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Elizabeth A. Brown
Clerk of Supreme Court

LAW OFFICE OF DANIEL MARKS
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(702) 386-0536; FAX (702) 386-6812
Attorneys for Appellant Shari Kassebaum

DISTRICT COURT

CLARK COUNTY, NEVADA

SHARI KASSEBAUM,

Petitioners,

v.

STATE OF NEVADA ex rel, its DEPARTMENT
OF CORRECTIONS, and STATE OF NEVADA ex
rel, its DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER, CARA BROWN

Respondents.


Case No.: A-20-811982-J
Dept. No.: 21

NOTICE OF APPEAL

Petitioner Shari Kassebaum hereby appeals the Findings of Fact, Conclusion of Law and Order Denying Petition for Judicial Review entered in this action on November 19, 2021 and for which Notice of Entry was filed on December 1, 2021. (Exhibit "1" attached hereto).

DATED this 10th day of December 2021.

LAW OFFICE OF DANIEL MARKS



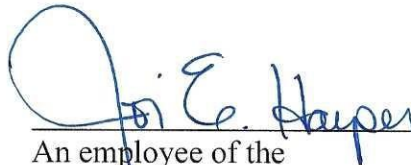
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CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 10th day of December 2021, I did serve the above and forgoing NOTICE OF APPEAL, by way of Notice of Electronic Filing provided by the court mandated E-file & Serve service, upon Respondents at the following:

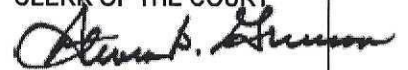
Aaron D. Ford, Esq.
Attorney General
Michelle Di Silvestro Alanis, Esq.,
Supervising Sr. Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Avenue, #3900
Las Vegas, Nevada 89101
Email: MAlanis@ag.nv.gov
Attorneys for Respondent
State of Nevada ex rel its Department of Corrections



An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT 1

EXHIBIT 1



AARON D. FORD
Attorney General
MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue, #3900
Las Vegas, Nevada 89101
(702) 486-3268 (phone)
(702) 486-3773 (fax)
malanis@ag.nv.gov

*Attorneys for Respondent,
State of Nevada ex rel its Department of Corrections*

DISTRICT COURT

CLARK COUNTY, NEVADA

SHARI KASSEBAUM,

Petitioner,

v.

STATE OF NEVADA ex rel, its
DEPARTMENT OF CORRECTIONS, and
STATE OF NEVADA ex rel, its
DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondent.

CASE NO. A-20-811982-J
DEPT. 21

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

TO: Sheri Kassebaum, Petitioner; and,

TO: Adam Levine, Esq., Petitioner's Attorney,

///

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1 PLEASE TAKE NOTICE that the *FINDINGS OF FACT, CONCLUSIONS OF LAW AND*
2 *ORDER DENYING PETITION FOR JUDICIAL REVIEW* was entered in the above-entitled action on
3 the 19th day of November, 2021, a copy of which is attached hereto.

4 DATED this 1st day of December, 2021.

5
6 AARON D. FORD
7 ATTORNEY GENERAL

8 By: /s/ Michelle Di Silvestro Alanis
9 Michelle Di Silvestro Alanis (Bar No. 10024)
10 Supervising Senior Deputy Attorney General
11 Attorney for Respondent
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing ***NOTICE OF ENTRY OF FINDINGS***
3 ***OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PETITION FOR JUDICIAL***
4 ***REVIEW*** with the Clerk of the Court by using the electronic filing system on the December 1, 2021.

5 I certify that the following participants in this case are registered electronic filing systems users
6 and will be served electronically:

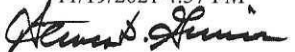
7
8 Adam Levine, Esq.
9 Law Office of Daniel Marks
610 S. Ninth St.
10 Las Vegas, NV 89101
alevine@danielmarks.net

11
12 I further certify that on December 1, 2021 the foregoing will be mailed by United States Mail to
13 the following:

14 Mark Gentile
15 Hearing Officer
16 Hearings Division
Department of Administration
2200 S. Rancho Dr. Ste. 220
17 Las Vegas, NV 89102

18 Angela Lizada, Esq.
19 Lizada Law Firm, Ltd.
711 S. 9th St.
20 Las Vegas, NV 89101

21
22
23 /s/ Anela Kaheaku
24 An employee of Office of the Attorney General
25
26
27
28


CLERK OF THE COURT

AARON D. FORD
Attorney General
MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
State of Nevada, Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas NV 89101-1068
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malanis@ag.nv.gov
*Attorneys for Respondent State of Nevada
ex rel. Department of Corrections*

DISTRICT COURT

CLARK COUNTY, NEVADA

SHARI KASSEBAUM,

Petitioner,

vs.

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS; STATE
OF NEVADA ex rel., its DEPARTMENT OF
ADMINISTRATION, PERSONNEL
COMMISSION, HEARING OFFICER,

Respondents.

Case No: A-20-811982-J

Dept. No: 21

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

This matter having come on for hearing on the 22nd day of September 2021, on Petitioner, Shari Kassebaum's Petition for Judicial Review filed on March 10, 2020, requesting review of the Hearing Officer's Decision and Order. Respondent, State of Nevada ex rel. its Department of Corrections' (NDOC) appearing by and through its counsel Michelle Di Silvestro Alanis, Supervising Senior Deputy Attorney General of the Attorney General's Office; and Petitioner, Shari Kassebaum (Kassebaum), appearing by and through her counsel Adam Levine, 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 February 22, 2021; Respondent's Answering Brief, filed on April 8, 2021; Petitioner's Reply Brief, filed on May 25, 2021, the Record on Appeal, and having reviewed *Allen v. State of Nevada*, District Court

1 Case A-20-811982-J, having heard the arguments of counsel, and good cause appearing hereby makes
2 the following findings of fact, conclusions of law, and order:

3 **A. FINDINGS OF FACT**

4 THE COURT HEREBY FINDS the legal assertions in Respondent's Answering Brief persuasive.

5 THE COURT FURTHER FINDS the Hearing Officer applied the appropriate standard of
6 evidence and made thorough findings of fact.

7 THE COURT FURTHER FINDS Kassebaum was a correctional sergeant employed at NDOC
8 and assigned to Southern Desert Correctional Center. ROA 71.

9 On August 9, 2019, NDOC served Kassebaum with a Specificity of Charges (SOC), which
10 recommended a two-day (sixteen hour) suspension without pay as a result of her continuous discourteous
11 conduct towards her fellow employees and supervisors. ROA 21-179.

12 On August 23, 2019, NDOC conducted a pre-disciplinary review pursuant to NAC 284.6561 but
13 Kassebaum chose not to attend her scheduled pre-disciplinary review. The pre-disciplinary review officer
14 concurred with the proposed discipline of a two-day suspension without pay. ROA 182.

15 On August 28, 2019, NDOC served Kassebaum with the written notification of Acting Director
16 Harold Wickham's final decision that Kassebaum would be suspended for two days without pay effective
17 August 30, 2019. ROA 181.

18 On or about September 12, 2019, Kassebaum filed an appeal of her discipline by filing the NPD-
19 54 Form titled "Appeal of Dismissal, Suspension, Demotion, or Involuntary Transfer" (Appeal Form).
20 The Appeal Form specifically states, "*This appeal form must be accompanied by the written notification*
21 *of the appointing authority's decision regarding the proposed action provided to the employee pursuant*
22 *to subsection 7 of NAC 284.6561.*" ROA 223-235.

23 Kassebaum attached a typed statement totaling nine pages to the Appeal Form explaining why
24 she believed the action taken was not reasonable and done in retaliation. However, Kassebaum's Appeal
25 Form was not accompanied by the written notification of Acting Director Wickham as required by NAC
26 284.6562(2)(b). ROA 223-235.

27 NDOC filed its "Motion to Dismiss Appeal for Lack of Jurisdiction." NDOC argued that the
28 appeal was jurisdictionally defective because Kassebaum failed to comply with the mandatory

1 requirements of NAC 284.6562(2) and could not amend since the 10-day appeal period under NRS
2 284.390(1) had expired. ROA 14-208.

3 Kassebaum filed a "Limited Opposition to Motion to Dismiss Appeal" in which she did not
4 oppose any of the legal issues raised by NDOC and only opposed the statement of facts in the Motion to
5 Dismiss. In her limited opposition, Kassebaum "concedes that under the revised NAC 284.6562(2)(b) it
6 is now required" for an Appeal to include the written notification of the appointing authority. Kassebaum
7 did not dispute that the requirements of NAC 284.6562 and NRS 284.390 were mandatory and
8 jurisdictional. Kassebaum further noted that "the language of NAC 284.6562 is clear...that employee
9 must submit the written notification of the appointing authority's decision." Accordingly, Kassebaum
10 wholly conceded that she failed to comply with NAC 284.6562(2)(b) and that she failed to submit a
11 complete and proper appeal within the 10-day filing period under NRS 284.390(1). ROA 11-12.

12 NDOC filed its Reply in Support of Motion to Dismiss, which noted Kassebaum's non-opposition
13 to the legal arguments for dismissal. ROA 7-10.

14 Hearing Officer Gentile granted NDOC's Motion to Dismiss. The Hearing Officer found that in
15 her "limited opposition" Kassebaum conceded that procedurally her notice of appeal was deficient. The
16 Hearing Officer further concluded that "NAC 284.6562 sets forth the mandatory manner in which an
17 appeal must be initiated" and that Kassebaum's notice of appeal was deficient. ROA 0003-5.

18 If any of these Findings of Fact are properly considered as Conclusions of Law, they shall be so
19 construed.

20 **B. CONCLUSIONS OF LAW**

21 THE COURT HEREBY CONCLUDES that the standard of review for evaluating a hearing
22 officer's decision is set forth in NRS 233B.010.

