCMSI was timely served with the petition.** Petitioner complied with these elements.

#### CONCLUSION

Based on the foregoing, Petitioner respectfully moves this Court to for Reconsideration of its Order for Dismissal and Reinstate the Briefing Schedule for this matter.

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

Dated this 16<sup>th</sup> day of July, 2019

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**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 16<sup>th</sup> day of July, 2019, I served a copy of the foregoing **REPLY TO OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Aaron D. Ford  
Attorney General  
100 N. Carson Street  
Carson City, NV 89701

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

Department of Administration  
Hearing Division  
1050 West William Street, Suite 450  
Carson City, NV 89701

Human Resource Management  
209 East Musser Street, Suite 101  
Carson City, Nevada 89701-4204

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

1 Code:  
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

8  
9  
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 IN THE MATTER OF:

Case No. CV19-00641

14 MICHAEL WHITFIELD  
15 (Appeal No. 1803430-LLW)

Dept. No. 1

16 Petitioner,

17 vs.

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

25 Respondents.

26 INDEX OF EXHIBITS

27 Exhibit Number 1 Number of Pages: 1  
28 Exhibit Description: Summons: James Dzurenda/NDOC Director

Exhibit Number 2 Number of Pages: 1

|    |                      |  |
|----|----------------------|--|
| 1  | Exhibit Description: | Summons: State of Nevada Department of Administrative Hearings |
| 2  |                      |  |
| 3  | Exhibit Number 3     | Number of Pages 2  |
| 4  | Exhibit Description: | Sommons: Nevada Human Resource Management                      |
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**EXHIBIT 1**

**EXHIBIT 1**

**EXHIBIT 1**

Code: 4085

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

Micheal Whitfield,  
Plaintiff / Petitioner / Joint Petitioner,

Case No. CV19-00641

vs.

Dept. No. 1

James Dzurenda/NDOC Director,  
Defendant / Respondent / Joint Petitioner.

**SUMMONS**

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: Judicial Review

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

**MAR 22 2019**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Issued on behalf of Plaintiff(s):

JACQUELINE BRYANT  
CLERK OF THE COURT

Name: Michael Whitfield

By: J. Shields

Address: P.O. Box 18421

Deputy Clerk

Reno, NV 89511

Second Judicial District Court

Phone Number: 775-737-3493

75 Court Street

Reno, Nevada 89501

CODE 1067

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

MICHEAL WHITFIELD,  
Plaintiff(s),

CASE NO: CV19-00641

VS.

JAMES DZURENDA/NDOC DIRECTOR,  
Defendant(s),

## DECLARATION OF SERVICE

STATE OF NEVADA  
COUNTY OF CARSON CITY ss.:

SERWIND NETZLER, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **PETITION FOR JUDICIAL REVIEW; SUMMONS** On 3/26/2019 and served the same on 3/26/2019 at 2:26 PM by delivery and leaving a copy with:

By then and there personally delivering a true and correct copy of the documents into the hands of and leaving with **Nancy Sanders** whose title is **Administrative Assistant**.

Served on behalf of **JAMES DZURENDA NEVADA DEPARTMENT OF CORRECTION DIRECTOR**

Service Address: **NDOC - 5500 Snyder Ave Bldg 17, Carson City, NV 89701-6752**

## A description of Nancy Sanders is as follows

| Gender | Color of Skin/Race | Hair | Age     | Height    | Weight      |
|--------|--------------------|------|---------|-----------|-------------|
| Female | White              | Red  | 36 - 40 | 5'1 - 5'6 | 161-180 Lbs |

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 3/27/2019  
by SERWIND NETZLER  
Registration: R-2018-05938

No notary is required per NRS 53.045

X

SERWIND NETZLER  
Registration: R-2018-05938  
Reno Carson Messenger Service, Inc #322  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R67257 NVPRF411

1 **EXHIBIT 2**  
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28 **EXHIBIT 2**

**EXHIBIT 2**

Code: 4085

STATE OF NEVADA  
DEPT OF ADMIN  
HEARINGS  
APPEALS

2019 MAR 27

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

Micheal Whitfield,

Plaintiff / Petitioner / Joint Petitioner,

Case No. CV19-00641

vs.

Dept. No. 1State of NV Dept of Admin/Hearings Div,

Defendant / Respondent / Joint Petitioner.

SUMMONS

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: Petition for Judicial Review

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this \_\_\_\_\_ day of MAR 22 2019, 20\_\_\_\_.

