

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY NEVADA, )  
DEPARTMENT OF AVIATION, a )  
political subdivision of the State of )  
Nevada; )  
Appellant, )

vs. )

SOUTHERN NEVADA LABOR )  
MANAGEMENT COOPERATION )  
COMMITTEE, by and through its )  
Trustees Terry Mayfield and Chris )  
Christophersen, and THE OFFICE )  
OF THE LABOR COMMISSIONER, )  
Respondents. )

Electronically Filed  
May 10, 2020 04:42 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT’S RESPONSE TO ORDER TO SHOW CAUSE**

PLEASE TAKE NOTICE that, pursuant to NRAP 9, the Appellant, Clark County Department of Aviation, (“Appellant” or the “CCDOA”), by and through its counsel, Fisher & Phillips, LLP, hereby files its Response to the Order to Show Cause.

**1. The Appeal Of The Order Of The District Court Is Timely Under NRAP 4**

The Notice of Entry of the District Court’s Order Granting in Part the Petition for Judicial Review of the final agency decision of the Office of the Labor Commissioner (“OLC”) was filed on February 7, 2020

1 (hereinafter the “Order”).<sup>1</sup> Order attached as **Exhibit 1**. On February 21,  
2 2020, Appellant filed a Motion for Reconsideration of the Order (the  
3 “Motion”)<sup>2</sup>, together with a Motion for an Order Shortening Time (“OST  
4 Motion”). Copies of the Motion and the OST Motion are attached as  
5 **Exhibits 2 and 3**.  
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8 The Motion addressed the conflicting language in paragraphs 4<sup>3</sup> and  
9 7<sup>4</sup> of the District Court’s final Order, that when read together, purported to  
10 simultaneously remand the matter to the OLC and retain jurisdiction over  
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13 <sup>1</sup> The OLC’s ruling that prompted the LMCC’s Petition for Judicial  
14 Review was solely that the carpet installation work at McCarran Airport  
15 did not involve public money and thus prevailing wage did not need to be  
16 paid on that work.

17 <sup>2</sup> Appellant did not believe that the Motion for Reconsideration was a  
18 tolling motion as defined by NRAP 4(a)(4), but one made under EDCR  
19 2.24 (although not specifically denominated as such). No reference to  
20 NRCPP 59 was made therein.

21 <sup>3</sup> Paragraph 4 of the Order stated:

22 The Court further Orders *the matter remanded* to the OLC  
23 for the sole purpose of determining the amount, if any, of the  
24 completed work constitutes maintenance and to whom and  
25 how much additional wages should be paid for work subject  
26 to NRS 338 *et seq.*’s prevailing wage requirements. In  
27 making any such determinations, the OLC must not separate  
28 the Project into smaller units as doing so is in violation of  
Nevada law.

See Ex. 1 at p. 8 ¶ 4 (emphasis added).

<sup>4</sup> Paragraph 7 of the Order stated:

The Court further Orders that it *retains jurisdiction* over any  
subsequent proceedings that may be necessary for the  
collection of information, the enforcement of this Order or for  
further review, if any, as may be sought by the parties.

See Ex. 1 at p. 8 ¶ 7 (emphasis added).

1 further proceedings.<sup>5</sup> See Ex. 2. Such an order would deprive the OLC of  
2 the power to hear the matter and act on remand (and would render any  
3 enforcement action the OLC did take based on the Order, *ultra vires*). See  
4 *Westside Charter Service, Inc. v. Gray Line Tours of S. Nev.*, 99 Nev. 456,  
5 459-460, 664 P.2d 351, 353 (1983); see also *SFPP, L.P. v. Second Jud.*  
6 *Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (Nev. 2007).  
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8  
9 Additionally, the language of the Order could be construed as  
10 limiting the OLC's ability to accept new evidence on remand,<sup>6</sup> which  
11 appeared to be inconsistent with the District Court's findings announced at  
12 the hearing.<sup>7</sup> See August 27, 2019 Hearing Transcript at page 15:1-6,  
13 attached as **Exhibit 5**. Based on such inconsistencies, it appeared to the  
14 CCDOA that the District Court might have been mistaken or perhaps  
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18 <sup>5</sup> This issue was also raised in the CCDOA's objections to the draft order  
19 submitted by the Petitioner, Southern Nevada Labor Management  
20 Cooperation Committee ("LMCC"). See Objections attached as **Exhibit**  
21 **4**.