23 THE COURT FURTHER CONCLUDES that the District Court defers to the agency's findings
24 of fact that are supported by substantial evidence and reviews questions of law de novo. *Taylor v. Dep't.*
25 *of Health & Human Servs.*, 129 Nev. 928, 930, (2013). However, in reviewing statutory construction, the
26 Court "defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation
27 is within the language of the statute." *Id.* quoting *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*,
28 124 Nev. 701, 709, (2008).

1 NRS 284.390(1) establishes a mandatory 10-day deadline for employee disciplinary appeals.
2 Under NRS 284.065(2)(d), the Nevada Legislature delegated to the Personnel Commission authority to
3 adopt all “regulations to carry out the provisions” of NRS Chapter 284. This delegated authority was not
4 limited to the adoption of mere procedural rules but all regulations.

5 With that delegated power, the Personnel Commission adopted NAC 284.6562, which sets forth
6 the requirements for satisfying the mandatory 10-day filing deadline under NRS 284.390(1). Among
7 these mandatory requirements is that the appeal “must” be “accompanied by the written notification of
8 the appointing authority’s decision regarding the proposed [disciplinary] action.” See NAC
9 284.6562(2)(b).

10 The word “must,” as used in NAC 284.6562(2), imposes a mandatory requirement. See *Washoe*
11 *Cty. v. Otto*, 128 Nev. 424, 432 (2012).

12 NAC 284.6562(2)(b) is quoted verbatim, in bold and italicized letters, on the first page of every
13 NPD-54 appeal form. ROA 223.

14 Regulations adopted by the Personnel Commission, such as NAC 284.6562, have the full force
15 and effect of law. See *Turk v. Nev. State Prison*, 94 Nev. 101, 104, 575 P.3d 599, 601 (1978).

16 The powers of an administrative agency are strictly limited to only those powers specifically set
17 forth by statute and regulation. See *Clark Cty. Sch. Dist. V. Clark Cty. Classroom Teachers Ass’n*, 115
18 Nev. 98, 102 977 P.2d 1008, 1010 (1999). Indeed, an administrative agency cannot act outside its legal
19 authority without committing an abuse of discretion.

20 NAC 284.6562 has the full force and effect of law and sets forth the mandatory requirements for
21 submitting a proper and timely administrative appeal under NRS 284.390(1). The Nevada Supreme Court
22 has held that the proper and timely filing of a notice of appeal is jurisdictional. See *Rust v. Clark Co.*
23 *School Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

24 THE COURT FURTHER CONCLUDES There was substantial evidence to support the Hearing
25 Officer’s granting of NDOC’s Motion to Dismiss Appeal for Lack of Jurisdiction.

26 The Hearing Officer’s interpretation of NAC 284.6562 is owed deference.

27 Pursuant to NAC 284.6562(2)(b), Kassebaum failed to attach the written notification of her final
28 discipline to her appeal form.

1 Kassebaum failed to oppose NDOC's Motion to Dismiss as her Limited Opposition did not
2 contest the jurisdictional challenge by NDOC in failing to attach the final discipline form, but rather
3 solely disputed the facts. In doing so, Kassebaum failed to preserve the jurisdictional issue for appeal and
4 therefore it is deemed waived for purposes of this Petition for Judicial Review.

5 The Hearing Officer applied the appropriate standard of evidence, made thorough findings of fact,
6 and applied the relevant law to the case.

7 Kassebaum is judicially estopped from arguing in her petition for judicial review that NAC
8 284.6562 is not jurisdictional and is a claims processing rule as it is inconsistent from the position set
9 forth in her Limited Opposition before the Hearing Officer.

10 Kassebaum cannot raise a new theory for the first time on appeal which is inconsistent from the
11 one she raised before the Hearing Officer.

12 The Hearing Officer properly determined that the plain language of NAC 284.6562 imposed
13 mandatory and jurisdictional requirements for initiating an appeal under NRS 284.390.

14 The Hearing Officer properly ruled that Kassebaum's appeal was deficient and Kassebaum did
15 not file a proper and timely appeal under NRS 284.390 or NAC 284.6562.

16 The District Court's decision in *Kassebaum v. NDOC*, Case No. A-20-810424-P did not create
17 issue preclusion with the issues raised herein.

18 If any of these Conclusions of Law are properly considered as Findings of Fact, they shall be so
19 construed.

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1 **C. ORDER**

2 IT IS THEREFORE ORDERED that Kassebaum's Petition for Judicial Review is DENIED
3 and the Hearing officer's ruling is hereby AFFIRMED.

4 DATED: _____

Dated this 19th day of November, 2021

6 

7
8 3A9 2CA 45ED FBCF
Tara Clark Newberry
District Court Judge

9 Respectfully submitted by:

10 AARON D. FORD
11 Attorney General

12 By: /s/ Michelle Di Silvestro Alanis
13 MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
14 *Attorney for Respondent, Department of Corrections*

15 Approved as to form and content:

16 LAW OFFICE OF DANIEL MARKS
17

18 By: /s/ Adam Levine
19 Adam Levine, Esq.
Attorney for Petitioner, Shari Kassebaum
20
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From: Joi Harper
To: Michelle D. Alanis; Adam Levine; Anela P. Kaheaku
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J
Date: Thursday, November 18, 2021 11:47:04 AM

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good morning Michelle,

You have his permission to esign the Proposed Order. Sorry he has not been able to respond to you. He is in an arbitration all day today and yesterday was involved with preparing for his arbitration and dealing with the officer involved shooting and other matters.

Thank you,

Joi E. Harper, Paralegal
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
O: (702) 386-0536; F: (702) 386-6812
JHarper@danielmarks.net

From: Michelle D. Alanis [mailto:MAlanis@ag.nv.gov]
Sent: Thursday, November 18, 2021 10:15 AM
To: Adam Levine <ALevine@danielmarks.net>; Anela P. Kaheaku <AKaheaku@ag.nv.gov>
Cc: Joi Harper <JHarper@danielmarks.net>
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Good morning Adam,

I am following up on this matter that was originally sent on 10/22/21.

You have now stated you do not have any changes to the Order but when I asked if I have permission to submit with your electronic signature you did not respond. Please advise if we have your permission to use your electronic signature. If I do not have a response by tomorrow, November 19, 2021 at noon, I plan to submit the proposed Order to the Judge without your signature.

I look forward to hearing from you. Thank you.

Michelle Di Silvestro Alanis
Supervising Senior Deputy Attorney General
702-486-3268

From: Michelle D. Alanis

Sent: Tuesday, November 16, 2021 5:18 PM

To: Adam Levine <ALevine@danielmarks.net>; Anela P. Kaheaku <AKaheaku@ag.nv.gov>

Cc: Joi Harper <JHarper@danielmarks.net>

Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Do I have your permission to use your electronic signature on the order? Thanks.

Michelle Di Silvestro Alanis

Supervising Senior Deputy Attorney General

702-486-3268

From: Adam Levine <ALevine@danielmarks.net>

Sent: Tuesday, November 16, 2021 4:25 PM

To: Michelle D. Alanis <MAlanis@ag.nv.gov>; Anela P. Kaheaku <AKaheaku@ag.nv.gov>

Cc: Joi Harper <JHarper@danielmarks.net>

Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

No.

Adam Levine, Esq.

Law Office of Daniel Marks

610 S. Ninth Street

Las Vegas, NV 89101

(702) 386-0536: Office

(702) 386-6812: Fax

alevine@danielmarks.net

From: Michelle D. Alanis [<mailto:MAlanis@ag.nv.gov>]

Sent: Tuesday, November 16, 2021 4:26 PM

To: Adam Levine; Anela P. Kaheaku

Cc: Joi Harper

Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Adam,

Do you have any changes to the Kassebaum Order?

Thank you.

Michelle Di Silvestro Alanis
Supervising Senior Deputy Attorney General
702-486-3268

From: Michelle D. Alanis
Sent: Wednesday, November 10, 2021 10:44 AM
To: Adam Levine <ALevine@danielmarks.net>; Anela P. Kaheaku <AKaheaku@ag.nv.gov>
Cc: Joi Harper <JHarper@danielmarks.net>
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Adam,

I am following up on the draft of the Order in Kassebaum.

Please let me know if you have any specific changes to the Order. I would like to submit to the Court by Friday. Thank you.

Michelle Di Silvestro Alanis
Supervising Senior Deputy Attorney General
702-486-3268

From: Michelle D. Alanis
Sent: Tuesday, November 2, 2021 5:10 PM
To: Adam Levine <ALevine@danielmarks.net>; Anela P. Kaheaku <AKaheaku@ag.nv.gov>
Cc: Joi Harper <JHarper@danielmarks.net>
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Hi Adam,

I prepared the Order not Anela. She only emailed the draft for your review.

The Order does contain more than the minutes because it contains findings of fact and conclusions of law that lead us to the Court's decision. In the Court minutes, it states that "Counsel for Respondent may use the legal arguments within their Answering Brief as a basis of the Order." The proposed order contains information relevant to the ruling.

Your office has prepared other orders that included more than language of the minutes. Off the top of my head, I recall the Bilavarn/Olague Order and the Navarrete Order.

If you have more specific changes, please let me know. I am also available to discuss on Friday if you would like. Thank you.

Michelle Di Silvestro Alanis
Supervising Senior Deputy Attorney General
702-486-3268

From: Adam Levine <ALevine@danielmarks.net>
Sent: Tuesday, November 2, 2021 4:19 PM
To: Anela P. Kaheaku <AKaheaku@ag.nv.gov>
Cc: Joi Harper <JHarper@danielmarks.net>; Michelle D. Alanis <MAlanis@ag.nv.gov>
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

For your patience. My review of your proposed order reveals that it has all sorts of things, including citations to cases, which are not contained within the Minutes of the District Court's ruling. I would request that you revise the Order to reflect only those matters identified in the Court Minutes.

If Michelle wishes to discuss the matter, I can do so this Friday. I am going to be out of the office in Carson City for Supreme Court arguments tomorrow, and do not fly back until Thursday whereupon I have to proceed immediately to Pahrump upon landing.