Issued on behalf of Plaintiff(s):

JACQUELINE BRYANT  
CLERK OF THE COURT

Name: Michael WhitfieldBy: J. ShieldsAddress: P.O. Box 18421

Deputy Clerk

Reno, NV 89511

Second Judicial District Court

Phone Number: 775-737-3493

75 Court Street

Reno, Nevada 89501

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF Nevada )COUNTY OF Carson City )I, Kylon Ridders, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

Summons, Petition for Judicial Reviewupon Human Resource Management, at the following  
(Name of Respondent/Defendant who was served) Tasha Eatonaddress: 1050 Williams #450 Carson City, NVon the 25 day of March, 2019.  
(Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

K. Ridders  
(Signature of person who completed service)

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**EXHIBIT 3**

**EXHIBIT 3**

**EXHIBIT 3**

MAR 25 2019

Code: 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOEMicheal Whitfield  
Plaintiff / Petitioner / Joint Petitioner,

vs.

Case. No. CV 19-00641Dept. No. 1NV Human Resource Mangagement  
Defendant / Respondent / Joint Petitioner.SUMMONS

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: Petition for Judicial Review

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this \_\_\_\_\_ day of MAR 22 2019, 20\_\_\_\_

Issued on behalf of Plaintiff(s):

Name: Michael WhitfieldAddress: P.O. Box 18421Reno, NV 89511Phone Number: 775-737-3493JACQUELINE BRYANT  
CLERK OF THE COURTBy: [Signature]

Deputy Clerk

Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

AARON D. FORD  
Attorney General

CAROLINE BATEMAN  
First Assistant Attorney General

CHRISTINE JONES  
BRADY  
Second Assistant Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 North Carson Street  
Carson City, Nevada 89701

JESSICA L. ADAIR  
Chief of Staff

RACHEL J. ANDERSON  
General Counsel

HEIDI PARRY STERN  
Solicitor General

DATE RECEIVED: 3/25/19  
RECEIVED BY: Diana Herrera  
CASE NAME: Whitfield, v. NV Human Resources  
management  
CASE NUMBER: CV19-00641 COURT: 2nd JD  
DOCUMENT(S) RECEIVED: summons

**NOTICE**

**NRS 41.031(2)** provides in part that, in 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. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. Service on the Attorney General or designee does not constitute service on any individual or administrative head.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031(2)(a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, except the Office of the Attorney General. Receipt of summons and complaint or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 41.

**DECLARATION OF PERSONAL SERVICE**

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF Nevada )COUNTY OF W Carson City )I, Kyron Riddere, declare:  
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.
2. That I personally served a copy of the Summons and the following documents:

I was redirected from 209 Masser to Attorney  
General office at the address below  
Petition for Judicial Review, Summons  
 upon Human Resource Management Santa Diana Herrera, at the following  
 (Name of Respondent/Defendant who was served) Herrera  
 address: 100 N. Carson Carson City, NV 89701

on the 25 day of March, 2019.  
 (Month) (Year)

This document does not contain the Social Security Number of any Person.

I declare, under penalty of perjury under the law of then State of Nevada, that the foregoing is true and correct.

Kyron Riddere  
 (Signature of person who completed service)

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-07-16 14:45:24.763.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-07-16 14:45:24.42.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV19-00641

Judge:

HONORABLE KATHLEEN DRAKULICH

Official File Stamp:

07-16-2019:14:24:55

Clerk Accepted:

07-16-2019:14:44:35

Court:

Second Judicial District Court - State of Nevada  
Civil

Case Title:

IN RE: MICHAEL WHITFIELD (D1)

Document(s) Submitted:

Reply to/in Opposition

- \*\*Continuation
- \*\*Continuation
- \*\*Continuation
- \*\*Continuation

Filed By:

Michael Whitfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

Code: 3860  
Michael Whitfield  
P.O. Box 18421  
Reno, NV 89511  
(775) 737-3493  
Email: mwhitfi2000@gmail.com  
Self-Represented Litigant

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.

\_\_\_\_\_ /

**REQUEST FOR SUBMISSION**

I request that all documents relative to the MOTION FOR  
RECONSIDERATION, that was filed on 7/2/19, be submitted to the Court for  
decision.

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

Respectfully submitted this 19th day of July, 2019.