22 <sup>6</sup> The OLC's original determination was limited to the finding that the  
23 carpet maintenance work at issue was not paid for with public money, and  
24 the OLC never considered evidence as to whether such carpet work was a  
25 maintenance project or maintenance work and therefore not subject to  
26 prevailing wage.

27 <sup>7</sup> The District Court stated:

28 But I think it would be improper for me to determine at this  
point that the labor commissioner is without discretion to  
undertake that full review and that must only just decide who  
gets paid what. I am going to decline, Mr. James, to go that  
far.

Ex. 5 at p. 15:1-6.

1 overlooked the exact contents of the proposed order, or at least that the  
2 District Court had not considered the potential interpretation of the  
3 language contained in the LMCC's proposed order. Cf. March 31, 2020  
4 Hearing Transcript attached as **Exhibit 6**, at p. 16:13-20. Without  
5 clarification, the CCDOA could not determine what course of action (if  
6 any) was needed to preserve its interests. Due to the presence of this  
7 ambiguous language, the CCDOA filed the Motion to ask the District  
8 Court to reconsider its chosen language, or in the alternative, to clarify the  
9 language of the Order to clearly state that these problematic outcomes  
10 were in fact the outcomes intended by the District Court. Ex. 2.  
11

12 In *AA Primo Builders*, this Court held that:

13 so long as a post-judgment motion for reconsideration is in  
14 writing, timely filed, states its grounds with particularity, and  
15 'request[s] a substantive alteration of the judgment, not  
16 merely the correction of a clerical error, or relief of a type  
17 wholly collateral to the judgment,' [] there is no reason to  
18 deny it NRCP 59(e) status, with tolling effect under NRAP  
19 4(a)(4)(C).  
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21 *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585 (Nev. 2010).

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1           Accordingly, a motion is not a tolling motion if it seeks only to  
2 correct a clerical error or does not request substantive alteration of the  
3 judgment. *Id.* The Motion at issue here did not seek substantive alteration  
4 of the judgment, it merely sought clarification or confirmation of the  
5 findings in the judgment.<sup>8</sup> *See* Ex. 2.

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8           The Motion was specifically filed with a request to be heard on  
9 shortened time through its accompanying OST Motion. The OST Motion  
10 acknowledged that the Motion was not a tolling motion. *See* Ex. 3.  
11 Unfortunately, the District Court denied the OST Motion by setting the  
12 OST Motion for hearing on the same date that the Motion was set for  
13 hearing, March 31, 2020, which was three weeks after the 30-day appeal  
14 deadline. *See* February 24, 2020 Orders setting Hearings on Motion and  
15 OST Motion attached as **Exhibits 7 and 8**. In fact (though not dispositive  
16 on this Court), at the District Court hearing on the Motion, all three parties  
17 and the District Court acknowledged that Motion was not a tolling motion,  
18 that an appeal to the Supreme Court of Nevada had been filed, and the  
19 District Court had been divested of jurisdiction. *See* Ex. 6. Thus, the  
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25           <sup>8</sup> To the extent the Motion argued that the District Court misapplied the  
26 law, it did so to highlight alternative readings and consequences of the  
27 Order as written — for example, if the Order could have two  
28 interpretations, and the first interpretation violated the law, the District  
Court should clarify that the second interpretation was the interpretation  
intended.

1 CCDOA had no choice but to file a timely appeal on March 9, 2020 or risk  
2 losing the right to appeal permanently.  
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4 As the Motion for Reconsideration only sought clarification of the  
5 conflicting language of the Order and not reconsideration of the merits of  
6 the Order itself, the Motion is not considered a “tolling motion” as defined  
7 by NRAP 4(a)(4), and the appeal was timely filed on March 9, 2020  
8 within 30 days of the final Order. *See* NRAP 4(a)(1). Therefore, the  
9 appeal was not prematurely filed, and the Court should not dismiss this  
10 case for lack of jurisdiction.  
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12 DATED this 15<sup>th</sup> day of May, 2020.  
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14  
15 Respectfully Submitted by:  
16 FISHER & PHILLIPS LLP  
17

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25  
26  
27  
28

**CERTIFICATE OF MAILING**

This is to certify that on the 15th day of May, 2020, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE**, via the Court's e-file and e-service system, and the same was served on those case participants who are registers users as follows:

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