Adam Levine, Esq.
Law Office of Daniel Marks
610 S. Ninth Street
Las Vegas, NV 89101
(702) 386-0536: Office
(702) 386-6812: Fax
alevine@danielmarks.net

From: Anela P. Kaheaku [<mailto:AKaheaku@ag.nv.gov>]
Sent: Wednesday, October 27, 2021 12:42 PM
To: Adam Levine
Cc: Joi Harper; Michelle D. Alanis
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Hello,

I am following up on the email below. Please advise.

Thank you,

Reply/Forward From:

Anela Kaheaku, LS II

AKaheaku@ag.nv.gov

From: Anela P. Kaheaku

Sent: Friday, October 22, 2021 3:10 PM

To: Adam Levine <alevine@danielmarks.net>

Cc: Joi Harper <JHarper@danielmarks.net>; Michelle D. Alanis (MAlanis@ag.nv.gov)
<MAlanis@ag.nv.gov>

Subject: Kassebaum v NDOC, Case No. A-20-81182-J

Good afternoon,

Attached for your review and approval is the Findings of Fact, Conclusions of Law and Order Denying Petition for Judicial Review. If acceptable, please authorize the use of your e- signature.

Thank you,

Anela Kaheaku, LS II

State of Nevada*Office of the Attorney General

Personnel Division

555 E. Washington Ave., Ste. 3900 * Las Vegas, NV 89101

AKaheaku@ag.nv.gov

PLEASE BE GREEN. *Please don't print this email unless necessary.*

This e-mail contains the thoughts and opinions of Anela Kaheaku and does not represent official Office of the Attorney General policy.

CONFIDENTIALITY NOTICE

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of this message and attachments and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately and destroy this document and all attachments. Thank you.

1 CSERV

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Shari Kassebaum, Petitioner(s)

CASE NO: A-20-811982-J

7 vs.

DEPT. NO. Department 21

8 Nevada Department of
9 Corrections, Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 11/19/2021

16 Michelle Alanis

malanis@ag.nv.gov

17 Anela Kaheaku

akaheaku@ag.nv.gov

18 Daniel Marks

Office@danielmarks.net

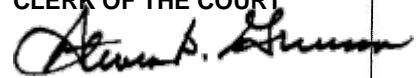
19 Angela Lizada

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(702) 386-0536; FAX (702) 386-6812
Attorneys for Appellant Shari Kassebaum

DISTRICT COURT
CLARK COUNTY, NEVADA

SHARI KASSEBAUM,
Petitioner/Appellant,

Case No.: A-20-811982-J
Dept. No.: 21

v.

STATE OF NEVADA ex rel, its DEPARTMENT
OF CORRECTIONS, and STATE OF NEVADA ex
rel, its DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER, CARA BROWN

Defendants/Respondents.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Shari Kassebaum.

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

District Court Judge Tara Clark Newberry.

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

Shari Kassebaum, Appellant:

Adam Levine, Esq., Law Office of Daniel Marks, 610 South Ninth Street, Las Vegas, Nevada
89101.

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

4 State of Nevada, ex rel. its Department of Corrections, Respondent:

5 Michelle Di Silvestro Alanis, Esq., Supervising Sr. Deputy Attorney General, State of Nevada,
6 Office of the Attorney General, 555 E. Washington Avenue, #3900, Las Vegas, Nevada 89101

7 State of Nevada ex rel its Department of Administration Personnel Commission, Respondent:

8 Michelle Di Silvestro Alanis, Esq., Supervising Sr. Deputy Attorney General, State of Nevada,
9 Office of the Attorney General, 555 E. Washington Avenue, #3900, Las Vegas, Nevada 89101;

10 Hearing Officer Cara Brown, unknown whether this entity will be Respondent or Cross
11 Appellant:

12 Michelle Di Silvestro Alanis, Esq., Supervising Sr. Deputy Attorney General, State of Nevada,
13 Office of the Attorney General, 555 E. Washington Avenue, #3900, Las Vegas, Nevada 89101

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

18 n/a.

19 **6. Indicate whether appellant was represented by appointed or retained counsel in district**
20 **court:**

21 Appellant was represented by retained counsel.

22 **7. Indicate whether appellant was representing by appointed or retained counsel on appeal:**

23 Appellant are being represented by retained counsel.

24 ///

25 ///

///

1 8. Indicate whether appellant is granted leave to proceed in forma pauperis, and the date of
2 entry of the district court order granting such leave:

3 n/a.

4 9. Indicate the date the proceedings commenced in the district court:

5 The Petition for Judicial Review was filed on March 10, 2020.

6 10. A brief description of the nature of the action and result in the district court:

7 The Petition for Judicial Review was filed by Appellant challenging the dismissal of her appeal
8 under NRS 284.390 without a hearing. The District Court denied judicial review.

9 11. Indicate whether this case has previously been the subject on appeal:

10 No.

11 12. Indicate whether this appeal involves child custody or visitation:

12 No.

13 13. Indicate whether this appeal involves the possibility of settlement:

14 No.

15 DATED this 10th day of December 2021.

16 LAW OFFICE OF DANIEL MARKS

17 
18 DANIEL MARKS, ESQ.

19 Nevada State Bar No. 002003

20 ADAM LEVINE, ESQ.

21 Nevada State Bar No. 004673

22 610 South Ninth Street

23 Las Vegas, Nevada 89101

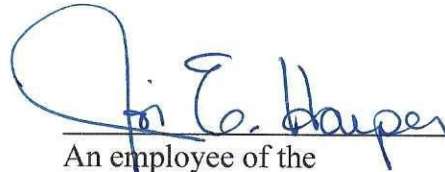
24 (702) 386-0536; FAX (702) 386-6812

25 *Attorneys for Appellant*

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 10th day of December 2021, I did serve the above and forgoing CASE APPEAL STATEMENT, by way of Notice of Electronic Filing provided by the court mandated E-file & Serve service, upon Respondents at the following:

Aaron D. Ford, Esq.
Attorney General
Michelle Di Silvestro Alanis, Esq.,
Supervising Sr. Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Avenue, #3900
Las Vegas, Nevada 89101
Email: MAlanis@ag.nv.gov
Attorneys for Respondent
State of Nevada ex rel its Department of Corrections



An employee of the
LAW OFFICE OF DANIEL MARKS

CASE SUMMARY

CASE NO. A-20-811982-J

Shari Kassebaum, Petitioner(s)
vs.
Nevada Department of Corrections, Respondent(s)

§
§
§
§
§

Location: Department 21
Judicial Officer: Clark Newberry, Tara
Filed on: 03/10/2020
Case Number History:
Cross-Reference Case Number: A811982

CASE INFORMATION

Statistical Closures

11/19/2021 Summary Judgment

Case Type: Other Judicial Review/Appeal

Case Status: 11/19/2021 Closed

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-811982-J
Court Department 21
Date Assigned 08/02/2021
Judicial Officer Clark Newberry, Tara

PARTY INFORMATION






Petitioner	Kassebaum, Shari	<i>Lead Attorneys</i> Lizada, Angela J., ESQ <i>Retained</i> 702-979-4676(W)
Respondent	Nevada Department of Corrections	Alanis, Michelle D. <i>Retained</i> 7023079500(W)
	Nevada Dept of Administration Personnel Commission Hearing Officer	Alanis, Michelle D. <i>Retained</i> 7023079500(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

03/10/2020	 Petition for Judicial Review Filed by: Petitioner Kassebaum, Shari <i>[1] Petition for Judicial Review</i>
03/11/2020	 Clerk's Notice of Nonconforming Document <i>[2] Clerk's Notice of Nonconforming Document</i>
04/14/2020	 Statement of Intent to Participate in Petition for Judicial Filed By: Respondent Nevada Department of Corrections <i>[3] Statement of Intent to Participate in Petition for Judicial Review</i>
05/07/2020	 Motion to Consolidate Filed By: Petitioner Kassebaum, Shari <i>[4] Motion to Consolidate with Case No. A-20-810424-P, A-20-811982-J and A-20-813237-J</i>
05/21/2020	 Opposition to Motion Filed By: Respondent Nevada Department of Corrections

CASE SUMMARY
CASE NO. A-20-811982-J

[5] Opposition to Motion to Consolidate

06/02/2020



Reply in Support

Filed By: Petitioner Kassebaum, Shari

[6] Reply in Support of Motion to Consolidate With Case Nos. A-20-810424-P, A-20-811982-J and A-20-813237-J

06/26/2020



Motion to Extend Time to Serve

[7] Motion to Extend Time to Serve

06/26/2020



Affidavit of Service

[8] Affidavit of Service

06/26/2020



Motion to Extend Time to Serve

[9] Amended Motion to Extend Time to Serve

06/29/2020



Clerk's Notice of Nonconforming Document

[10] Clerk's Notice of Nonconforming Document

07/02/2020



Order Extending Time to Serve

Filed By: Petitioner Kassebaum, Shari

[11] Order to Extend Time For Service

07/09/2020



Motion to Reconsider

Filed By: Respondent Nevada Department of Corrections

[12] Motion for Reconsideration of Order to Extend Time for Service

07/10/2020



Opposition

Filed By: Petitioner Kassebaum, Shari

[13] Opposition to Motion for Reconsideration

07/10/2020



Clerk's Notice of Hearing

[14] Notice of Hearing

07/17/2020



Reply in Support

Filed By: Respondent Nevada Department of Corrections

[15] Reply in Support of Motion for Reconsideration of Order to Extend Time for Service

07/31/2020



Certificate of Service

[16] Certificate of Service

08/20/2020



Brief

Filed By: Petitioner Kassebaum, Shari

[17] Petitioner's Brief Regarding Good Cause

08/31/2020



Supplement

Filed by: Respondent Nevada Department of Corrections

[18] Supplemental Brief on Good Cause

09/17/2020




Order Denying Motion

Filed By: Petitioner Kassebaum, Shari

[19] Oder Denying Motion for Reconsideration


CASE SUMMARY


CASE NO. A-20-811982-J


01/04/2021	Case Reassigned to Department 8 <i>Judicial Reassignment to Judge Jessica K. Peterson</i>
02/08/2021	 Transmittal of Record on Appeal Party: Administrator Nevada Department of Administration Hearings Division <i>[20] Transmittal of Record on Appeal</i>
02/08/2021	 Affidavit Filed By: Administrator Nevada Department of Administration Hearings Division <i>[21] Affidavit</i>
02/08/2021	 Certification of Transmittal Party: Administrator Nevada Department of Administration Hearings Division <i>[22] Certification of Transmittal</i>
02/22/2021	 Brief Filed By: Petitioner Kassebaum, Shari <i>[23] Petitioner Shari Kassebaum's Opening Brief</i>
03/25/2021	 Stipulation and Order Filed by: Respondent Nevada Department of Corrections; Respondent Nevada Dept of Administration Personnel Commission Hearing Officer <i>[24] Stipulation and Order to Extend the Time for Respondent's Answering Brief</i>
03/26/2021	 Notice of Entry Filed By: Respondent Nevada Department of Corrections <i>[25] Notice of Entry of Stipulation and Order to Extend the Time for Respondent's Answering Brief</i>
04/08/2021	 Answering Brief Filed By: Respondent Nevada Department of Corrections <i>[26] Respondent's Answering Brief</i>
04/08/2021	 Appendix Filed By: Respondent Nevada Department of Corrections <i>[27] Appendix to Respondent's Answering Brief</i>
05/13/2021	 Request Filed by: Respondent Nevada Department of Corrections <i>[28] Respondent, Department of Corrections' Request to Set Matter for Hearing</i>
05/19/2021	 Clerk's Notice of Hearing <i>[29] Clerk's Notice of Hearing</i>
05/25/2021	 Petitioner's Reply Brief Filed by: Petitioner Kassebaum, Shari <i>[30] Petitioner Shari Kassebaum's Reply Brief</i>
06/22/2021	 Notice of Change of Hearing <i>[31] Notice of Change of Hearing</i>
07/28/2021	 Notice of Appearance Party: Petitioner Kassebaum, Shari <i>[32] Notice of Appearance</i>


CASE SUMMARY


CASE NO. A-20-811982-J

08/02/2021  Notice of Department Reassignment
[33] *Notice of Department Reassignment*


11/19/2021  Findings of Fact, Conclusions of Law and Order
[34] *Findings of Fact, Conclusions of Law and Order Denying Petition for Judicial Review*


12/01/2021  Notice of Entry of Order
Filed By: Respondent Nevada Department of Corrections
[35] *Notice of Entry of Findings of Fact, Conclusions of Law and Order Denying Petition for Judicial Review*

12/10/2021  Case Appeal Statement
Filed By: Petitioner Kassebaum, Shari
[36] *Case Appeal Statement*

12/10/2021  Notice of Appeal
Filed By: Petitioner Kassebaum, Shari
[37] *Notice of Appeal*

HEARINGS

08/04/2020  **Minute Order** (3:00 AM) (Judicial Officer: Crockett, Jim)
Minute Order - No Hearing Held;
Journal Entry Details:
The court directs counsel to file supplemental briefs limited to a maximum of fifteen (15) pages. Those supplemental briefs are to address whether or not good cause exists in this case, in the context of the court's reasoning in Spar Business Services, Inc. vs Olson, 135 Nev. 296 (2019) 448 P.3d 539, Unempl.Ins.Rep. (CCH) P 8334, 135 Nev. Adv. Op. 40. Petitioner's brief is due 8/20/20. Respondent's brief is due 8/31/20. COURT FURTHER ORDERED, matter SET for hearing. 9/10/20 9:00 AM CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /rl 8/4/2020;

09/04/2020  **Minute Order** (3:00 AM) (Judicial Officer: Crockett, Jim)
Defendant's Motion for Reconsideration of Order to Extend Time for Service
Minute Order - No Hearing Held;
Journal Entry Details:
Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by the parties without oral argument since the court deems oral argument unnecessary. 8/4/20 Minutes: "The Court directs counsel to file supplemental briefs limited to a maximum of fifteen (15) pages. Those supplemental briefs are to address whether or not good cause exists in this case, in the context of the court's reasoning in Spar Business Services, Inc. vs Olson, 135 Nev. 296 (2019) 448 P.3d 539, Unempl.Ins.Rep. (CCH) P 8334, 135 Nev. Adv. Op. 40." The court has reviewed the briefs prepared by counsel on the issue of "good cause" and finds Petitioner Kassebaum's arguments persuasive, if not compelling. The Spar case certainly provides guidance in cases that were not impacted by the Coronavirus. The resulting consequences detailed in Attorney Lizada's brief, coupled with Administrative Order 20-17, provide ample support for the court's finding good cause exists to extend the time for service. The court finds good cause existed to extend time to serve per the 7/2/20 Order to Extend Time for Service. Accordingly, the Motion for Reconsideration is denied and the 7/2/20 Order to Extend Time for Service stands. Counsel for Petitioner to prepare and submit order to court for signature within 14 days per EDCR 7.21. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 09/04/20;

09/10/2020 **CANCELED Motion to Reconsider** (9:00 AM) (Judicial Officer: Crockett, Jim)
Vacated - per Order
Defendant's Motion for Reconsideration of Order to Extend Time for Service

09/18/2020 **CANCELED Status Check** (3:00 AM) (Judicial Officer: Crockett, Jim)

CASE SUMMARY

CASE NO. A-20-811982-J

Vacated

Status Check: Filing of Order Re: Motion for Reconsideration of Order to Extend Time for Service

07/29/2021



Petition for Judicial Review (10:00 AM) (Judicial Officer: Peterson, Jessica K.)

Respondent, Department of Corrections' Request to Set Matter for Hearing

Recused;

Journal Entry Details:

RESPONDENT, DEPARTMENT OF CORRECTIONS' REQUEST TO SET MATTER FOR HEARING Based on prior dealings with Petitioner's counsel, Angela Lizada, COURT hereby RECUSES; case to be REASSIGNED by the Clerk s Office.;

09/01/2021



Petition for Judicial Review (2:00 PM) (Judicial Officer: Clark Newberry, Tara)

09/01/2021, 09/22/2021

Petition for Judicial Review: Respondent, Department of Corrections' Request to Set Matter for Hearing

Matter Continued; Petition for Judicial Review: Respondent, Department of Corrections' Request to Set Matter for Hearing

Denied;

Journal Entry Details:

Court noted it had reviewed the briefs and had a good inclination of how it was going to rule, however, welcomed brief arguments. Arguments by Mr. Levine and Ms. Alanis regarding the merits of and opposition to Petition for Judicial Review. COURT ORDERED, matter taken UNDER ADVISEMENT. CLERK'S NOTE: This minute order was completed with the use of the JAVs recording program. /mt;

Matter Continued; Petition for Judicial Review: Respondent, Department of Corrections' Request to Set Matter for Hearing

Denied;

Journal Entry Details:

Colloquy regarding continuance. There being agreement, COURT ORDERED, matter CONTINUED to 9/22/21 at 1:30 p.m. CONTINUED TO: 9/22/21 1:30 PM PETITION FOR JUDICIAL REVIEW: RESPONDENT, DEPARTMENT OF CORRECTIONS' REQUEST TO SET MATTER FOR HEARING CLERK'S NOTE: Minutes prepared upon review of JAVS recording. /cd 10-28-2021/;

10/01/2021



Minute Order (3:00 AM) (Judicial Officer: Clark Newberry, Tara)

Petition for Judicial Review: Respondent, Department of Corrections' Request to Set Matter for Hearing

Denied; Petition for Judicial Review: Respondent, Department of Corrections' Request to Set Matter for Hearing

Journal Entry Details:

The Court having further reviewed District Court Case. A-20-811982-J, Ray Allen v. State of Nevada ex rel, its Department of Corrections the September 22, 2021 Hearing in this matter, the February 22, 2021 Petitioners Opening Brief, the April 8, 2021 Respondent s Answering Brief, the May 25, 2021 Petitioner s Reply Brief, the February 8, 2021 Transmittal of Record on Appeal, and the entirety of the Record, finds the legal assertions in Respondent s Answering Brief persuasive. Specifically, the COURT FINDS substantial evidence to support the Appeal s Officer s granting of NDOC s Motion to Dismiss Appeal for Lack of Jurisdiction. Pursuant to NAC 284.6562(2)(b), Kassebaum failed to attach the written notification of her final discipline to her appeal form. Additionally, Kassebaum failed to oppose NDOC s Motion to Dismiss as her Limited Opposition did not contest the jurisdictional challenge by NDOC in failing to attach the final discipline form, but rather solely disputed the facts. In doing so, Kassebaum failed to preserve the jurisdictional issue for appeal and therefore it is deemed waived for purposes of this Petition for Judicial Review. Lastly, the COURT FINDS the Appeal s Officer applied the appropriate standard of evidence, made thorough findings of fact, and applied the relevant law to the case. Therefore, it is ORDERED that the Petition for Judicial Review is DENIED. Per EDCR 7.21, within 14 days, Counsel for Respondent to prepare the Proposed Order, circulate to Counsel for Petitioner for signature as to Form and Content, and submit to dc21inbox@clarkcountycourts.us. Counsel for Respondent may use the legal arguments contained within their Answering Brief as a basis of the Order. CLERK'S NOTE: The above minute order has been electronically served to parties via e-mail and/or Odyssey File & Serve. //cbm 10-01-2021;

CASE SUMMARY

CASE NO. A-20-811982-J

FINANCIAL INFORMATION

DATE

Petitioner Kassebaum, Shari

Total Charges

294.00

Total Payments and Credits

294.00

Balance Due as of 12/14/2021

0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

CASE NO: A-20-811982-J
Department 24

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

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Shari Kassebaum 7644 Splashing River Court Las Vegas, NV 89131 (559) 903-3225</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">State of Nevada, ex rel its Department of Corrections 3955 W Russell Rd Las Vegas, NV 89118</div>
Attorney (name/address/phone): <div style="text-align: center;">Angela J. Lizada, Esq. 711 S. 9th St. Las Vegas, NV 89101 (702) 979-4676</div>	Attorney (name/address/phone): <div style="text-align: center;">Michelle di Silvestro Alanis, Esq. 555 E. Washington Ave. Las Vegas, NV 89101</div>

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 <i>(select case type and estate value)</i> <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 Warrant <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.

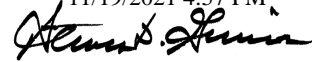
3/10/2020

Date

/s/Angela J. Lizada, Esq.

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

AARON D. FORD
Attorney General
MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
State of Nevada, Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas NV 89101-1068
Tel: (702) 486-3268
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malanis@ag.nv.gov
*Attorneys for Respondent State of Nevada
ex rel. Department of Corrections*

DISTRICT COURT
CLARK COUNTY, NEVADA

SHARI KASSEBAUM,

Petitioner,

vs.

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS; STATE
OF NEVADA ex rel., its DEPARTMENT OF
ADMINISTRATION, PERSONNEL
COMMISSION, HEARING OFFICER,

Respondents.

Case No: A-20-811982-J
Dept. No: 21

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

This matter having come on for hearing on the 22nd day of September 2021, on Petitioner, Shari Kassebaum's Petition for Judicial Review filed on March 10, 2020, requesting review of the Hearing Officer's Decision and Order. Respondent, State of Nevada ex rel. its Department of Corrections' (NDOC) appearing by and through its counsel Michelle Di Silvestro Alanis, Supervising Senior Deputy Attorney General of the Attorney General's Office; and Petitioner, Shari Kassebaum (Kassebaum), appearing by and through her counsel Adam Levine, 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 February 22, 2021; Respondent's Answering Brief, filed on April 8, 2021; Petitioner's Reply Brief, filed on May 25, 2021, the Record on Appeal, and having reviewed *Allen v. State of Nevada*, District Court

Case A-20-811982-J, having heard the arguments of counsel, and good cause appearing hereby makes the following findings of fact, conclusions of law, and order:

A. FINDINGS OF FACT

THE COURT HEREBY FINDS the legal assertions in Respondent's Answering Brief persuasive.

THE COURT FURTHER FINDS the Hearing Officer applied the appropriate standard of evidence and made thorough findings of fact.

THE COURT FURTHER FINDS Kassebaum was a correctional sergeant employed at NDOC and assigned to Southern Desert Correctional Center. ROA 71.

On August 9, 2019, NDOC served Kassebaum with a Specificity of Charges (SOC), which recommended a two-day (sixteen hour) suspension without pay as a result of her continuous discourteous conduct towards her fellow employees and supervisors. ROA 21-179.

On August 23, 2019, NDOC conducted a pre-disciplinary review pursuant to NAC 284.6561 but Kassebaum chose not to attend her scheduled pre-disciplinary review. The pre-disciplinary review officer concurred with the proposed discipline of a two-day suspension without pay. ROA 182.

On August 28, 2019, NDOC served Kassebaum with the written notification of Acting Director Harold Wickham's final decision that Kassebaum would be suspended for two days without pay effective August 30, 2019. ROA 181.

On or about September 12, 2019, Kassebaum filed an appeal of her discipline by filing the NPD-54 Form titled "Appeal of Dismissal, Suspension, Demotion, or Involuntary Transfer" (Appeal Form). The Appeal Form specifically states, "***This appeal form must be accompanied by the written notification of the appointing authority's decision regarding the proposed action provided to the employee pursuant to subsection 7 of NAC 284.6561.***" ROA 223-235.

Kassebaum attached a typed statement totaling nine pages to the Appeal Form explaining why she believed the action taken was not reasonable and done in retaliation. However, Kassebaum's Appeal Form was not accompanied by the written notification of Acting Director Wickham as required by NAC 284.6562(2)(b). ROA 223-235.

NDOC filed its "Motion to Dismiss Appeal for Lack of Jurisdiction." NDOC argued that the appeal was jurisdictionally defective because Kassebaum failed to comply with the mandatory

1 requirements of NAC 284.6562(2) and could not amend since the 10-day appeal period under NRS
2 284.390(1) had expired. ROA 14-208.

3 Kassebaum filed a “Limited Opposition to Motion to Dismiss Appeal” in which she did not
4 oppose any of the legal issues raised by NDOC and only opposed the statement of facts in the Motion to
5 Dismiss. In her limited opposition, Kassebaum “concedes that under the revised NAC 284.6562(2)(b) it
6 is now required” for an Appeal to include the written notification of the appointing authority. Kassebaum
7 did not dispute that the requirements of NAC 284.6562 and NRS 284.390 were mandatory and
8 jurisdictional. Kassebaum further noted that “the language of NAC 284.6562 is clear...that employee
9 must submit the written notification of the appointing authority’s decision.” Accordingly, Kassebaum
10 wholly conceded that she failed to comply with NAC 284.6562(2)(b) and that she failed to submit a
11 complete and proper appeal within the 10-day filing period under NRS 284.390(1). ROA 11-12.

12 NDOC filed its Reply in Support of Motion to Dismiss, which noted Kassebaum’s non-opposition
13 to the legal arguments for dismissal. ROA 7-10.

14 Hearing Officer Gentile granted NDOC’s Motion to Dismiss. The Hearing Officer found that in
15 her “limited opposition” Kassebaum conceded that procedurally her notice of appeal was deficient. The
16 Hearing Officer further concluded that “NAC 284.6562 sets forth the mandatory manner in which an
17 appeal must be initiated” and that Kassebaum’s notice of appeal was deficient. ROA 0003-5.

18 If any of these Findings of Fact are properly considered as Conclusions of Law, they shall be so
19 construed.

20 **B. CONCLUSIONS OF LAW**

21 THE COURT HEREBY CONCLUDES that the standard of review for evaluating a hearing
22 officer’s decision is set forth in NRS 233B.010.

23 THE COURT FURTHER CONCLUDES that the District Court defers to the agency’s findings
24 of fact that are supported by substantial evidence and reviews questions of law de novo. *Taylor v. Dep’t.*
25 *of Health & Human Servs.*, 129 Nev. 928, 930, (2013). However, in reviewing statutory construction, the
26 Court “defer[s] to an agency’s interpretation of its governing statutes or regulations if the interpretation
27 is within the language of the statute.” *Id.* quoting *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*,
28 124 Nev. 701, 709, (2008).

1 NRS 284.390(1) establishes a mandatory 10-day deadline for employee disciplinary appeals.
2 Under NRS 284.065(2)(d), the Nevada Legislature delegated to the Personnel Commission authority to
3 adopt all “regulations to carry out the provisions” of NRS Chapter 284. This delegated authority was not
4 limited to the adoption of mere procedural rules but all regulations.

5 With that delegated power, the Personnel Commission adopted NAC 284.6562, which sets forth
6 the requirements for satisfying the mandatory 10-day filing deadline under NRS 284.390(1). Among
7 these mandatory requirements is that the appeal “must” be “accompanied by the written notification of
8 the appointing authority’s decision regarding the proposed [disciplinary] action.” *See* NAC
9 284.6562(2)(b).

10 The word “must,” as used in NAC 284.6562(2), imposes a mandatory requirement. *See Washoe*
11 *Cty. v. Otto*, 128 Nev. 424, 432 (2012).

12 NAC 284.6562(2)(b) is quoted verbatim, in bold and italicized letters, on the first page of every
13 NPD-54 appeal form. ROA 223.

14 Regulations adopted by the Personnel Commission, such as NAC 284.6562, have the full force
15 and effect of law. *See Turk v. Nev. State Prison*, 94 Nev. 101, 104, 575 P.3d 599, 601 (1978).

16 The powers of an administrative agency are strictly limited to only those powers specifically set
17 forth by statute and regulation. *See Clark Cty. Sch. Dist. V. Clark Cty. Classroom Teachers Ass’n*, 115
18 Nev. 98, 102 977 P.2d 1008, 1010 (1999). Indeed, an administrative agency cannot act outside its legal
19 authority without committing an abuse of discretion.

20 NAC 284.6562 has the full force and effect of law and sets forth the mandatory requirements for
21 submitting a proper and timely administrative appeal under NRS 284.390(1). The Nevada Supreme Court
22 has held that the proper and timely filing of a notice of appeal is jurisdictional. *See Rust v. Clark Co.*
23 *School Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

24 THE COURT FURTHER CONCLUDES There was substantial evidence to support the Hearing
25 Officer’s granting of NDOC’s Motion to Dismiss Appeal for Lack of Jurisdiction.

26 The Hearing Officer’s interpretation of NAC 284.6562 is owed deference.

27 Pursuant to NAC 284.6562(2)(b), Kassebaum failed to attach the written notification of her final
28 discipline to her appeal form.

1 Kassebaum failed to oppose NDOC's Motion to Dismiss as her Limited Opposition did not
2 contest the jurisdictional challenge by NDOC in failing to attach the final discipline form, but rather
3 solely disputed the facts. In doing so, Kassebaum failed to preserve the jurisdictional issue for appeal and
4 therefore it is deemed waived for purposes of this Petition for Judicial Review.

5 The Hearing Officer applied the appropriate standard of evidence, made thorough findings of fact,
6 and applied the relevant law to the case.

7 Kassebaum is judicially estopped from arguing in her petition for judicial review that NAC
8 284.6562 is not jurisdictional and is a claims processing rule as it is inconsistent from the position set
9 forth in her Limited Opposition before the Hearing Officer.

10 Kassebaum cannot raise a new theory for the first time on appeal which is inconsistent from the
11 one she raised before the Hearing Officer.

12 The Hearing Officer properly determined that the plain language of NAC 284.6562 imposed
13 mandatory and jurisdictional requirements for initiating an appeal under NRS 284.390.

14 The Hearing Officer properly ruled that Kassebaum's appeal was deficient and Kassebaum did
15 not file a proper and timely appeal under NRS 284.390 or NAC 284.6562.

16 The District Court's decision in *Kassebaum v. NDOC*, Case No. A-20-810424-P did not create
17 issue preclusion with the issues raised herein.

18 If any of these Conclusions of Law are properly considered as Findings of Fact, they shall be so
19 construed.

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1 **C. ORDER**

2 IT IS THEREFORE ORDERED that Kassebaum's Petition for Judicial Review is DENIED
3 and the Hearing officer's ruling is hereby AFFIRMED.

4 DATED: _____

Dated this 19th day of November, 2021

6 

7
8 3A9 2CA 45ED FBCF
Tara Clark Newberry
District Court Judge

9 Respectfully submitted by:

10 AARON D. FORD
11 Attorney General

12 By: /s/ Michelle Di Silvestro Alanis
13 MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
14 *Attorney for Respondent, Department of Corrections*

15 Approved as to form and content:

16 LAW OFFICE OF DANIEL MARKS
17

18 By: /s/ Adam Levine
19 Adam Levine, Esq.
Attorney for Petitioner, Shari Kassebaum

From: [Joi Harper](#)
To: [Michelle D. Alanis](#); [Adam Levine](#); [Anela P. Kaheaku](#)
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J
Date: Thursday, November 18, 2021 11:47:04 AM

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good morning Michelle,

You have his permission to esign the Proposed Order. Sorry he has not been able to respond to you. He is in an arbitration all day today and yesterday was involved with preparing for his arbitration and dealing with the officer involved shooting and other matters.

Thank you,

Joi E. Harper, Paralegal
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
O: (702) 386-0536; F: (702) 386-6812
JHarper@danielmarks.net

From: Michelle D. Alanis [<mailto:MAlanis@ag.nv.gov>]
Sent: Thursday, November 18, 2021 10:15 AM
To: Adam Levine <ALevine@danielmarks.net>; Anela P. Kaheaku <AKaheaku@ag.nv.gov>
Cc: Joi Harper <JHarper@danielmarks.net>
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Good morning Adam,

I am following up on this matter that was originally sent on 10/22/21.

You have now stated you do not have any changes to the Order but when I asked if I have permission to submit with your electronic signature you did not respond. Please advise if we have your permission to use your electronic signature. If I do not have a response by tomorrow, November 19, 2021 at noon, I plan to submit the proposed Order to the Judge without your signature.

I look forward to hearing from you. Thank you.

Michelle Di Silvestro Alanis
Supervising Senior Deputy Attorney General
702-486-3268

From: Michelle D. Alanis
Sent: Tuesday, November 16, 2021 5:18 PM
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No.

Adam Levine, Esq.
Law Office of Daniel Marks
610 S. Ninth Street
Las Vegas, NV 89101
(702) 386-0536: Office
(702) 386-6812: Fax
alevine@danielmarks.net

From: Michelle D. Alanis [<mailto:MAlanis@ag.nv.gov>]
Sent: Tuesday, November 16, 2021 4:26 PM
To: Adam Levine; Anela P. Kaheaku
Cc: Joi Harper
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

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Do you have any changes to the Kassebaum Order?

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For your patience. My review of your proposed order reveals that it has all sorts of things, including citations to cases, which are not contained within the Minutes of the District Court's ruling. I would request that you revise the Order to reflect only those matters identified in the Court Minutes.

If Michelle wishes to discuss the matter, I can do so this Friday. I am going to be out of the office in Carson City for Supreme Court arguments tomorrow, and do not fly back until Thursday whereupon I have to proceed immediately to Pahrump upon landing.

Adam Levine, Esq.
Law Office of Daniel Marks
610 S. Ninth Street
Las Vegas, NV 89101
(702) 386-0536: Office
(702) 386-6812: Fax
alevine@danielmarks.net

From: Anela P. Kaheaku [<mailto:AKaheaku@ag.nv.gov>]
Sent: Wednesday, October 27, 2021 12:42 PM
To: Adam Levine
Cc: Joi Harper; Michelle D. Alanis
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Hello.

I am following up on the email below. Please advise.

Thank you,

Reply/Forward From:

Anela Kaheaku, LS II

AKaheaku@ag.nv.gov

From: Anela P. Kaheaku

Sent: Friday, October 22, 2021 3:10 PM

To: Adam Levine <alevine@danielmarks.net>

Cc: Joi Harper <JHarper@danielmarks.net>; Michelle D. Alanis (MAlanis@ag.nv.gov)
<MAlanis@ag.nv.gov>

Subject: Kassebaum v NDOC, Case No. A-20-81182-J

Good afternoon,

Attached for your review and approval is the Findings of Fact, Conclusions of Law and Order Denying Petition for Judicial Review. If acceptable, please authorize the use of your e- signature.

Thank you,

Anela Kaheaku, LS II

State of Nevada*Office of the Attorney General

Personnel Division

555 E. Washington Ave., Ste. 3900 * Las Vegas, NV 89101

AKaheaku@ag.nv.gov

PLEASE BE GREEN. *Please don't print this email unless necessary.*

This e-mail contains the thoughts and opinions of Anela Kaheaku and does not represent official Office of the Attorney General policy.

CONFIDENTIALITY NOTICE

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of this message and attachments and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately and destroy this document and all attachments. Thank you.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

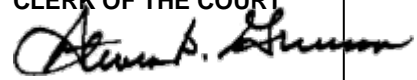
4		
5		
6	Shari Kassebaum, Petitioner(s)	CASE NO: A-20-811982-J
7	vs.	DEPT. NO. Department 21
8	Nevada Department of	
9	Corrections, Respondent(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 11/19/2021

16 Michelle Alanis	malanis@ag.nv.gov
17 Anela Kaheaku	akaheaku@ag.nv.gov
18 Daniel Marks	Office@danielmarks.net
19 Angela Lizada	angela@lizardalaw.com
20 Joi Harper	Jharper@danielmarks.net
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AARON D. FORD
Attorney General
MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 East Washington Avenue, #3900
Las Vegas, Nevada 89101
(702) 486-3268 (phone)
(702) 486-3773 (fax)
malanis@ag.nv.gov

*Attorneys for Respondent,
State of Nevada ex rel its Department of Corrections*

DISTRICT COURT
CLARK COUNTY, NEVADA

SHARI KASSEBAUM,

Petitioner,

v.

STATE OF NEVADA ex rel, its
DEPARTMENT OF CORRECTIONS, and
STATE OF NEVADA ex rel, its
DEPARTMENT OF ADMINISTRATION
PERSONNEL COMMISSION, HEARING
OFFICER,

Respondent.

CASE NO. A-20-811982-J
DEPT. 21

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

TO: Sheri Kassebaum, Petitioner; and,

TO: Adam Levine, Esq., Petitioner's Attorney,

///

///

///

///

///

///

1 PLEASE TAKE NOTICE that the ***FINDINGS OF FACT, CONCLUSIONS OF LAW AND***
2 ***ORDER DENYING PETITION FOR JUDICIAL REVIEW*** was entered in the above-entitled action on
3 the 19th day of November, 2021, a copy of which is attached hereto.

4 DATED this 1st day of December, 2021.

5
6 AARON D. FORD
7 ATTORNEY GENERAL

8 By: /s/ Michelle Di Silvestro Alanis
9 Michelle Di Silvestro Alanis (Bar No. 10024)
10 Supervising Senior Deputy Attorney General
11 Attorney for Respondent
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing ***NOTICE OF ENTRY OF FINDINGS***
3 ***OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PETITION FOR JUDICIAL***
4 ***REVIEW*** with the Clerk of the Court by using the electronic filing system on the December 1, 2021.

5 I certify that the following participants in this case are registered electronic filing systems users
6 and will be served electronically:

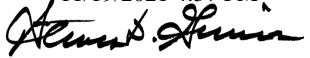
7
8 Adam Levine, Esq.
9 Law Office of Daniel Marks
610 S. Ninth St.
Las Vegas, NV 89101
10 alevine@danielmarks.net

11
12 I further certify that on December 1, 2021 the foregoing will be mailed by United States Mail to
13 the following:

14 Mark Gentile
15 Hearing Officer
Hearings Division
16 Department of Administration
2200 S. Rancho Dr. Ste. 220
17 Las Vegas, NV 89102

18 Angela Lizada, Esq.
19 Lizada Law Firm, Ltd.
711 S. 9th St.
20 Las Vegas, NV 89101

21
22
23 /s/ Anela Kaheaku
An employee of Office of the Attorney General
24
25
26
27
28


CLERK OF THE COURT

AARON D. FORD
Attorney General
MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
State of Nevada, Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas NV 89101-1068
Tel: (702) 486-3268
Fax: (702) 486-3773
malanis@ag.nv.gov
*Attorneys for Respondent State of Nevada
ex rel. Department of Corrections*

DISTRICT COURT
CLARK COUNTY, NEVADA

SHARI KASSEBAUM,

Petitioner,

vs.

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS; STATE
OF NEVADA ex rel., its DEPARTMENT OF
ADMINISTRATION, PERSONNEL
COMMISSION, HEARING OFFICER,

Respondents.

Case No: A-20-811982-J
Dept. No: 21

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

This matter having come on for hearing on the 22nd day of September 2021, on Petitioner, Shari Kassebaum's Petition for Judicial Review filed on March 10, 2020, requesting review of the Hearing Officer's Decision and Order. Respondent, State of Nevada ex rel. its Department of Corrections' (NDOC) appearing by and through its counsel Michelle Di Silvestro Alanis, Supervising Senior Deputy Attorney General of the Attorney General's Office; and Petitioner, Shari Kassebaum (Kassebaum), appearing by and through her counsel Adam Levine, 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 February 22, 2021; Respondent's Answering Brief, filed on April 8, 2021; Petitioner's Reply Brief, filed on May 25, 2021, the Record on Appeal, and having reviewed *Allen v. State of Nevada*, District Court

Case A-20-811982-J, having heard the arguments of counsel, and good cause appearing hereby makes the following findings of fact, conclusions of law, and order:

A. FINDINGS OF FACT

THE COURT HEREBY FINDS the legal assertions in Respondent's Answering Brief persuasive.

THE COURT FURTHER FINDS the Hearing Officer applied the appropriate standard of evidence and made thorough findings of fact.

THE COURT FURTHER FINDS Kassebaum was a correctional sergeant employed at NDOC and assigned to Southern Desert Correctional Center. ROA 71.

On August 9, 2019, NDOC served Kassebaum with a Specificity of Charges (SOC), which recommended a two-day (sixteen hour) suspension without pay as a result of her continuous discourteous conduct towards her fellow employees and supervisors. ROA 21-179.

On August 23, 2019, NDOC conducted a pre-disciplinary review pursuant to NAC 284.6561 but Kassebaum chose not to attend her scheduled pre-disciplinary review. The pre-disciplinary review officer concurred with the proposed discipline of a two-day suspension without pay. ROA 182.

On August 28, 2019, NDOC served Kassebaum with the written notification of Acting Director Harold Wickham's final decision that Kassebaum would be suspended for two days without pay effective August 30, 2019. ROA 181.

On or about September 12, 2019, Kassebaum filed an appeal of her discipline by filing the NPD-54 Form titled "Appeal of Dismissal, Suspension, Demotion, or Involuntary Transfer" (Appeal Form). The Appeal Form specifically states, "***This appeal form must be accompanied by the written notification of the appointing authority's decision regarding the proposed action provided to the employee pursuant to subsection 7 of NAC 284.6561.***" ROA 223-235.

Kassebaum attached a typed statement totaling nine pages to the Appeal Form explaining why she believed the action taken was not reasonable and done in retaliation. However, Kassebaum's Appeal Form was not accompanied by the written notification of Acting Director Wickham as required by NAC 284.6562(2)(b). ROA 223-235.

NDOC filed its "Motion to Dismiss Appeal for Lack of Jurisdiction." NDOC argued that the appeal was jurisdictionally defective because Kassebaum failed to comply with the mandatory

1 requirements of NAC 284.6562(2) and could not amend since the 10-day appeal period under NRS
2 284.390(1) had expired. ROA 14-208.

3 Kassebaum filed a “Limited Opposition to Motion to Dismiss Appeal” in which she did not
4 oppose any of the legal issues raised by NDOC and only opposed the statement of facts in the Motion to
5 Dismiss. In her limited opposition, Kassebaum “concedes that under the revised NAC 284.6562(2)(b) it
6 is now required” for an Appeal to include the written notification of the appointing authority. Kassebaum
7 did not dispute that the requirements of NAC 284.6562 and NRS 284.390 were mandatory and
8 jurisdictional. Kassebaum further noted that “the language of NAC 284.6562 is clear...that employee
9 must submit the written notification of the appointing authority’s decision.” Accordingly, Kassebaum
10 wholly conceded that she failed to comply with NAC 284.6562(2)(b) and that she failed to submit a
11 complete and proper appeal within the 10-day filing period under NRS 284.390(1). ROA 11-12.

12 NDOC filed its Reply in Support of Motion to Dismiss, which noted Kassebaum’s non-opposition
13 to the legal arguments for dismissal. ROA 7-10.

14 Hearing Officer Gentile granted NDOC’s Motion to Dismiss. The Hearing Officer found that in
15 her “limited opposition” Kassebaum conceded that procedurally her notice of appeal was deficient. The
16 Hearing Officer further concluded that “NAC 284.6562 sets forth the mandatory manner in which an
17 appeal must be initiated” and that Kassebaum’s notice of appeal was deficient. ROA 0003-5.

18 If any of these Findings of Fact are properly considered as Conclusions of Law, they shall be so
19 construed.

20 **B. CONCLUSIONS OF LAW**

21 THE COURT HEREBY CONCLUDES that the standard of review for evaluating a hearing
22 officer’s decision is set forth in NRS 233B.010.

23 THE COURT FURTHER CONCLUDES that the District Court defers to the agency’s findings
24 of fact that are supported by substantial evidence and reviews questions of law de novo. *Taylor v. Dep’t.*
25 *of Health & Human Servs.*, 129 Nev. 928, 930, (2013). However, in reviewing statutory construction, the
26 Court “defer[s] to an agency’s interpretation of its governing statutes or regulations if the interpretation
27 is within the language of the statute.” *Id.* quoting *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*,
28 124 Nev. 701, 709, (2008).

1 NRS 284.390(1) establishes a mandatory 10-day deadline for employee disciplinary appeals.
2 Under NRS 284.065(2)(d), the Nevada Legislature delegated to the Personnel Commission authority to
3 adopt all “regulations to carry out the provisions” of NRS Chapter 284. This delegated authority was not
4 limited to the adoption of mere procedural rules but all regulations.

5 With that delegated power, the Personnel Commission adopted NAC 284.6562, which sets forth
6 the requirements for satisfying the mandatory 10-day filing deadline under NRS 284.390(1). Among
7 these mandatory requirements is that the appeal “must” be “accompanied by the written notification of
8 the appointing authority’s decision regarding the proposed [disciplinary] action.” *See* NAC
9 284.6562(2)(b).

10 The word “must,” as used in NAC 284.6562(2), imposes a mandatory requirement. *See Washoe*
11 *Cty. v. Otto*, 128 Nev. 424, 432 (2012).

12 NAC 284.6562(2)(b) is quoted verbatim, in bold and italicized letters, on the first page of every
13 NPD-54 appeal form. ROA 223.

14 Regulations adopted by the Personnel Commission, such as NAC 284.6562, have the full force
15 and effect of law. *See Turk v. Nev. State Prison*, 94 Nev. 101, 104, 575 P.3d 599, 601 (1978).

16 The powers of an administrative agency are strictly limited to only those powers specifically set
17 forth by statute and regulation. *See Clark Cty. Sch. Dist. V. Clark Cty. Classroom Teachers Ass’n*, 115
18 Nev. 98, 102 977 P.2d 1008, 1010 (1999). Indeed, an administrative agency cannot act outside its legal
19 authority without committing an abuse of discretion.

20 NAC 284.6562 has the full force and effect of law and sets forth the mandatory requirements for
21 submitting a proper and timely administrative appeal under NRS 284.390(1). The Nevada Supreme Court
22 has held that the proper and timely filing of a notice of appeal is jurisdictional. *See Rust v. Clark Co.*
23 *School Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

24 THE COURT FURTHER CONCLUDES There was substantial evidence to support the Hearing
25 Officer’s granting of NDOC’s Motion to Dismiss Appeal for Lack of Jurisdiction.

26 The Hearing Officer’s interpretation of NAC 284.6562 is owed deference.

27 Pursuant to NAC 284.6562(2)(b), Kassebaum failed to attach the written notification of her final
28 discipline to her appeal form.

1 Kassebaum failed to oppose NDOC's Motion to Dismiss as her Limited Opposition did not
2 contest the jurisdictional challenge by NDOC in failing to attach the final discipline form, but rather
3 solely disputed the facts. In doing so, Kassebaum failed to preserve the jurisdictional issue for appeal and
4 therefore it is deemed waived for purposes of this Petition for Judicial Review.

5 The Hearing Officer applied the appropriate standard of evidence, made thorough findings of fact,
6 and applied the relevant law to the case.

7 Kassebaum is judicially estopped from arguing in her petition for judicial review that NAC
8 284.6562 is not jurisdictional and is a claims processing rule as it is inconsistent from the position set
9 forth in her Limited Opposition before the Hearing Officer.

10 Kassebaum cannot raise a new theory for the first time on appeal which is inconsistent from the
11 one she raised before the Hearing Officer.

12 The Hearing Officer properly determined that the plain language of NAC 284.6562 imposed
13 mandatory and jurisdictional requirements for initiating an appeal under NRS 284.390.

14 The Hearing Officer properly ruled that Kassebaum's appeal was deficient and Kassebaum did
15 not file a proper and timely appeal under NRS 284.390 or NAC 284.6562.

16 The District Court's decision in *Kassebaum v. NDOC*, Case No. A-20-810424-P did not create
17 issue preclusion with the issues raised herein.

18 If any of these Conclusions of Law are properly considered as Findings of Fact, they shall be so
19 construed.

20 ///

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1 **C. ORDER**

2 IT IS THEREFORE ORDERED that Kassebaum's Petition for Judicial Review is DENIED
3 and the Hearing officer's ruling is hereby AFFIRMED.

4 DATED: _____

Dated this 19th day of November, 2021

6 

7
8 3A9 2CA 45ED FBCF
Tara Clark Newberry
District Court Judge

9 Respectfully submitted by:

10 AARON D. FORD
11 Attorney General

12 By: /s/ Michelle Di Silvestro Alanis
13 MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)
Supervising Senior Deputy Attorney General
14 *Attorney for Respondent, Department of Corrections*

15 Approved as to form and content:

16 LAW OFFICE OF DANIEL MARKS
17

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19 Adam Levine, Esq.
Attorney for Petitioner, Shari Kassebaum

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From: Adam Levine <ALevine@danielmarks.net>
Sent: Tuesday, November 2, 2021 4:19 PM
To: Anela P. Kaheaku <AKaheaku@ag.nv.gov>
Cc: Joi Harper <JHarper@danielmarks.net>; Michelle D. Alanis <MAlanis@ag.nv.gov>
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

For your patience. My review of your proposed order reveals that it has all sorts of things, including citations to cases, which are not contained within the Minutes of the District Court's ruling. I would request that you revise the Order to reflect only those matters identified in the Court Minutes.

If Michelle wishes to discuss the matter, I can do so this Friday. I am going to be out of the office in Carson City for Supreme Court arguments tomorrow, and do not fly back until Thursday whereupon I have to proceed immediately to Pahrump upon landing.

Adam Levine, Esq.
Law Office of Daniel Marks
610 S. Ninth Street
Las Vegas, NV 89101
(702) 386-0536: Office
(702) 386-6812: Fax
alevine@danielmarks.net

From: Anela P. Kaheaku [<mailto:AKaheaku@ag.nv.gov>]
Sent: Wednesday, October 27, 2021 12:42 PM
To: Adam Levine
Cc: Joi Harper; Michelle D. Alanis
Subject: RE: Kassebaum v NDOC, Case No. A-20-81182-J

Hello.

I am following up on the email below. Please advise.

Thank you,

Reply/Forward From:

Anela Kaheaku, LS II

AKaheaku@ag.nv.gov

From: Anela P. Kaheaku

Sent: Friday, October 22, 2021 3:10 PM

To: Adam Levine <alevine@danielmarks.net>

Cc: Joi Harper <JHarper@danielmarks.net>; Michelle D. Alanis (MAlanis@ag.nv.gov)
<MAlanis@ag.nv.gov>

Subject: Kassebaum v NDOC, Case No. A-20-81182-J

Good afternoon,

Attached for your review and approval is the Findings of Fact, Conclusions of Law and Order Denying Petition for Judicial Review. If acceptable, please authorize the use of your e- signature.

Thank you,

Anela Kaheaku, LS II

State of Nevada*Office of the Attorney General

Personnel Division

555 E. Washington Ave., Ste. 3900 * Las Vegas, NV 89101

AKaheaku@ag.nv.gov

PLEASE BE GREEN. *Please don't print this email unless necessary.*

This e-mail contains the thoughts and opinions of Anela Kaheaku and does not represent official Office of the Attorney General policy.

CONFIDENTIALITY NOTICE

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of this message and attachments and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately and destroy this document and all attachments. Thank you.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Shari Kassebaum, Petitioner(s) | CASE NO: A-20-811982-J

7 vs. | DEPT. NO. Department 21

8 Nevada Department of
9 Corrections, Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 11/19/2021

16 Michelle Alanis malanis@ag.nv.gov

17 Anela Kaheaku akaheaku@ag.nv.gov

18 Daniel Marks Office@danielmarks.net

19 Angela Lizada angela@lizardalaw.com

20 Joi Harper Jharper@danielmarks.net
21
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 04, 2020

A-20-811982-J

Shari Kassebaum, Petitioner(s)

vs.

Nevada Department of Corrections, Respondent(s)

August 04, 2020

3:00 AM

Minute Order

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building 11th Floor
116

COURT CLERK: Rem Lord

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The court directs counsel to file supplemental briefs limited to a maximum of fifteen (15) pages. Those supplemental briefs are to address whether or not good cause exists in this case, in the context of the court's reasoning in Spar Business Services, Inc. vs Olson, 135 Nev. 296 (2019) 448 P.3d 539, Unempl.Ins.Rep. (CCH) P 8334, 135 Nev. Adv. Op. 40

Petitioner's brief is due 8/20/20

Respondent's brief is due 8/31/20

COURT FURTHER ORDERED, matter SET for hearing.

9/10/20 9:00 AM

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /rl 8/4/2020

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

September 04, 2020

A-20-811982-J Shari Kassebaum, Petitioner(s)
vs.
Nevada Department of Corrections, Respondent(s)

September 04, 2020 3:00 AM Minute Order

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK:
Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by the parties without oral argument since the court deems oral argument unnecessary.

8/4/20 Minutes:

"The Court directs counsel to file supplemental briefs limited to a maximum of fifteen (15) pages. Those supplemental briefs are to address whether or not good cause exists in this case, in the context of the court's reasoning in Spar Business Services, Inc. vs Olson, 135 Nev. 296 (2019) 448 P.3d 539, Unempl.Ins.Rep. (CCH) P 8334, 135 Nev. Adv. Op. 40."

The court has reviewed the briefs prepared by counsel on the issue of "good cause" and finds Petitioner Kassebaum's arguments persuasive, if not compelling. The Spar case certainly provides guidance in cases that were not impacted by the Coronavirus. The resulting consequences detailed in Attorney Lizada's brief, coupled with Administrative Order 20-17, provide ample support for the court's finding good cause exists to extend the time for service. The court finds good cause existed to extend time to serve per the 7/2/20 Order to Extend Time for Service. Accordingly, the Motion for Reconsideration is denied and the 7/2/20 Order to Extend Time for Service stands. Counsel for

Petitioner to prepare and submit order to court for signature within 14 days per EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 09/04/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

July 29, 2021

A-20-811982-J Shari Kassebaum, Petitioner(s)
vs.
Nevada Department of Corrections, Respondent(s)

July 29, 2021 10:00 AM Petition for Judicial Review

HEARD BY: Peterson, Jessica K. **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK: Rem Lord

RECORDER: Nancy Maldonado

REPORTER:

PARTIES

PRESENT: Alanis, Michelle D. Attorney
Levine, Adam Attorney

JOURNAL ENTRIES

- RESPONDENT, DEPARTMENT OF CORRECTIONS' REQUEST TO SET MATTER FOR HEARING

Based on prior dealings with Petitioner's counsel, Angela Lizada, COURT hereby RECUSES; case to be REASSIGNED by the Clerk s Office.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

September 01, 2021

A-20-811982-J Shari Kassebaum, Petitioner(s)
vs.
Nevada Department of Corrections, Respondent(s)

September 01, 2021	2:00 PM	Petition for Judicial Review	Petition for Judicial Review: Respondent, Department of Corrections' Request to Set Matter for Hearing
---------------------------	----------------	-------------------------------------	---

HEARD BY: Clark Newberry, Tara

COURTROOM: RJC Courtroom 16C

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Alanis, Michelle D.	Attorney
	Levine, Adam	Attorney

JOURNAL ENTRIES

- Colloquy regarding continuance. There being agreement, COURT ORDERED, matter CONTINUED to 9/22/21 at 1:30 p.m.

CONTINUED TO: 9/22/21 1:30 PM PETITION FOR JUDICIAL REVIEW: RESPONDENT, DEPARTMENT OF CORRECTIONS' REQUEST TO SET MATTER FOR HEARING

CLERK'S NOTE: Minutes prepared upon review of JAVS recording. /cd 10-28-2021/

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

September 22, 2021

A-20-811982-J Shari Kassebaum, Petitioner(s)
vs.
Nevada Department of Corrections, Respondent(s)

September 22, 2021 1:30 PM Petition for Judicial Review

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT: Alanis, Michelle D. Attorney
Levine, Adam Attorney

JOURNAL ENTRIES

- Court noted it had reviewed the briefs and had a good inclination of how it was going to rule, however, welcomed brief arguments. Arguments by Mr. Levine and Ms. Alanis regarding the merits of and opposition to Petition for Judicial Review. COURT ORDERED, matter taken UNDER ADVISEMENT.

CLERK'S NOTE: This minute order was completed with the use of the JAVs recording program. /mt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

October 01, 2021

A-20-811982-J

Shari Kassebaum, Petitioner(s)

vs.

Nevada Department of Corrections, Respondent(s)

October 01, 2021

3:00 AM

Minute Order

**Petition for Judicial
Review: Respondent,
Department of
Corrections' Request
to Set Matter for
Hearing**

HEARD BY: Clark Newberry, Tara**COURTROOM:** Chambers**COURT CLERK:** Carina Bracamontez-Munguia**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court having further reviewed District Court Case. A-20-811982-J, Ray Allen v. State of Nevada ex rel, its Department of Corrections the September 22, 2021 Hearing in this matter, the February 22, 2021 Petitioners Opening Brief, the April 8, 2021 Respondent s Answering Brief, the May 25, 2021 Petitioner s Reply Brief, the February 8, 2021 Transmittal of Record on Appeal, and the entirety of the Record, finds the legal assertions in Respondent s Answering Brief persuasive. Specifically, the COURT FINDS substantial evidence to support the Appeal s Officer s granting of NDOC s Motion to Dismiss Appeal for Lack of Jurisdiction. Pursuant to NAC 284.6562(2)(b), Kassebaum failed to attach the written notification of her final discipline to her appeal form. Additionally, Kassebaum failed to oppose NDOC s Motion to Dismiss as her Limited Opposition did not contest the jurisdictional challenge by NDOC in failing to attach the final discipline form, but rather solely disputed the facts. In doing so, Kassebaum failed to preserve the jurisdictional issue for appeal and therefore it is deemed waived for purposes of this Petition for Judicial Review. Lastly, the COURT FINDS the Appeal s Officer applied the appropriate standard of evidence, made thorough findings of fact, and

applied the relevant law to the case. Therefore, it is ORDERED that the Petition for Judicial Review is DENIED.

Per EDCR 7.21, within 14 days, Counsel for Respondent to prepare the Proposed Order, circulate to Counsel for Petitioner for signature as to Form and Content, and submit to dc21inbox@clarkcountycourts.us. Counsel for Respondent may use the legal arguments contained within their Answering Brief as a basis of the Order.

CLERK'S NOTE: The above minute order has been electronically served to parties via e-mail and/or Odyssey File & Serve. //cbm 10-01-2021



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

DANIEL MARKS, ESQ.
610 S. NINTH ST.
LAS VEGAS, NV 89101

DATE: December 14, 2021
CASE: A-20-811982-J

RE CASE: SHARI KASSEBAUM vs. STATE OF NEVADA, ex rel its DEPARTMENT OF CORRECTIONS;
STATE OF NEVADA, ex rel its DEPARTMENT OF ADMINISTRATION PERSONNEL COMMISSION, HEARING
OFFICER

NOTICE OF APPEAL FILED: December 10, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

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 DENYING PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PETITION FOR JUDICIAL REVIEW; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SHARI KASSEBAUM,

Petitioner(s),

vs.

STATE OF NEVADA, ex rel its
DEPARTMENT OF CORRECTIONS; STATE
OF NEVADA, ex rel its DEPARTMENT OF
ADMINISTRATION PERSONNEL
COMMISSION, HEARING OFFICER,

Respondent(s),

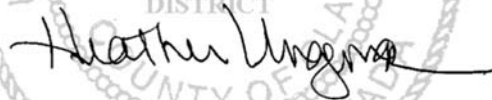
Case No: A-20-811982-J

Dept No: XXI

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 14 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk