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Elizabeth A. Brown
Clerk of Supreme Court

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ex rel. DEPARTMENT OF CORRECTIONS

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel., its
DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

CASE NO: A-19-797661-J

DEPT NO: XVI

NOTICE OF APPEAL

Notice is hereby given that the Petitioner, State of Nevada ex rel. its Department of Corrections, hereby appeals to the Supreme Court of Nevada from the District Court's Findings of Fact, Conclusions of Law, and Order on Petition for Judicial Review entered in this action on the 13th day of October, 2020, which is attached as Exhibit 1.

DATED: November 12, 2020.

AARON D. FORD
Attorney General

By: /s/ Michelle Di Silvestro Alanis
Michelle Di Silvestro Alanis (Bar No. 10024)
Supervising Senior Deputy Attorney General

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 12th day of November, 2020; I electronically filed the foregoing **NOTICE OF APPEAL** with the Clerk of the Court by using the electronic filing system. Parties that are registered with this Court's electronic filing system will be served electronically.

Daniel Marks, Esq,
Law Offices of Daniel Marks
610 S. Ninth St.
Las Vegas, NV 89101

For those parties not registered, service will be made on November 18, 2020 by depositing a copy for mailing in the United States Mail, first-class postage pre-paid, at Las Vegas, Nevada to the following:

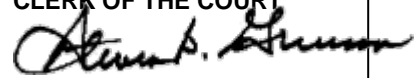
Mark Gentile
Hearing Officer
Department of Administration
2200 S. Rancho Dr. Ste. 220
Las Vegas, NV 89102

/s/ Anela Kaheaku

An employee of the State of Nevada
Office of the Attorney General

EXHIBIT 1

EXHIBIT 1



NEOJ
LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
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(702) 386-0536; FAX (702) 386-6812
Attorneys for Respondent Jose Navarrete

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS,

Case No.: A-19-797661-J
Dept. No.: XVI

Petitioner,

vs.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel., its
DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER ON PETITION FOR JUDICIAL REVIEW**

TO: STATE OF NEVADA ex rel, DEPARTMENT OF PUBLIC SAFETY, Petitioner; and

TO: MICHELLE DI SILVESTRO ALANIS, Deputy Attorney General, Attorney for Petitioner:

1 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,**
2 **AND ORDER ON PETITION FOR JUDICIAL REVIEW**

3 PLEASE TAKE NOTICE that an Order was entered in the above-entitled action on the 12th day
4 of October 2020, a copy of which is attached hereto.

5 DATED this 12th day of October 2020.

6 LAW OFFICE OF DANIEL MARKS

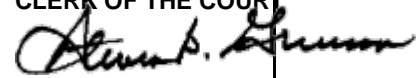
7 /s/Adam Levine, Esq.
8 DANIEL MARKS, ESQ.
9 Nevada State Bar No. 002003
10 office@danielmarks.net
11 ADAM LEVINE, ESQ.
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14 610 South Ninth Street
15 Las Vegas, Nevada 89101
16 (702) 386-0536: FAX (702) 386-6812
17 Attorneys for

18 **CERTIFICATE OF SERVICE BY ELECTRONIC MEANS**

19 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 12th
20 day of October 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically
21 transmitted a true and correct copy of the above and foregoing NOTICE OF ENTRY OF FINDINGS
22 OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR JUDICIAL REVIEW by
23 way of Notice of Electronic Filing provided by the court mandated E-file & Serve system, to the e-mail
24 address on file for:

25 Michelle Di Silvestro Alanis, Esq.
 Deputy Attorney General
 ATTORNEY GENERAL'S OFFICE
 Attorney for Petitioner
 e-mail: malanis@ag.nv.gov
 akaheaku@ag.nv.gov

/s/ Joi E. Harper
 An employee of the
 LAW OFFICE OF DANIEL MARKS_____



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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel, DEPARTMENT
OF CORRECTIONS,

Case No.: A-19-797661-J
Dept. No.: XVI

Petitioner,

v.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel; its
DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR
JUDICIAL REVIEW**

This matter having come on for hearing on the 9th day of June, 2020, on Petitioner's
Petition for Judicial Review, filed on June 28, 2019. Petitioner State of Nevada appearing by and
through its counsel, Michelle Di Silvestro Alanis, of the Attorney General's Office; and
Respondent Jose Navarrete appearing by and through his counsel Daniel Marks, Esq., of the Law
Office of Daniel Marks; the Court having reviewed the papers and pleadings on file, including
Petitioner's Opening Brief, filed on November 27, 2019; Respondent's Answering Brief, filed on
February 26, 2020; and Petitioner's Reply Brief, filed on May 15, 2020; having heard the
arguments of counsel, and good cause appearing:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 **A. Findings of Fact**

2 THE COURT HEREBY FINDS that the hearing officer's factual conclusions are
3 supported by substantial evidence. *See Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245, 249-50
4 (2014).

5 Respondent Jose Navarrete ("Navarrete") was terminated for an incident involving
6 another correction officer, Paul Valdez ("Valdez"), and inmate Rickie Norelus ("Norelus") at
7 Southern Desert Correctional Center ("SDCC"). (ROA 583.)

8 On October 9, 2016, during the breakfast service, Navarrete and Valdez "were randomly
9 searching inmates leaving culinary for contraband." (ROA 583-84.) This search, as well as other
10 searches, are "a common occurrence" at SDCC. (ROA 583.) A surveillance video recorded the
11 incident from a single perspective with no audio. (ROA 583.)

12 During the hearing at issue, Hearing Officer Mark Gentile ("Gentile") was provided an
13 enhanced and slow motion video of the crucial moments of this incident. (ROA 584, 709-11 &
14 1150-51.) Navarrete also provided comprehensive testimony regarding what occurred during
15 each stage of the encounter. (ROA 584.) Gentile found Navarrete credible. (ROA 584.)

16 Gentile also found, "without question":

17 that Mr. Norelus was acting differently than the other inmates when placed on the
18 wall for a pat down. He was clearly agitated and his hands were not in the proper
19 position. He appears to be continually looking around anxiously. There is,
20 unfortunately, no audio and one cannot determine what is being said by the
21 officers or the inmates - yet, the head and body movements of all reflect, without a
22 doubt, that there was continual chatter by inmate Norelus. The testimony by Mr.
23 Navarrete was that Mr Norelus was being uncooperative and verbally abusive
24 throughout the encounter.

25 (ROA584.) These findings support Navarrete's testimony that Norelus was noncompliant.

26 With regard to this incident, Gentile found:

27 As Officer Valdez abruptly approaches the inmate from behind, the inmate does
28 move backward slightly off the wall and looks over his left shoulder. You can see
the inmate's left arm and shoulders slightly moving backwards, but the hands
remain on the wall. Officer Valdez then pushes the inmate into the wall, grabs the
inmate's neck with his right arm, and wrestles him to the ground.

(ROA 585.)

////

1 This all “occurred in a matter of a few seconds.” (ROA 585.) Valdez immediately cuffed
2 Norelus once on the ground, and Navarrete came over to assist. (ROA 585.) Gentile found that
3 even with the enhanced video, Valdez’ conduct was unjustified. (ROA 585.)

4 With regard to the post-incident video, that includes audio, Gentile found that while
5 Norelus is leaving the area he is “laughing at the officers and claiming they will ‘put his kids
6 through college.’” (ROA 586.) He also “does not appear injured and his conduct makes it seem
7 as if he may have been baiting the officers to some extent, which according to the testimony is a
8 common occurrence” at SDCC. (ROA 586.)

9 Navarrete later submitted an informational report, which states:

10 On October 9, 2016 I, Senior Correctional Officer Navarrete was assigned to
11 Search and Escort Southern Desert Correctional Center. At approximately 06:45
12 hours inmate Norelus #1104257 came off the Culinary wall while C/O Valdez
13 was attempting to restrain him resulting in the spontaneous use of force. When
14 inmate Norelus came off the wall he was resisting and both he and C/O Valdez
went to the ground. I then assisted in holding the inmates upper body down so that
C/O Valdez could restrain him. I notified supervisors and called medical so that
they could respond to the scene. Medical responded and inmate Norelus was
escorted to the infirmary to be further evaluated.

15 (ROA 586.)

16 With regard to Navarrete’s involvement in this incident, Gentile specifically found that
17 NDOC failed to establish “factually by a preponderance of the evidence, that [] Navarrete
18 willfully employed or permitted the use of unauthorized or excessive force” and that “there is
19 absolutely no evidence to reflect that he personally utilized excessive force.” (ROA 588.) This is
20 because Valdez’ use of force “was quite sudden and was over in a matter of a few seconds.”
21 (ROA 589.) Gentile specifically found Navarrete could not have anticipated, nor prevented,
22 Valdez’s spontaneous use of force. (ROA 589.)