/s/ Michael Whitfield

Michael Whitfield

Self-Represented Litigant

**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 19<sup>th</sup> day of July, 2019, I served a copy of the foregoing **REQUEST FOR SUBMISSION OF MOTION FOR RECONSIDERATION** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

Department of Administration  
Hearing Division  
1050 West William Street, Suite 450  
Carson City, NV 89701

Human Resource Management  
209 East Musser Street, Suite 101  
Carson City, Nevada 89701-4204

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-07-19 10:32:05.269.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-07-19 10:32:03.428.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

07-19-2019:10:29:32

**Clerk Accepted:**

07-19-2019:10:30:54

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Request for Submission

**Filed By:**

Michael Whitfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

MICHAEL WHITFIELD

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

2840

**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

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

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

Officer Whitfield clearly and by a preponderance of the evidence violated AR 339.07.15(UU) and NAC 284.650(1). He failed to maintain his POST requirements as required by AR 339.07.15(UU) and his failure to qualify biannually and his inability to use a firearm violated NAC 284.650(1) because such is incompatible with an 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.

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’ offense as evidenced by the fact that NDOC determined 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.

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

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

Thereafter, on March 20, 2019, Petitioner Whitfield filed his *Petition for Judicial Review*. On April 4, 2019, Respondent NDOC filed a *Motion to Dismiss Petition for Judicial Review*. On April 8, 2019, Petitioner Whitfield 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. This Court issued an *Order Granting Motion to Dismiss Petition for Judicial Review* on June 24, 2019. Petitioner now brings the instant Motion seeking reconsideration of this Court’s June 24, 2019 *Order Granting Motion to Dismiss Petition for Judicial Review*.

## **II. Relevant Legal Authority**

Pursuant to DCR 13(7), no 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 upon motion therefor, after notice of such motion to the adverse parties. Although this Court has inherent authority to reconsider its prior orders, it will only do so if a party subsequently introduces substantially different evidence or establishes that the decision is clearly erroneous. *Masonry and Tile Contractors Ass’n of So. Nev. v. Jolley Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 589 (1997). Furthermore, arguments not raised in the original motion practice cannot be maintained or considered in a motion for reconsideration. *See, Achrem v. Expressway Plaza, Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996); *Chowdhry v. NLVH, Inc.*, 111 Nev. 560, 562-63, 893 P.2d 385, 387 (1995). “Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. City of*

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

The rehearing of motions must be done in conformity with D.C.R. 13, Section 7. A party seeking reconsideration of a ruling of the court, other than an order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion 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.

### III. Analysis

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

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

///

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 17<sup>th</sup> day of September, 2019.

  
KATHLEEN DRAKULICH  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

CASE NO. CV19-00641

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

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


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

KEVIN PICK, ESQ. for JAMES DZURENDA, NDOC

MICHAEL WHITFIELD

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

NONE

  
DANIELLE KENT  
Department 1 Judicial Assistant

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-09-17 14:34:41.018.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-09-17 14:34:40.893.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

09-17-2019:14:33:14

**Clerk Accepted:**

09-17-2019:14:33:44

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Ord Denying Motion

**Filed By:**

Judicial Asst. DKent

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

2540  
AARON D. FORD  
Attorney General  
KEVIN A. PICK  
Sr. Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
Nevada Bar No. 11683  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
(775) 687-2100  
Email: [kpick@ag.nv.gov](mailto: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:

MICHAEL WHITFIELD  
(Appeal No. 1803430-LLW)

Petitioner,

Case No. CV19-00641

Dept. No. 1

**NOTICE OF ENTRY OF ORDER**

TO: Petitioner Michael Whitfield:

PLEASE TAKE NOTICE that on September 17, 2019, the Court entered an Order Denying Motion for Reconsideration, 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 17th day of September 2019.

AARON D. FORD  
Attorney General

By: /s/ Kevin A. Pick

Kevin A. Pick (Bar. No. 11683)  
Sr. Deputy Attorney General  
*Attorneys for Respondent, State of Nevada*  
*ex rel. Department of Corrections*

**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 17th day of September 2019, I served a copy of the foregoing NOTICE OF ENTRY OF ORDER by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

MICHAEL WHITFIELD  
PO Box 18421  
Reno, NV 89511  
*Petitioner-Employee*

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

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

/s/ Ginny Brownell  
An employee of the State of Nevada,  
Office of the Attorney General

**INDEX OF EXHIBITS**

|           |  |         |
|-----------|--|---------|
| Exhibit 1 | Order Denying Motion for Reconsideration | 6 pages |
|-----------|--|---------|

# EXHIBIT 1

# EXHIBIT 1

2840

**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.

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**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

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

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

Officer Whitfield clearly and by a preponderance of the evidence violated AR 339.07.15(UU) and NAC 284.650(1). He failed to maintain his POST requirements as required by AR 339.07.15(UU) and his failure to qualify biannually and his inability to use a firearm violated NAC 284.650(1) because such is incompatible with an 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.

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’ offense as evidenced by the fact that NDOC determined 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.

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

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

Thereafter, on March 20, 2019, Petitioner Whitfield filed his *Petition for Judicial Review*. On April 4, 2019, Respondent NDOC filed a *Motion to Dismiss Petition for Judicial Review*. On April 8, 2019, Petitioner Whitfield 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. This Court issued an *Order Granting Motion to Dismiss Petition for Judicial Review* on June 24, 2019. Petitioner now brings the instant Motion seeking reconsideration of this Court’s June 24, 2019 *Order Granting Motion to Dismiss Petition for Judicial Review*.

## II. Relevant Legal Authority

Pursuant to DCR 13(7), no 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 upon motion therefor, after notice of such motion to the adverse parties. Although this Court has inherent authority to reconsider its prior orders, it will only do so if a party subsequently introduces substantially different evidence or establishes that the decision is clearly erroneous. *Masonry and Tile Contractors Ass’n of So. Nev. v. Jolley Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 589 (1997). Furthermore, arguments not raised in the original motion practice cannot be maintained or considered in a motion for reconsideration. *See, Achrem v. Expressway Plaza, Ltd.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996); *Chowdhry v. NLVH, Inc.*, 111 Nev. 560, 562-63, 893 P.2d 385, 387 (1995). “Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. City of*

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

The rehearing of motions must be done in conformity with D.C.R. 13, Section 7. A party seeking reconsideration of a ruling of the court, other than an order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion 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.

### III. Analysis

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

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

///

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 17<sup>th</sup> day of September, 2019.

  
KATHLEEN DRAKULICH  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

CASE NO. CV19-00641

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

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


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

KEVIN PICK, ESQ. for JAMES DZURENDA, NDOC

MICHAEL WHITFIELD

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

NONE

  
DANIELLE KENT  
Department 1 Judicial Assistant

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-09-17 15:24:43.051.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-09-17 15:24:42.957.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

09-17-2019:15:23:33

**Clerk Accepted:**

09-17-2019:15:24:11

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Notice of Entry of Ord

**Filed By:**

Kevin A Pick

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

Code: 1310  
Michael Whitfield  
P.O. Box 18421  
Reno, NV 89511  
(775) 737-3493  
Email: mwhitfi2000@gmail.com  
Self-Represented Litigant

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:

**This document does not contain the personal information of any person as**

//

**defined by NRS 603A.040.**

Dated this 19th day of September, 2019

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**CERTIFICATE OF SERVICE**

I hereby certify that I am the Petitioner in the above entitled matter and that on the 19<sup>th</sup> day of September, 2019, I served a copy of the foregoing **Notice of Filing Appeal Bond** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

Code: 1310  
Michael Whitfield  
P.O. Box 18421  
Reno, NV 89511  
(775) 737-3493  
Email: mwhitfi2000@gmail.com  
Self-Represented Litigant

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:

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

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

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

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

Dated this 19th day of September, 2019

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**CERTIFICATE OF SERVICE**

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

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-09-23 10:13:15.596.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-09-23 10:13:15.518.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

09-23-2019:10:12:07

**Clerk Accepted:**

09-23-2019:10:12:46

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Case Appeal Statement

**Filed By:**

Michael Whitfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-09-23 10:13:24.894.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-09-23 10:13:24.832.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

09-23-2019:10:09:36

**Clerk Accepted:**

09-23-2019:10:12:50

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Case Appeal Statement

**Filed By:**

Michael Whitfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

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

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

**CERTIFICATE OF SERVICE**

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

Kevin Pick, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511

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

/s/ Michael Whitfield  
Michael Whitfield  
Petitioner in Proper Person

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-09-23 14:38:12.18.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-09-23 14:38:12.117.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV19-00641

Judge:

HONORABLE KATHLEEN DRAKULICH

Official File Stamp:

09-23-2019:14:31:03

Clerk Accepted:

09-23-2019:14:36:48

Court:

Second Judicial District Court - State of Nevada  
Civil

Case Title:

IN RE: MICHAEL WHITFIELD (D1)

Document(s) Submitted:

Notice/Appeal Supreme Court

Filed By:

Michael Whitfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-09-25 09:08:06.189.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-09-25 09:08:06.127.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

09-25-2019:08:49:16

**Clerk Accepted:**

09-25-2019:09:07:18

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Event(s):**

\*\*Supreme Court Appeal Bond

**Filed By:**

Michael Whitfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

Code 1310

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.

\_\_\_\_\_ /

**CASE APPEAL STATEMENT**

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

1. Appellant is Michael Whitfield.
2. This appeal is from an order entered by the Honorable Judge Kathleen Drakulich.
3. Appellant is representing himself in Proper Person on appeal, the Appellant's address is:  
Michael Whitfield  
P.O. Box 18421  
Reno, Nevada 89511
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:

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 20<sup>th</sup>, 2019.
10. This is a civil proceeding and the Appellant is appealing the Order Denying Motion for Reconsideration filed September 17<sup>th</sup>, 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

Code 1350

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

MICHAEL WHITFIELD,

Case No. CV19-00641

Petitioner,

Dept. No. 1

vs.

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

Respondents.

\_\_\_\_\_ /

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

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

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

Dated this 25th day of September, 2019

Jacqueline Bryant  
Clerk of the Court

By /s/ Yvonne Vilorio  
Yvonne Vilorio  
Deputy Clerk

**Return Of NEF****Recipients**

**MICHAEL** - Notification received on 2019-09-25 12:12:48.58.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-09-25 12:12:48.517.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV19-00641

Judge:

HONORABLE KATHLEEN DRAKULICH

Official File Stamp:

09-25-2019:12:11:50

Clerk Accepted:

09-25-2019:12:12:17

Court:

Second Judicial District Court - State of Nevada  
Civil

Case Title:

IN RE: MICHAEL WHITFIELD (D1)

Document(s) Submitted:

Case Appeal Statement  
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

**IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK**

MICHAEL WHITFIELD,  
Appellant,  
vs.

**Supreme Court No. 79718**  
District Court Case No. CV1900641

DI

NEVADA STATE PERSONNEL  
COMMISSION; STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION;  
LORNA WARD, APPEALS OFFICER; AND  
THE STATE OF NEVADA DEPARTMENT OF  
CORRECTIONS, AS EMPLOYER,  
Respondents.

**RECEIPT FOR DOCUMENTS**

TO: Michael Whitfield  
Attorney General/Reno \ Kevin A. Pick  
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

|            |  |
|------------|--|
| 10/01/2019 | Filing Fee Paid. \$250.00 from Michael Whitfield. Check no. 1483.<br>(SC)                    |
| 10/01/2019 | Filed Notice of Appeal/Proper Person. Appeal docketed in the<br>Supreme Court this day. (SC) |

DATE: October 01, 2019

Elizabeth A. Brown, Clerk of Court  
lh

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-10-03 13:58:54.903.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-10-03 13:58:54.856.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

10-03-2019:13:57:41

**Clerk Accepted:**

10-03-2019:13:58:18

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Supreme Court Receipt for Doc

**Filed By:**

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

NEVADA STATE PERSONNEL COMMISSION

## IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WHITFIELD,  
Appellant,  
vs.  
NEVADA STATE PERSONNEL  
COMMISSION; STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION;  
LORNA WARD, APPEALS OFFICER;  
AND THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS, AS  
EMPLOYER,  
Respondents.

No. 79718

CV19-00641

D1

**FILED**

OCT 15 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has reviewed the documents on file in this pro se appeal and concludes that review of the complete record is warranted. NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in District Court Case No. CV19-00641. See NRAP 11(a)(2) (providing that the complete "record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court," as well as "any previously prepared transcripts of the proceedings in the district court"). The record shall not include any exhibits filed in the district court. NRAP 11(a)(1).

It is so ORDERED.

 C.J.

cc: Michael Whitfield  
Attorney General/Carson City  
Attorney General/Reno  
Washoe District Court Clerk

## Return Of NEF

### Recipients

**MICHAEL** - Notification received on 2019-10-16 13:22:09.26.  
**WHITFIELD**

**KEVIN PICK, ESQ.** - Notification received on 2019-10-16 13:22:08.932.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV19-00641

**Judge:**

HONORABLE KATHLEEN DRAKULICH

**Official File Stamp:**

10-16-2019:13:18:03

**Clerk Accepted:**

10-16-2019:13:21:09

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

IN RE: MICHAEL WHITFIELD (D1)

**Document(s) Submitted:**

Supreme Ct Order Directing

**Filed By:**

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

MICHAEL WHITFIELD

KEVIN A. PICK, ESQ. for JAMES DZURENDA,  
NDOC

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