23 With regard to the charge of dishonesty in relation to Navarrete’s use of force report,
24 Gentile found, as follows:

25 Navarrete wrote the report without the benefit of reviewing any video - he was
26 trying to assimilate and explain this unexpected event he saw occur literally in a
27 matter of second. The reality is Mr. Navarrete saw this event (the physical use of
28 force by Officer Valdez) take place in a matter of 2-3 seconds, from a side
perspective. He saw it only one time.

1 (ROA 590.) He then concluded:

2 Navarrete's report is brief and, essentially, factually accurate given what he
3 reasonably could be expected to have perceived at the time. From his testimony,
4 and even in his pre-hearing interviews, it is clear that he believed, initially, Officer
5 Valdez was intending to restrain the inmate. While this was happening, a
6 spontaneous use of force situation occurred. Norelus did come off the wall as
7 Officer Valdez was either properly or improperly attempting to restrain him, but I
8 do not think Mr. Navarrete could be fairly called up to conclude from his 2-3
9 second perception whether Officer Valdez' actions were appropriate or not, or
10 whether the take down was initiated by the wrongful conduct of the inmate or of
11 Officer Valdez. The inmate did rock backwards just prior to physical contact. I do
12 not believe that Mr. Navarrete was in the position to know what Officer Valdez
13 perceived or why this ended as it did. Mr. Navarrete's report is a bland statement
14 of events which are, essentially, true. "When he came off the wall he was
15 resisting." They did end up about 15 feet away - inmate Norelus didn't just flop to
16 the ground. Both officers, ultimately, had to restrain the inmate. Once again, this
17 appears, to me, to be a plain statement that appears, essentially true.

18 (ROA 590-91.)

19 Based on these factual findings, and NDOC's failure to prove otherwise by a
20 preponderance of the evidence, Gentile concluded that Navarrete's dismissal from NDOC be
21 reversed with restoration to his prior position with back pay and benefits. (ROA 591.)

22 **B. Conclusions of Law**

23 NRS 233B.135 sets forth the rules of judicial review district courts must follow. Along
24 with NRS 233B.135, the Court finds that *O'Keefe v. Dept. of Motor Veh.*, 134 Nev. 752 (2018),
25 and *Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245, 251(2014) provide guidance that aids the
26 district court's review on the instant petition. Under the review process found in *O'Keefe*, a
27 hearing officer must first determine whether the employee in fact committed the alleged
28 violation. *O'Keefe*, 134 Nev. at 759. When a hearing officer's conclusions of law are closely
related to the findings of fact, those legal conclusions must also be afforded deference and may
not be disturbed if supported by substantial evidence. *Jones v. Rosner*, 102 Nev. 215, 719 P.2d
805 (1986).

Since the hearing officer reviews the facts, the applicable standard for this review is the
preponderance-of-the-evidence standard. See *Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245,
251(2014) (holding that in absence of a specific governing statute, the preponderance of the
evidence standard should be applied, as it is the minimum standard to guarantee due process).

1 The hearing officer ultimately concluded, under step one of *O'Keefe* and the preponderance of
2 the evidence standard, that Navarrete did not commit the alleged violations.

3 Petitioner failed to prove the hearing officer's decision violated Petitioner's substantial
4 rights under NRS 233B.135(2). To meet this burden, the petitioner must prove the agency's
5 decision (1) violates the constitution or other statutory provisions, (2) exceeds the agency's
6 statutory authority, (3) is based on an unlawful procedure, (4) constitutes legal error, (5) clearly
7 erroneous based on "reliable probative and substantial evidence on the whole record," or (6)
8 "arbitrary and capricious or characterized by abuse of discretion." NRS 233B.135(2). Petitioner
9 failed to prove any of these bases to reverse the hearing officer's decision.

10 **C. Order**

11 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the hearing officer's
12 ruling is hereby AFFIRMED.

13 DATED this 9th day of October, 2020.

14 
15 DISTRICT COURT JUDGE ZJ

16
17 Respectfully submitted:

18 DATED this 2nd day of October, 2020.

19 LAW OFFICE OF DANIEL MARKS

20 /s/ Nicole M. Young

21 DANIEL MARKS, ESQ.

22 Nevada State Bar No. 002003

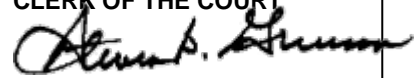
23 NICOLE M. YOUNG, ESQ.

24 Nevada State Bar No. 012659

25 610 S. Ninth Street

26 Las Vegas, Nevada 89101

27 Attorneys for Respondent/Employee
28



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Attorneys for Petitioner STATE OF NEVADA
ex rel. DEPARTMENT OF CORRECTIONS

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel., its
DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

CASE NO: A-19-797661-J

DEPT NO: XVI

CASE APPEAL STATEMENT

1. Name of appellant filing this Case Appeal Statement:

State of Nevada, Department of Corrections

2. Identify the Judge issuing the decision, judgment, or order appealed from:

Honorable Timothy C. Williams, Eighth Judicial District Court, Dept. XVI

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: State of Nevada, Department of Corrections

Counsel for Appellant:

Michelle Di Silvestro Alanis
Supervising Senior Deputy Attorney General
Office of the Attorney General
555 East Washington Avenue, #3900
Las Vegas, Nevada 89101

(702) 486-3268

- 4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

Respondent: Jose Miguel Navarrete

Trial Counsel for Respondent Navarrete

Daniel Marks, Esq.
Law Office of Daniel Marks
601 S. Ninth St.
Las Vegas, Nevada 89101
(702) 386-0536

Counsel for Appellant is without information as to whether or not Respondent has or will retain the same counsel for the appellate proceeding.

Respondent: State of Nevada Department of Administration, Personnel Commission,
Hearing Officer

Counsel for Appellant is without information as to whether or not Respondent will appear in this action and retain counsel for the appellate proceeding.

- 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

N/A

- 6. Indicate whether Appellant was represented by appointed or retained counsel in the District Court:**

Appellant was represented by retained counsel in the district court.

- 7. Indicate whether Appellant is represented by appointed or retained counsel on appeal:**

Appellant is represented by retained counsel on appeal.

- 8. Indicate whether Appellant was granted leave to proceed in forma pauperis, and the date of entry of the District Court Order granting such leave:**

N/A

- 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information or petition was filed):**

Appellant's Petition for Judicial Review was filed on June 28, 2019.

1 **10. Brief description of the nature of the action and result in the district court, including**
2 **the type of judgment or order being appealed and the relief granted by the district**
3 **court:**

4 State of Nevada, ex rel. Department of Corrections (NDOC), terminated Respondent, Jose M.
5 Navarrete (Employee), a correctional officer, effective April 21, 2017 for various acts of misconduct
6 including dishonesty and allowing the use of excessive force or an act of violence to occur against NDOC
7 policy. Employee appealed his termination to the Department of Administration Personnel Commission
8 pursuant to NRS 284.390. A hearing was held on April 2, 2019 and April 16, 2019 before Hearing Officer
9 Mark Gentile. On May 30, 2019, the hearing officer entered his Findings of Fact, Conclusions of Law
10 Decision and Order (Decision) finding that NDOC did not prove by a preponderance of the evidence that
11 Employee engaged in the misconduct and set aside Employee's termination and reinstated him to his
12 position with full back pay and benefits for the period of dismissal subject to the parties previous
13 stipulation.

14 NDOC filed a Petition for Judicial Review with the District Court. The District Court denied
15 judicial review and affirmed the Hearing Officer's ruling. DPS now appeals the District Court's denial
16 of judicial review and affirmance of the hearing's officer decision to reverse the discipline.

17 **11. Whether the case has previously been the subject of an appeal:**

18 No.

19 **12. Whether the appeal involves child custody or visitation:**

20 No.

21 **13. Whether the appeal involves the possibility of settlement:**

22 This appeal is unlikely to involve the possibility of settlement.

23 DATED: November 12, 2020.

24 AARON D. FORD
25 Attorney General

26 By: /s/ Michelle Di Silvestro Alanis
27 Michelle Di Silvestro Alanis (Bar No. 10024)
28 Supervising Senior Deputy Attorney General

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 12th day of November, 2020; I electronically filed the foregoing **CASE APPEAL STATEMENT** with the Clerk of the Court by using the electronic filing system. Parties that are registered with this Court's electronic filing system will be served electronically.

Daniel Marks, Esq,
Law Offices of Daniel Marks
610 S. Ninth St.
Las Vegas, NV 89101

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Mark Gentile
Hearing Officer
Department of Administration
2200 S. Rancho Dr. Ste. 220
Las Vegas, NV 89102

/s/ Anela Kaheaku

An employee of the State of Nevada
Office of the Attorney General

CASE SUMMARY

CASE NO. A-19-797661-J

Nevada Dept of Corrections, Petitioner(s)
vs.
Jose Navarette, Respondent(s)

§
§
§
§
§

Location: **Department 16**
Judicial Officer: **Williams, Timothy C.**
Filed on: **06/28/2019**
Cross-Reference Case Number: **A797661**

CASE INFORMATION

Statistical Closures

10/12/2020 Summary Judgment

Case Type: **Other Judicial Review/Appeal**

Case Status: **10/12/2020 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-797661-J
Court Department 16
Date Assigned 06/28/2019
Judicial Officer Williams, Timothy C.

PARTY INFORMATION

Petitioner Nevada Dept of Corrections

Lead Attorneys

Alanis, Michelle D.
Retained
7023079500(W)

Respondent Navarette, Jose Miguel

Marks, Daniel
Retained
702-386-0536(W)


Nevada Dept of Administration, Personnel Commission, Hearing Officer


DATE

EVENTS & ORDERS OF THE COURT


INDEX


EVENTS

06/28/2019  Petition for Judicial Review
Filed by: Petitioner Nevada Dept of Corrections
Petition for Judicial Review

07/01/2019  Notice of Intent to Participate
Filed By: Respondent Navarette, Jose Miguel
Notice of Intent to Participate

07/01/2019  Motion to Stay
Motion for Stay

07/01/2019  Exhibits
Filed By: Petitioner Nevada Dept of Corrections
Exhibit 1

07/01/2019  Exhibits
Filed By: Petitioner Nevada Dept of Corrections
Exhibit 2

CASE SUMMARY

CASE NO. A-19-797661-J

07/01/2019	 Exhibits Filed By: Petitioner Nevada Dept of Corrections <i>Exhibit 3</i>
07/01/2019	 Exhibits Filed By: Petitioner Nevada Dept of Corrections <i>Exhibit 4</i>
07/01/2019	 Exhibits Filed By: Petitioner Nevada Dept of Corrections <i>Exhibit 5</i>
07/01/2019	 Exhibits Filed By: Petitioner Nevada Dept of Corrections <i>Exhibit 6</i>
07/01/2019	 Exhibits Filed By: Petitioner Nevada Dept of Corrections <i>Exhibit 7</i>
07/02/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/02/2019	 Certificate of Service Filed by: Petitioner Nevada Dept of Corrections <i>Certificate of Service</i>
07/02/2019	 Amended Filed By: Petitioner Nevada Dept of Corrections <i>Amended Exhibit #2 to Motion for Stay</i>
07/02/2019	 Certificate of Service Filed by: Petitioner Nevada Dept of Corrections <i>Certificate of Service</i>
07/09/2019	 Opposition Filed By: Respondent Navarette, Jose Miguel <i>Respondent Jose Navarrete's Opposition to Petitioner's Motion to Stay and Petitioner's Counter-Motion For Immediate Reinstatement and Payment of All Back Pay and Full Benefits</i>
07/16/2019	 Reply to Opposition Filed by: Petitioner Nevada Dept of Corrections <i>Petitioner's Reply to Respondent, Jose Navarrete's Opposition to Petition's Motion for Stay and Opposition to Respondent's Counter-Motion for Immediate Reinstatement and Payment of All Back Pay and Full Benefits</i>
07/18/2019	 Stipulation and Order Filed by: Respondent Navarette, Jose Miguel <i>Stipulation and Order to Continue 8/13/19 Hearing</i>
07/18/2019	 Notice of Entry of Order Filed By: Respondent Navarette, Jose Miguel <i>Notice of Entry of Order</i>













CASE SUMMARY
CASE NO. A-19-797661-J

07/25/2019	 Reply in Support Filed By: Respondent Navarette, Jose Miguel <i>Reply in Support of Counter-Motion for Immediate Reimbursement and Payment of Back Pay and Full Benefits</i>
08/09/2019	 Acceptance of Service Filed By: Petitioner Nevada Dept of Corrections <i>Acceptance of Service</i>
08/14/2019	 Transmittal of Record on Appeal Party: Respondent Nevada Dept of Administration, Personnel Commission, Hearing Officer <i>TRANSMITTAL OF RECORD ON APPEAL</i>
08/14/2019	 Affidavit Filed By: Respondent Nevada Dept of Administration, Personnel Commission, Hearing Officer <i>AFFIDAVIT AND CERTIFICATION</i>
08/14/2019	 Certification of Transmittal Party: Respondent Nevada Dept of Administration, Personnel Commission, Hearing Officer <i>CERTIFICATION OF TRANSMITTAL</i>
09/18/2019	 Notice of Attorney Lien Filed By: Respondent Navarette, Jose Miguel <i>Notice of Attorney's Lien</i>
09/24/2019	 Motion to Adjudicate Attorney's Lien Filed by: Respondent Navarette, Jose Miguel <i>Motion for Adjudication of Attorney's Lien</i>
09/25/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/26/2019	 Ex Parte Motion Filed By: Respondent Navarette, Jose Miguel <i>ExParte Motion for An Order Shortening Time on Motion to Adjudicate Attorney's Lien</i>
09/27/2019	 Opposition to Motion Filed By: Petitioner Nevada Dept of Corrections <i>Petitioner's Opposition to Motion for Adjudication of Attorney's Lien</i>
09/30/2019	Opposition to Motion <i>Petitiner's Opposition to Motion for Adjudication of Attorney's Lien</i>
10/02/2019	 Stipulation and Order Filed by: Petitioner Nevada Dept of Corrections <i>Stipulation and Order to Extend Time for Filing of the Opening Brief</i>
10/02/2019	 Notice of Entry of Order Filed By: Petitioner Nevada Dept of Corrections <i>Notice of Entry of Order</i>
10/07/2019	 Motion Filed By: Respondent Navarette, Jose Miguel

CASE SUMMARY

CASE NO. A-19-797661-J

Motion to Advance Hearing Date on Order Shortening Time RE: Motion for Adjudication of Attorney's Lien










10/08/2019	 Reply Points and Authorities Filed by: Respondent Navarette, Jose Miguel <i>Respondent's Reply to Points and Authorities</i>
10/09/2019	 Order Filed By: Respondent Navarette, Jose Miguel <i>Order From August 20, 2019 Hearing</i>
10/09/2019	 Notice of Entry of Order Filed By: Respondent Navarette, Jose Miguel <i>Notice of Entry of Order</i>
10/14/2019	 Supplemental Points and Authorities Filed by: Respondent Navarette, Jose Miguel <i>Respondent's Supplemental Authorities</i>
10/24/2019	 Stipulation and Order Filed by: Petitioner Nevada Dept of Corrections <i>Stipulation and Order to Extend Time for Filing of the Opening Brief</i>
10/24/2019	 Notice of Entry of Order Filed By: Petitioner Nevada Dept of Corrections <i>Notice of Entry of Order</i>
11/20/2019	 Supplemental Transmittal of Record on Appeal Filed By: Respondent Nevada Dept of Administration, Personnel Commission, Hearing Officer <i>Supplemental Transmittal of Record on Appeal</i>
11/20/2019	 Affidavit Filed By: Respondent Nevada Dept of Administration, Personnel Commission, Hearing Officer <i>AFFIDAVIT AND CERTIFICATION</i>
11/20/2019	 Certification of Transmittal Party: Respondent Nevada Dept of Administration, Personnel Commission, Hearing Officer <i>CERTIFICATION OF TRANSMITTAL</i>
11/20/2019	 Amended Filed By: Respondent Nevada Dept of Administration, Personnel Commission, Hearing Officer <i>AMENDED CERTIFICATION OF TRANSMITTAL</i>
11/27/2019	 Petitioners Opening Brief Filed by: Petitioner Nevada Dept of Corrections <i>Petitioner's Opening Brief</i>
12/11/2019	 Stipulation and Order Filed by: Petitioner Nevada Dept of Corrections <i>Stipulation and Order to Stay Briefing</i>
12/12/2019	

CASE SUMMARY
CASE NO. A-19-797661-J

	 Notice of Entry of Order Filed By: Petitioner Nevada Dept of Corrections <i>Notice of Entry of Order</i>
12/18/2019	 Stipulation and Order Filed by: Respondent Navarette, Jose Miguel <i>Stipulation and Order to Extend the Time of Filing of Respondent Jose Navarrete's Answering brief</i>
12/19/2019	 Notice of Entry of Stipulation and Order Filed By: Respondent Navarette, Jose Miguel <i>Notice of Entry of Stipulation and Order</i>
01/24/2020	 Order Filed By: Respondent Navarette, Jose Miguel <i>Order from October 10, 2019 Hearing</i>
01/24/2020	 Notice of Entry of Order Filed By: Respondent Navarette, Jose Miguel <i>Notice of Entry of Order</i>
02/07/2020	 Stipulation and Order Filed by: Respondent Navarette, Jose Miguel <i>Stipulation and Order to Extend the Time of Filing of Respondent Jose Navarrete's Answering Brief (Second Request)</i>
02/12/2020	 Notice of Entry of Stipulation and Order Filed By: Respondent Navarette, Jose Miguel <i>Notice of Entry of Stipulation and Order</i>
02/26/2020	 Answering Brief Filed By: Respondent Navarette, Jose Miguel <i>Respondent's Answering Brief</i>
03/24/2020	 Stipulation and Order Filed by: Petitioner Nevada Dept of Corrections <i>Stipulation and Order to Extend Time for Filing of the Reply Brief</i>
03/24/2020	 Notice of Entry of Order Filed By: Petitioner Nevada Dept of Corrections <i>Notice of Entry of Order</i>
05/01/2020	 Stipulation and Order Filed by: Petitioner Nevada Dept of Corrections <i>Stipulation and Order to Extend Time for Filing of the Reply Brief (Second Request)</i>
05/01/2020	 Stipulation and Order Filed by: Petitioner Nevada Dept of Corrections <i>Stipulation and Order to Extend Time for Filing of the Reply Brief (Second Request)</i>
05/05/2020	 Notice of Entry of Order Filed By: Petitioner Nevada Dept of Corrections <i>Notice of Entry of Order</i>

CASE SUMMARY

CASE NO. A-19-797661-J

05/15/2020	 Petitioner's Reply Brief Filed by: Petitioner Nevada Dept of Corrections <i>Petitioner's Reply Brief</i>
05/22/2020	 Notice Filed By: Petitioner Nevada Dept of Corrections <i>Petitioner's Notice of Readiness and Request for Setting Matter for Hearing</i>
05/26/2020	 Notice of Hearing <i>Notice of Hearing</i>
10/12/2020	 Findings of Fact, Conclusions of Law and Order Filed By: Respondent Navarette, Jose Miguel <i>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR JUDICIAL REVIEW</i>
10/13/2020	 Notice of Entry of Order Filed By: Respondent Navarette, Jose Miguel <i>Notice of Entry of Findings of Fact, Conclusions of Law, And Order on Petition For Judicial Review</i>
11/12/2020	 Notice of Appeal Filed By: Petitioner Nevada Dept of Corrections <i>Notice of Appeal</i>
11/12/2020	 Case Appeal Statement Filed By: Petitioner Nevada Dept of Corrections <i>Case Appeal Statement</i>
HEARINGS	
08/20/2019	Motion For Stay (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Petitioner's Motion to Stay</i> Motion Denied; See 8/29/19 Minute Order
08/20/2019	Counter-motion (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Opposition to Motion to Stay and Counter-Motion For Immediate Reinstatement and Payment of All Back Pay and Full Benefits</i> Decision Made; Resolved by Denial of Stay; See 8/29/19 Minute Order
08/20/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Williams, Timothy C.) Matter Heard; Journal Entry Details: <i>APPEARANCES CONTINUED: Nicole Young, Esq. present for Respondent Jose Navarette. PETITIONER'S MOTION TO STAY...OPPOSITION TO MOTION TO STAY AND COUNTER-MOTION FOR IMMEDIATE REINSTATEMENT AND PAYMENT OF ALL BACK PAY AND FULL BENEFITS Ms. Alanis advised Counter-motion also filed; Court so noted. Arguments by Ms. Alanis and Mr. Marks as to Motion to Stay and the Counter-motion. Court stated will review Otto case and decision to issue in a week.;</i>
08/29/2019	 Minute Order (1:05 PM) (Judicial Officer: Williams, Timothy C.) <i>re: Petitioner's Motion for Stay</i> Minute Order - No Hearing Held; Journal Entry Details: <i>After review and consideration of the arguments of counsel and the moving papers on file herein, the Court determined as follows: The Court in the instant action is called upon to determine whether strict or substantial compliance is required when filing the application for stay under NRS 233B.140 because the State of Nevada ex rel. Nevada Department of</i>

CASE SUMMARY

CASE NO. A-19-797661-J

Corrections (NDOC), failed to file its application for stay at the time of filing its petition for judicial review. NRS 233B.140 provides in pertinent part, A petitioner who applies for a stay of the final decision in a contested case shall file and serve a written motion for stay in the agency and all parties of record at the time of filing the petition for judicial review. The record reveals that NDOC filed its Petition for Judicial Review on June 28, 2019. However, NDOC did not file the motion for stay until July 1, 2019, on the last day NDOC was allowed to file it Petition for Judicial Review. In determining whether strict or substantial compliance is required under a statute, as it relates to mandated court filings and timing, Nevada law focuses on the nature of the statutory requirements and whether it is a time and manner statute or a form and content statute. In Leven v. Frey, the Supreme Court noted: Our interpretation of the statute s timing requirements and our conclusion that those requirements must be complied with strictly is consistent with the general tenet that time and manner requirements are strictly construed, whereas substantial compliance may be sufficient for form and content requirements. Leven v. Frey, 123 Nev. 399, 408. This Court determines that NRS 233B.140 is a time and manner statute that mandates strict construction. Thus, in order for this Court to consider the application for stay, it must be filed at the time of the filing of the Petition for Judicial Review. Since the motion for stay was filed not at the time of, but after the time of filing the Petition for Judicial Review, the Court has no choice but to follow the statutory mandate under a time and manner statute and must deny the application for stay as untimely. Additionally, the Court sees no need to address the other issues raised in opposition to the application for stay. Consequently, NDOC s Motion for Stay shall be DENIED. Counsel for Respondent shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature. CLERK'S NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.;

10/10/2019



Motion (9:00 AM) (Judicial Officer: Williams, Timothy C.)

Motion to Advance Hearing Date on OST re: Motion for Adjudication of Attorney's Lien Decision Made;

Journal Entry Details:

Colloquy regarding whether matter may be argued and submitted today or scheduling of same. COURT ORDERED, Motion for Adjudication of Attorney's Lien RESET from 11/5/19 to 10/16/19. 10/16/19 9:00 AM MOTION FOR ADJUDICATION OF ATTORNEY'S LIEN;

10/16/2019



Motion (9:00 AM) (Judicial Officer: Williams, Timothy C.)

Events: 09/24/2019 Motion to Adjudicate Attorney's Lien

Motion for Adjudication of Attorney's Lien

See 10/10/19 Minutes

Motion Granted; See 12/9/19 Minute Order

Journal Entry Details:

Arguments by counsel. Matter submitted. Court stated will make determination on figures and fringe benefits after review of figures and whether there is deficiency. Mr. Marks requested for the order to direct payment within ten days after notice of entry of order. Court stated will incorporate as soon as possible language.;

12/09/2019



Minute Order (3:21 PM) (Judicial Officer: Williams, Timothy C.)

Plaintiff s Motion to Adjudication of Attorney s Lien

Minute Order - No Hearing Held;

Journal Entry Details:

After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows: Under Nevada law, a perfected attorney s lien takes priority and is superior to the lien of a general creditor. As noted by the Nevada Supreme Court: [A] perfected attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that action have been paid. Once a net judgment is determined, then the attorney's lien is superior to any later lien asserted against that judgment. See United States Fidelity & Guarantee v. Levy, 77 F.2d 972 (5th Cir.1935) (attorney's lien is superior to offset from a claim arising out of a different matter from which the judgment arose); Cetenko v. United California Bank, 30 Cal.3d 528, 179 Cal.Rptr. 902, 638 P.2d 1299 (1982) (attorney's lien is superior to that of another creditor who obtained a lien on the same judgment); Haupt v. Charlie's Kosher Market, 17 Cal.2d 843, 112 P.2d 627 (1941) (attorney's lien is superior to that of third-party judgment creditor). John W. Muije, Ltd. v. A N. Las Vegas Cab Co., 106 Nev. 664, 667, 799 P.2d 559, 561 (1990). In Michel v. Eighth Judicial Dist. Court

CASE SUMMARY

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ex rel. Cty. of Clark 117 Nev. 145, 149 50, 17 P.3d 1003, 1006 (2001), the Nevada Supreme Court reiterated priority of attorney's liens over other liens, even statutory liens, and set forth the public policy for giving attorney's liens priority: [P]ersons with meritorious claims might well be deprived of legal representation because of their inability to pay legal fees or to assure that such fees will be paid out of the sum recovered in the latest lawsuit. Such a result would be detrimental not only to prospective litigants, but to their creditors as well. *Michel v. Eighth Judicial Dist. Court* *ex rel. Cty. of Clark*, 117 Nev. 145, 149 50, 17 P.3d 1003, 1006 (2001). Lastly, NRS 18.015 sets forth the procedures required for perfection and enforcement of an attorney lien. In light of the authority set forth, the Plaintiff's Motion to Adjudication of Attorney's Lien in the amount of thirty-three and one third percent (33 1/3%) of Jose Miguel Navarrete's gross back pay and benefits, including PERS contributions shall be GRANTED. Plaintiff shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature. CLERK'S NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.;

05/29/2020



Minute Order (8:00 AM) (Judicial Officer: Williams, Timothy C.)

Minute Order re: Hearing on 6/9/20 at 1:30 p.m.

Minute Order - No Hearing Held;

Journal Entry Details:

Department 16 Formal Request to Appear Telephonically Please be advised that pursuant to Administrative Order 20-10, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conference through BlueJeans, wherein you dial in prior to your hearing to appear. The call-in number is: Dial the following number: 1-408-419-1715 Meeting ID: 948 657 904 To connect, dial the telephone number then enter the meeting ID followed by #. PLEASE NOTE the following protocol each participant will be required to follow: Place your telephone on mute while waiting for your matter to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each and every time as a record is being made. Please be mindful of sounds of rustling of papers or coughing. CLERK'S NOTE: This Minute Order has been electronically served to counsel through Odyssey eFile. ;

06/09/2020



Petition for Judicial Review (1:30 PM) (Judicial Officer: Williams, Timothy C.)

Oral Argument on Petition for Judicial Review

Decision Made; Affirmed; See 8/6/20 Minute Order

Journal Entry Details:

Counsel present telephonically. Arguments by counsel. Court stated will review matter; decision forthcoming.;

08/06/2020



Minute Order (8:00 AM) (Judicial Officer: Williams, Timothy C.)

Minute Order re: Petition for Judicial Review

Minute Order - No Hearing Held;

Journal Entry Details:

After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows: NRS 233B.135 sets forth the rules of judicial review district courts must follow. Along with NRS 233B.135, the Court finds that O Keefe v. Dept. of Motor Veh., 134 Nev. 752 (2018), and Nassiri v. Chiropractic Phys. Bd., 130 Nev. 245, 251(2014) provide guidance that aids district courts in reaching a decision. Under the review process found in O Keefe, a hearing officer must first determine whether the employee in fact committed the alleged violation. O Keefe, 134 Nev. at 759. Since the hearing officer reviews the facts, the applicable standard for this review is the preponderance-of-the-evidence standard. See Nassiri v. Chiropractic Phys. Bd., 130 Nev. 245, 251(2014) (holding that in absence of a specific governing statute, the preponderance-of-the-evidence standard should be applied, as it is the minimum standard to guarantee due process). In the instant action, the hearing officer concluded that Navarrete did not commit the alleged violations. The Court finds that the hearing officer's factual determinations are supported by substantial evidence. See Nassiri, 130 Nev. at 249-50. Consequently, the Court AFFIRMS the hearing officer's ruling. Respondent shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature. CLERK'S NOTE: This Minute Order has been served to counsel electronically

CASE SUMMARY

CASE NO. A-19-797661-J

through Odyssey eFile.;

DATE

FINANCIAL INFORMATION

Petitioner Nevada Dept of Corrections

Total Charges

24.00

Total Payments and Credits

24.00

Balance Due as of 11/16/2020

0.00

DISTRICT COURT CIVIL COVER SHEET

CLARK County, Nevada
Case No. _____
(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): State of Nevada ex rel. its Department of Corrections	Defendant(s) (name/address/phone): Jose Miguel Navarrete, an individual, State of Nevada ex rel. its Department of Administration, Personnel Department Hearing Officer
Attorney (name/address/phone): Michelle Di Silvestro Alanis 555 E. Washington Ave. Ste. 3900 Las Vegas, Nevada 89101 702-486-3268	Attorney (name/address/phone): Daniel Marks, Esq. 610 S. Ninth Street Las Vegas, NV 89101 702-386-0536

CASE NO: A-19-797661-J
Department 16

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

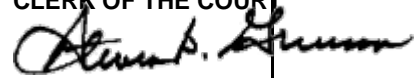
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input checked="" type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

6/28/19
Date

Michelle Di Silvestro Alanis
Signature of initiating party or representative

See other side for family-related case filings.



LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
office@danielmarks.net
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
Attorney for Respondent Jose Navarrete

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel, DEPARTMENT
OF CORRECTIONS,

Case No.: A-19-797661-J
Dept. No.: XVI

Petitioner,

v.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel; its
DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR
JUDICIAL REVIEW**

This matter having come on for hearing on the 9th day of June, 2020, on Petitioner's
Petition for Judicial Review, filed on June 28, 2019. Petitioner State of Nevada appearing by and
through its counsel, Michelle Di Silvestro Alanis, of the Attorney General's Office; and
Respondent Jose Navarrete appearing by and through his counsel Daniel Marks, Esq., of the Law
Office of Daniel Marks; the Court having reviewed the papers and pleadings on file, including
Petitioner's Opening Brief, filed on November 27, 2019; Respondent's Answering Brief, filed on
February 26, 2020; and Petitioner's Reply Brief, filed on May 15, 2020; having heard the
arguments of counsel, and good cause appearing:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 **A. Findings of Fact**

2 THE COURT HEREBY FINDS that the hearing officer's factual conclusions are
3 supported by substantial evidence. *See Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245, 249-50
4 (2014).

5 Respondent Jose Navarrete ("Navarrete") was terminated for an incident involving
6 another correction officer, Paul Valdez ("Valdez"), and inmate Rickie Norelus ("Norelus") at
7 Southern Desert Correctional Center ("SDCC"). (ROA 583.)

8 On October 9, 2016, during the breakfast service, Navarrete and Valdez "were randomly
9 searching inmates leaving culinary for contraband." (ROA 583-84.) This search, as well as other
10 searches, are "a common occurrence" at SDCC. (ROA 583.) A surveillance video recorded the
11 incident from a single perspective with no audio. (ROA 583.)

12 During the hearing at issue, Hearing Officer Mark Gentile ("Gentile") was provided an
13 enhanced and slow motion video of the crucial moments of this incident. (ROA 584, 709-11 &
14 1150-51.) Navarrete also provided comprehensive testimony regarding what occurred during
15 each stage of the encounter. (ROA 584.) Gentile found Navarrete credible. (ROA 584.)

16 Gentile also found, "without question":

17 that Mr. Norelus was acting differently than the other inmates when placed on the
18 wall for a pat down. He was clearly agitated and his hands were not in the proper
19 position. He appears to be continually looking around anxiously. There is,
20 unfortunately, no audio and one cannot determine what is being said by the
21 officers or the inmates - yet, the head and body movements of all reflect, without a
22 doubt, that there was continual chatter by inmate Norelus. The testimony by Mr.
23 Navarrete was that Mr Norelus was being uncooperative and verbally abusive
24 throughout the encounter.

25 (ROA584.) These findings support Navarrete's testimony that Norelus was noncompliant.

26 With regard to this incident, Gentile found:

27 As Officer Valdez abruptly approaches the inmate from behind, the inmate does
28 move backward slightly off the wall and looks over his left shoulder. You can see
the inmate's left arm and shoulders slightly moving backwards, but the hands
remain on the wall. Officer Valdez then pushes the inmate into the wall, grabs the
inmate's neck with his right arm, and wrestles him to the ground.

(ROA 585.)

////

1 This all “occurred in a matter of a few seconds.” (ROA 585.) Valdez immediately cuffed
2 Norelus once on the ground, and Navarrete came over to assist. (ROA 585.) Gentile found that
3 even with the enhanced video, Valdez’ conduct was unjustified. (ROA 585.)

4 With regard to the post-incident video, that includes audio, Gentile found that while
5 Norelus is leaving the area he is “laughing at the officers and claiming they will ‘put his kids
6 through college.’” (ROA 586.) He also “does not appear injured and his conduct makes it seem
7 as if he may have been baiting the officers to some extent, which according to the testimony is a
8 common occurrence” at SDCC. (ROA 586.)

9 Navarrete later submitted an informational report, which states:

10 On October 9, 2016 I, Senior Correctional Officer Navarrete was assigned to
11 Search and Escort Southern Desert Correctional Center. At approximately 06:45
12 hours inmate Norelus #1104257 came off the Culinary wall while C/O Valdez
13 was attempting to restrain him resulting in the spontaneous use of force. When
14 inmate Norelus came off the wall he was resisting and both he and C/O Valdez
went to the ground. I then assisted in holding the inmates upper body down so that
C/O Valdez could restrain him. I notified supervisors and called medical so that
they could respond to the scene. Medical responded and inmate Norelus was
escorted to the infirmary to be further evaluated.

15 (ROA 586.)

16 With regard to Navarrete’s involvement in this incident, Gentile specifically found that
17 NDOC failed to establish “factually by a preponderance of the evidence, that [] Navarrete
18 willfully employed or permitted the use of unauthorized or excessive force” and that “there is
19 absolutely no evidence to reflect that he personally utilized excessive force.” (ROA 588.) This is
20 because Valdez’ use of force “was quite sudden and was over in a matter of a few seconds.”
21 (ROA 589.) Gentile specifically found Navarrete could not have anticipated, nor prevented,
22 Valdez’s spontaneous use of force. (ROA 589.)

23 With regard to the charge of dishonesty in relation to Navarrete’s use of force report,
24 Gentile found, as follows:

25 Navarrete wrote the report without the benefit of reviewing any video - he was
26 trying to assimilate and explain this unexpected event he saw occur literally in a
27 matter of second. The reality is Mr. Navarrete saw this event (the physical use of
28 force by Officer Valdez) take place in a matter of 2-3 seconds, from a side
perspective. He saw it only one time.

1 (ROA 590.) He then concluded:

2 Navarrete's report is brief and, essentially, factually accurate given what he
3 reasonably could be expected to have perceived at the time. From his testimony,
4 and even in his pre-hearing interviews, it is clear that he believed, initially, Officer
5 Valdez was intending to restrain the inmate. While this was happening, a
6 spontaneous use of force situation occurred. Norelus did come off the wall as
7 Officer Valdez was either properly or improperly attempting to restrain him, but I
8 do not think Mr. Navarrete could be fairly called up to conclude from his 2-3
9 second perception whether Officer Valdez' actions were appropriate or not, or
10 whether the take down was initiated by the wrongful conduct of the inmate or of
11 Officer Valdez. The inmate did rock backwards just prior to physical contact. I do
12 not believe that Mr. Navarrete was in the position to know what Officer Valdez
13 perceived or why this ended as it did. Mr. Navarrete's report is a bland statement
14 of events which are, essentially, true. "When he came off the wall he was
15 resisting." They did end up about 15 feet away - inmate Norelus didn't just flop to
16 the ground. Both officers, ultimately, had to restrain the inmate. Once again, this
17 appears, to me, to be a plain statement that appears, essentially true.

18 (ROA 590-91.)

19 Based on these factual findings, and NDOC's failure to prove otherwise by a
20 preponderance of the evidence, Gentile concluded that Navarrete's dismissal from NDOC be
21 reversed with restoration to his prior position with back pay and benefits. (ROA 591.)

22 **B. Conclusions of Law**

23 NRS 233B.135 sets forth the rules of judicial review district courts must follow. Along
24 with NRS 233B.135, the Court finds that *O'Keefe v. Dept. of Motor Veh.*, 134 Nev. 752 (2018),
25 and *Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245, 251(2014) provide guidance that aids the
26 district court's review on the instant petition. Under the review process found in *O'Keefe*, a
27 hearing officer must first determine whether the employee in fact committed the alleged
28 violation. *O'Keefe*, 134 Nev. at 759. When a hearing officer's conclusions of law are closely
related to the findings of fact, those legal conclusions must also be afforded deference and may
not be disturbed if supported by substantial evidence. *Jones v. Rosner*, 102 Nev. 215, 719 P.2d
805 (1986).

Since the hearing officer reviews the facts, the applicable standard for this review is the
preponderance-of-the-evidence standard. See *Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245,
251(2014) (holding that in absence of a specific governing statute, the preponderance of the
evidence standard should be applied, as it is the minimum standard to guarantee due process).

1 The hearing officer ultimately concluded, under step one of *O'Keefe* and the preponderance of
2 the evidence standard, that Navarrete did not commit the alleged violations.

3 Petitioner failed to prove the hearing officer's decision violated Petitioner's substantial
4 rights under NRS 233B.135(2). To meet this burden, the petitioner must prove the agency's
5 decision (1) violates the constitution or other statutory provisions, (2) exceeds the agency's
6 statutory authority, (3) is based on an unlawful procedure, (4) constitutes legal error, (5) clearly
7 erroneous based on "reliable probative and substantial evidence on the whole record," or (6)
8 "arbitrary and capricious or characterized by abuse of discretion." NRS 233B.135(2). Petitioner
9 failed to prove any of these bases to reverse the hearing officer's decision.

10 **C. Order**

11 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the hearing officer's
12 ruling is hereby AFFIRMED.

13 DATED this 9th day of October, 2020.

14 
15 DISTRICT COURT JUDGE ZJ

16
17 Respectfully submitted:

18 DATED this 2nd day of October, 2020.

19 LAW OFFICE OF DANIEL MARKS

20 /s/ Nicole M. Young

21 DANIEL MARKS, ESQ.

22 Nevada State Bar No. 002003

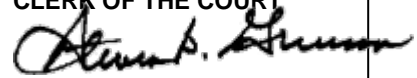
23 NICOLE M. YOUNG, ESQ.

24 Nevada State Bar No. 012659

25 610 S. Ninth Street

26 Las Vegas, Nevada 89101

27 Attorneys for Respondent/Employee
28



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(702) 386-0536; FAX (702) 386-6812
Attorneys for Respondent Jose Navarrete

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS,

Case No.: A-19-797661-J
Dept. No.: XVI

Petitioner,

vs.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel., its
DEPARTMENT OF ADMINISTRATION,
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER ON PETITION FOR JUDICIAL REVIEW**

TO: STATE OF NEVADA ex rel, DEPARTMENT OF PUBLIC SAFETY, Petitioner; and

TO: MICHELLE DI SILVESTRO ALANIS, Deputy Attorney General, Attorney for Petitioner:

1 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,**
2 **AND ORDER ON PETITION FOR JUDICIAL REVIEW**

3 PLEASE TAKE NOTICE that an Order was entered in the above-entitled action on the 12th day
4 of October 2020, a copy of which is attached hereto.

5 DATED this 12th day of October 2020.

6 LAW OFFICE OF DANIEL MARKS

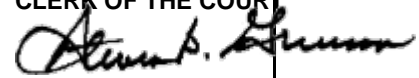
7 /s/Adam Levine, Esq.
8 DANIEL MARKS, ESQ.
9 Nevada State Bar No. 002003
10 office@danielmarks.net
11 ADAM LEVINE, ESQ.
12 Nevada State Bar No. 004673
13 alevine@danielmarks.net
14 610 South Ninth Street
15 Las Vegas, Nevada 89101
16 (702) 386-0536: FAX (702) 386-6812
17 Attorneys for

18 **CERTIFICATE OF SERVICE BY ELECTRONIC MEANS**

19 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 12th
20 day of October 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically
21 transmitted a true and correct copy of the above and foregoing NOTICE OF ENTRY OF FINDINGS
22 OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR JUDICIAL REVIEW by
23 way of Notice of Electronic Filing provided by the court mandated E-file & Serve system, to the e-mail
24 address on file for:

25 Michelle Di Silvestro Alanis, Esq.
26 Deputy Attorney General
27 ATTORNEY GENERAL'S OFFICE
28 Attorney for Petitioner
29 e-mail: malanis@ag.nv.gov
30 akaheaku@ag.nv.gov

31 /s/ Joi E. Harper
32 An employee of the
33 LAW OFFICE OF DANIEL MARKS_____



LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
office@danielmarks.net
610 South Ninth Street
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(702) 386-0536; FAX (702) 386-6812
Attorney for Respondent Jose Navarrete

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel, DEPARTMENT
OF CORRECTIONS,

Case No.: A-19-797661-J
Dept. No.: XVI

Petitioner,

v.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel; its
DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondents.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR
JUDICIAL REVIEW**

This matter having come on for hearing on the 9th day of June, 2020, on Petitioner's
Petition for Judicial Review, filed on June 28, 2019. Petitioner State of Nevada appearing by and
through its counsel, Michelle Di Silvestro Alanis, of the Attorney General's Office; and
Respondent Jose Navarrete appearing by and through his counsel Daniel Marks, Esq., of the Law
Office of Daniel Marks; the Court having reviewed the papers and pleadings on file, including
Petitioner's Opening Brief, filed on November 27, 2019; Respondent's Answering Brief, filed on
February 26, 2020; and Petitioner's Reply Brief, filed on May 15, 2020; having heard the
arguments of counsel, and good cause appearing:

////

////

////

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 **A. Findings of Fact**

2 THE COURT HEREBY FINDS that the hearing officer's factual conclusions are
3 supported by substantial evidence. *See Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245, 249-50
4 (2014).

5 Respondent Jose Navarrete ("Navarrete") was terminated for an incident involving
6 another correction officer, Paul Valdez ("Valdez"), and inmate Rickie Norelus ("Norelus") at
7 Southern Desert Correctional Center ("SDCC"). (ROA 583.)

8 On October 9, 2016, during the breakfast service, Navarrete and Valdez "were randomly
9 searching inmates leaving culinary for contraband." (ROA 583-84.) This search, as well as other
10 searches, are "a common occurrence" at SDCC. (ROA 583.) A surveillance video recorded the
11 incident from a single perspective with no audio. (ROA 583.)

12 During the hearing at issue, Hearing Officer Mark Gentile ("Gentile") was provided an
13 enhanced and slow motion video of the crucial moments of this incident. (ROA 584, 709-11 &
14 1150-51.) Navarrete also provided comprehensive testimony regarding what occurred during
15 each stage of the encounter. (ROA 584.) Gentile found Navarrete credible. (ROA 584.)

16 Gentile also found, "without question":

17 that Mr. Norelus was acting differently than the other inmates when placed on the
18 wall for a pat down. He was clearly agitated and his hands were not in the proper
19 position. He appears to be continually looking around anxiously. There is,
20 unfortunately, no audio and one cannot determine what is being said by the
21 officers or the inmates - yet, the head and body movements of all reflect, without a
22 doubt, that there was continual chatter by inmate Norelus. The testimony by Mr.
23 Navarrete was that Mr Norelus was being uncooperative and verbally abusive
24 throughout the encounter.

25 (ROA584.) These findings support Navarrete's testimony that Norelus was noncompliant.

26 With regard to this incident, Gentile found:

27 As Officer Valdez abruptly approaches the inmate from behind, the inmate does
28 move backward slightly off the wall and looks over his left shoulder. You can see
the inmate's left arm and shoulders slightly moving backwards, but the hands
remain on the wall. Officer Valdez then pushes the inmate into the wall, grabs the
inmate's neck with his right arm, and wrestles him to the ground.

(ROA 585.)

////

1 This all “occurred in a matter of a few seconds.” (ROA 585.) Valdez immediately cuffed
2 Norelus once on the ground, and Navarrete came over to assist. (ROA 585.) Gentile found that
3 even with the enhanced video, Valdez’ conduct was unjustified. (ROA 585.)

4 With regard to the post-incident video, that includes audio, Gentile found that while
5 Norelus is leaving the area he is “laughing at the officers and claiming they will ‘put his kids
6 through college.’” (ROA 586.) He also “does not appear injured and his conduct makes it seem
7 as if he may have been baiting the officers to some extent, which according to the testimony is a
8 common occurrence” at SDCC. (ROA 586.)

9 Navarrete later submitted an informational report, which states:

10 On October 9, 2016 I, Senior Correctional Officer Navarrete was assigned to
11 Search and Escort Southern Desert Correctional Center. At approximately 06:45
12 hours inmate Norelus #1104257 came off the Culinary wall while C/O Valdez
13 was attempting to restrain him resulting in the spontaneous use of force. When
14 inmate Norelus came off the wall he was resisting and both he and C/O Valdez
went to the ground. I then assisted in holding the inmates upper body down so that
C/O Valdez could restrain him. I notified supervisors and called medical so that
they could respond to the scene. Medical responded and inmate Norelus was
escorted to the infirmary to be further evaluated.

15 (ROA 586.)

16 With regard to Navarrete’s involvement in this incident, Gentile specifically found that
17 NDOC failed to establish “factually by a preponderance of the evidence, that [] Navarrete
18 willfully employed or permitted the use of unauthorized or excessive force” and that “there is
19 absolutely no evidence to reflect that he personally utilized excessive force.” (ROA 588.) This is
20 because Valdez’ use of force “was quite sudden and was over in a matter of a few seconds.”
21 (ROA 589.) Gentile specifically found Navarrete could not have anticipated, nor prevented,
22 Valdez’s spontaneous use of force. (ROA 589.)

23 With regard to the charge of dishonesty in relation to Navarrete’s use of force report,
24 Gentile found, as follows:

25 Navarrete wrote the report without the benefit of reviewing any video - he was
26 trying to assimilate and explain this unexpected event he saw occur literally in a
27 matter of second. The reality is Mr. Navarrete saw this event (the physical use of
28 force by Officer Valdez) take place in a matter of 2-3 seconds, from a side
perspective. He saw it only one time.

1 (ROA 590.) He then concluded:

2 Navarrete's report is brief and, essentially, factually accurate given what he
3 reasonably could be expected to have perceived at the time. From his testimony,
4 and even in his pre-hearing interviews, it is clear that he believed, initially, Officer
5 Valdez was intending to restrain the inmate. While this was happening, a
6 spontaneous use of force situation occurred. Norelus did come off the wall as
7 Officer Valdez was either properly or improperly attempting to restrain him, but I
8 do not think Mr. Navarrete could be fairly called up to conclude from his 2-3
9 second perception whether Officer Valdez' actions were appropriate or not, or
10 whether the take down was initiated by the wrongful conduct of the inmate or of
11 Officer Valdez. The inmate did rock backwards just prior to physical contact. I do
12 not believe that Mr. Navarrete was in the position to know what Officer Valdez
13 perceived or why this ended as it did. Mr. Navarrete's report is a bland statement
14 of events which are, essentially, true. "When he came off the wall he was
15 resisting." They did end up about 15 feet away - inmate Norelus didn't just flop to
16 the ground. Both officers, ultimately, had to restrain the inmate. Once again, this
17 appears, to me, to be a plain statement that appears, essentially true.

18 (ROA 590-91.)

19 Based on these factual findings, and NDOC's failure to prove otherwise by a
20 preponderance of the evidence, Gentile concluded that Navarrete's dismissal from NDOC be
21 reversed with restoration to his prior position with back pay and benefits. (ROA 591.)

22 **B. Conclusions of Law**

23 NRS 233B.135 sets forth the rules of judicial review district courts must follow. Along
24 with NRS 233B.135, the Court finds that *O'Keefe v. Dept. of Motor Veh.*, 134 Nev. 752 (2018),
25 and *Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245, 251(2014) provide guidance that aids the
26 district court's review on the instant petition. Under the review process found in *O'Keefe*, a
27 hearing officer must first determine whether the employee in fact committed the alleged
28 violation. *O'Keefe*, 134 Nev. at 759. When a hearing officer's conclusions of law are closely
related to the findings of fact, those legal conclusions must also be afforded deference and may
not be disturbed if supported by substantial evidence. *Jones v. Rosner*, 102 Nev. 215, 719 P.2d
805 (1986).

Since the hearing officer reviews the facts, the applicable standard for this review is the
preponderance-of-the-evidence standard. See *Nassiri v. Chiropractic Phys. Bd.*, 130 Nev. 245,
251(2014) (holding that in absence of a specific governing statute, the preponderance of the
evidence standard should be applied, as it is the minimum standard to guarantee due process).

1 The hearing officer ultimately concluded, under step one of *O'Keefe* and the preponderance of
2 the evidence standard, that Navarrete did not commit the alleged violations.

3 Petitioner failed to prove the hearing officer's decision violated Petitioner's substantial
4 rights under NRS 233B.135(2). To meet this burden, the petitioner must prove the agency's
5 decision (1) violates the constitution or other statutory provisions, (2) exceeds the agency's
6 statutory authority, (3) is based on an unlawful procedure, (4) constitutes legal error, (5) clearly
7 erroneous based on "reliable probative and substantial evidence on the whole record," or (6)
8 "arbitrary and capricious or characterized by abuse of discretion." NRS 233B.135(2). Petitioner
9 failed to prove any of these bases to reverse the hearing officer's decision.

10 **C. Order**

11 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the hearing officer's
12 ruling is hereby AFFIRMED.

13 DATED this 9th day of October, 2020.

14 
15 DISTRICT COURT JUDGE ZJ

16
17 Respectfully submitted:

18 DATED this 2nd day of October, 2020.

19 LAW OFFICE OF DANIEL MARKS

20 /s/ Nicole M. Young

21 DANIEL MARKS, ESQ.

22 Nevada State Bar No. 002003

23 NICOLE M. YOUNG, ESQ.

24 Nevada State Bar No. 012659

25 610 S. Ninth Street

26 Las Vegas, Nevada 89101

27 Attorneys for Respondent/Employee
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 20, 2019

A-19-797661-J Nevada Dept of Corrections, Petitioner(s)
vs.
Jose Navarette, Respondent(s)

August 20, 2019 9:00 AM All Pending Motions

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT:	Alanis, Michelle D.	Attorney
	Marks, Daniel	Attorney
	Navarette, Jose Miguel	Respondent

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Nicole Young, Esq. present for Respondent Jose Navarette.

PETITIONER'S MOTION TO STAY...OPPOSITION TO MOTION TO STAY AND COUNTER-MOTION FOR IMMEDIATE REINSTATEMENT AND PAYMENT OF ALL BACK PAY AND FULL BENEFITS

Ms. Alanis advised Countermotion also filed; Court so noted. Arguments by Ms. Alanis and Mr. Marks as to Motion to Stay and the Countermotion. Court stated will review Otto case and decision to issue in a week.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 29, 2019

A-19-797661-J Nevada Dept of Corrections, Petitioner(s)
vs.
Jose Navarette, Respondent(s)

August 29, 2019

1:05 PM

Minute Order

HEARD BY: Williams, Timothy C.

COURTROOM: Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- After review and consideration of the arguments of counsel and the moving papers on file herein, the Court determined as follows:

The Court in the instant action is called upon to determine whether strict or substantial compliance is required when filing the application for stay under NRS 233B.140 because the State of Nevada ex rel. Nevada Department of Corrections (NDOC), failed to file its application for stay at the time of filing its petition for judicial review. NRS 233B.140 provides in pertinent part, A petitioner who applies for a stay of the final decision in a contested case shall file and serve a written motion for stay in the agency and all parties of record at the time of filing the petition for judicial review. The record reveals that NDOC filed its Petition for Judicial Review on June 28, 2019. However, NDOC did not file the motion for stay until July 1, 2019, on the last day NDOC was allowed to file its Petition for Judicial Review.

In determining whether strict or substantial compliance is required under a statute, as it relates to mandated court filings and timing, Nevada law focuses on the nature of the statutory requirements and whether it is a time and manner statute or a form and content statute. In *Leven v. Frey*, the Supreme Court noted:

Our interpretation of the statute's timing requirements and our conclusion that those requirements must be complied with strictly is consistent with the general tenet that time and manner requirements are strictly construed, whereas substantial compliance may be sufficient for form and content requirements. *Leven v. Frey*, 123 Nev. 399, 408.

This Court determines that NRS 233B.140 is a time and manner statute that mandates strict construction. Thus, in order for this Court to consider the application for stay, it must be filed at the time of the filing of the Petition for Judicial Review. Since the motion for stay was filed not at the time of, but after the time of filing the Petition for Judicial Review, the Court has no choice but to follow the statutory mandate under a time and manner statute and must deny the application for stay as untimely. Additionally, the Court sees no need to address the other issues raised in opposition to the application for stay. Consequently, NDOC's Motion for Stay shall be DENIED.

Counsel for Respondent shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

October 10, 2019

A-19-797661-J Nevada Dept of Corrections, Petitioner(s)
vs.
Jose Navarette, Respondent(s)

October 10, 2019 9:00 AM Motion

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES

PRESENT: Alanis, Michelle D. Attorney
 Marks, Daniel Attorney

JOURNAL ENTRIES

- Colloquy regarding whether matter may be argued and submitted today or scheduling of same.
COURT ORDERED, Motion for Adjudication of Attorney's Lien RESET from 11/5/19 to 10/16/19.

10/16/19 9:00 AM MOTION FOR ADJUDICATION OF ATTORNEY'S LIEN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

October 16, 2019

A-19-797661-J Nevada Dept of Corrections, Petitioner(s)
vs.
Jose Navarette, Respondent(s)

October 16, 2019

9:00 AM

Motion

**See 12/9/19 Minute
Order**

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 03F

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES

PRESENT: Alanis, Michelle D. Attorney
 Marks, Daniel Attorney

JOURNAL ENTRIES

- Arguments by counsel. Matter submitted. Court stated will make determination on figures and fringe benefits after review of figures and whether there is deficiency. Mr. Marks requested for the order to direct payment within ten days after notice of entry of order. Court stated will incorporate as soon as possible language.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

December 09, 2019

A-19-797661-J Nevada Dept of Corrections, Petitioner(s)
vs.
Jose Navarette, Respondent(s)

December 09, 2019 3:21 PM Minute Order

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

Under Nevada law, a perfected attorney s lien takes priority and is superior to the lien of a general creditor. As noted by the Nevada Supreme Court:

[A] perfected attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that action have been paid. Once a net judgment is determined, then the attorney's lien is superior to any later lien asserted against that judgment. See *United States Fidelity & Guarantee v. Levy*, 77 F.2d 972 (5th Cir.1935) (attorney's lien is superior to offset from a claim arising out of a different matter from which the judgment arose); *Cetenko v. United California Bank*, 30 Cal.3d 528, 179 Cal.Rptr. 902, 638 P.2d 1299 (1982) (attorney's lien is superior to that of another creditor who obtained a lien on the same judgment); *Haupt v. Charlie's Kosher Market*, 17 Cal.2d 843, 112 P.2d 627 (1941) (attorney's lien is superior to that of third-party judgment creditor).

John W. Muije, Ltd. v. A N. Las Vegas Cab Co., 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

In *Michel v. Eighth Judicial Dist. Court ex rel. Cty. of Clark* 117 Nev. 145, 149 50, 17 P.3d 1003, 1006 (2001), the Nevada Supreme Court reiterated priority of attorney s liens over other liens, even statutory liens, and set forth the public policy for giving attorney s liens priority:

[P]ersons with meritorious claims might well be deprived of legal representation because of their inability to pay legal fees or to assure that such fees will be paid out of the sum recovered in the latest

lawsuit. Such a result would be detrimental not only to prospective litigants, but to their creditors as well.

Michel v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 117 Nev. 145, 149 50, 17 P.3d 1003, 1006 (2001).

Lastly, NRS 18.015 sets forth the procedures required for perfection and enforcement of an attorney lien. In light of the authority set forth, the Plaintiff's Motion to Adjudication of Attorney's Lien in the amount of thirty-three and one third percent (33 1/3%) of Jose Miguel Navarrete's gross back pay and benefits, including PERS contributions shall be GRANTED.

Plaintiff shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.

May 29, 2020

PRINT DATE: 11/16/2020 Page 8 of 11 Minutes Date: August 20, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

June 09, 2020

A-19-797661-J Nevada Dept of Corrections, Petitioner(s)
vs.
Jose Navarette, Respondent(s)

June 09, 2020

1:30 PM

Petition for Judicial Review

**Affirmed; See 8/6/20
Minute Order**

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 03H

COURT CLERK: Christopher Darling

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT: Alanis, Michelle D. Attorney
 Marks, Daniel Attorney

JOURNAL ENTRIES

- Counsel present telephonically. Arguments by counsel. Court stated will review matter; decision forthcoming.

August 06, 2020

PRINT DATE: 11/16/2020 Page 10 of 11 Minutes Date: August 20, 2019

prior to submitting to the Court for review and signature.

CLERK S NOTE: This Minute Order has been served to counsel electronically through Odyssey eFile.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR JUDICIAL REVIEW; DISTRICT COURT MINUTES

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS,

Petitioner(s),

vs.

JOSE MIGUEL NAVARRETE; STATE OF
NEVADA ex rel., its DEPARTMENT OF
ADMINISTRATION, PERSONNEL
COMMISSION, HEARING OFFICER,

Respondent(s),

Case No: A-19-797661-J

Dept No: XVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 16 day of November 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk