

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHARI KASSEBAUM

Appellant,

vs.

THE STATE OF NEVADA DEPARTMENT  
OF CORRECTIONS,

Respondents.

Supreme Court No. 83942

District Court: A811982

Electronically Filed  
Jan 06 2022 05:11 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

**GENERAL INFORMATION**

Appellant(s) must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court May impose sanctions on counselor appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Judicial District Court

Department: 21

County: Clark County Judge: Tara Clark Newberry

District Ct. Case No.: A-20-811982-J

**2. Attorney filing this docketing statement:**

Attorney: Adam Levine Telephone: (702) 386-0536

Firm: Law: Office of Daniel Marks

Address: 610 S. Ninth Street, Las Vegas, Nevada 89101

Client(s): Appellant, Shari Kassebaum

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney: Michelle Di Silvestro-Alanis, Esq. Telephone: (702) 486-3268

Firm: Office of the Attorney General

Address: 55 E. Washington Avenue, #3900, Las Vegas, Nevada 89101

Client(s): The State of Nevada Department of Corrections

Attorney: Telephone:

Firm:

Address:

Client(s):

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial                | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict               | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                          | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                          | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief         | <input type="checkbox"/> Other (specify):                               |
| <input type="checkbox"/> Grant/Denial of injunction                | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief        | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify):                   |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

N/A

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A



**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This was a Petition for Judicial Review pursuant to NRS 233B.130 of a decision of a State of Nevada Department of Administration/Personnel Commission Hearing Officer to dismiss the disciplinary appeal of Appellant brought under NRS 284.390. Judicial Review was denied.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Is the requirement under NAC 284.6562(2)(b) that a member of the classified service seeking to appeal a suspension, demotion or dismissal pursuant to NRS 284.390 attach a copy of the final decision of the appointing authority jurisdictional, or alternatively only a claims processing rule.

Does an administrative agency such as the Personnel Commission have authority to enact jurisdictional rules/regulations which supplements or alters the jurisdictional requirements established by the Legislature.

Did the dismissal of Appellant's appeal pursuant to NRS 284.390 without any post-suspension hearing violate her rights to due process of law under *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532 (1985) and *Gilbert v. Homar*, 520 U.S. 924 (1997).

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**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

*Kassebaum v. Department of Corrections*, Docket No. 84008 raises the identical issue. This Appeal (Docket 83942) involves the dismissal of Sgt. Shari Kassebaum's appeal of a two (2) day suspension under NRS 289.390. Docket No. 84008 raises the exact same issues arising out of the dismissal of Sgt. Kassebaum's appeal of a fifteen (15) day suspension under NRS.390. The two (2) Appeals should be consolidated.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of unsettled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this Court's decisions

☐ A ballot question

If so, explain:

In *Cleveland Board of Education v. Loudermill* 470 U.S. 532 (1985) the United States Supreme Court held that once a property interest in employment is conferred by the State, an employee may not be deprived of that property interest without a full post-deprivation hearing which meets the requirements of federal constitutional law. In *Gilbert v. Homar*, 520 U.S. 924 (1997), the Supreme Court extended the holding of *Loudermill* to suspension cases.

In 2018 the State Personnel Commission amended NAC 284.6562 to require that an employee filing an appeal to the Department of Administration of a suspension, demotion or dismissal pursuant to NRS 284.390 attach a copy of the final decision of the appointing authority. Kassebaum did not attach the document when filing her appeal even though her employer had a copy of the document. The employer moved to dismiss Kassebaum's appeal arguing that NAC 284.6562 requirement of attaching the document was *jurisdictional* and could not be cured after the 10 working days for filing an appeal provided for under NRS 284.390(1). The hearing officer granted the motion, thus depriving Kassebaum of the hearing which *Loudermill* and *Homar* require.

Whether the requirement to attach the written decision of the appointing authority under NAC 284.6562 is jurisdictional, or alternatively only a claims processing rule, is an issue of first impression.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

While the case would normally be assigned to the Court of Appeals pursuant to NRAP17(b)(9), the appeal(s) should be retained by the Court pursuant to NRAP

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59) N/A**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- |                                     |                |
|-------------------------------------|----------------|
| <input type="checkbox"/> NRCP 50(b) | Date of filing |
| <input type="checkbox"/> NRCP 52(b) | Date of filing |
| <input type="checkbox"/> NRCP 59    | Date of filing |

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

- ☐ Delivery  
☐ Mail

**19. Date notice of appeal filed**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

The appeal was filed by Shari Kassebaum on 12-10-21

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

#### **SUBSTANTIVE APPEALABILITY**



**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)          |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Order denying Judicial Review was a final judgment.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Petitioner: Shari Kassebaum

Respondents: 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

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

No parties other than the Department of Corrections filed a Notice of Intent to Participate pursuant to NRS 233B.130(3).

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

A Petition for Judicial Review under NRS 233B.130 which was denied on December 1, 2021.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following: N/A**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attached is file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
  - Any tolling motion(s) and order(s) resolving tolling motion(s);
  - Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal;
  - Any other order challenged on appeal;
  - Notices of entry for each attached order.
1. District Court Clark County, Nevada Case No. A-20-811982-J, Petition for Judicial Review filed March 3, 2020;
  2. District Court Clark County, Nevada Case No. A-20-811982-J, Notice of Entry of Findings of Fact, Conclusions of Law and Order Denying Petition for Judicial Review filed December 1, 2021.

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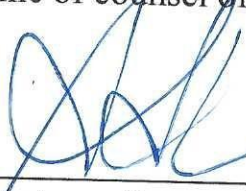
## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Shari Kassebaum  
Name of appellant

Adam Levine, Esq.  
Name of counsel of record

Jan. 6, 2022  
Date

  
Signature of counsel of record

Nevada, Clark County  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 6<sup>th</sup> day of January 2022, I served a copy of this completed docketing statement upon all counsel of record:

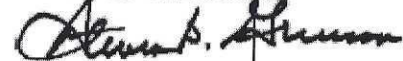
- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following addressees): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

☒ I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 6<sup>th</sup> day of January 2022, I did serve the above and forgoing Docketing Statement, by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, at the following:

Michelle Di Silvestro Alanis, Esq.,  
Supervising Sr. Deputy Attorney General  
Office of the Attorney General  
555 E. Washington Avenue, #3900  
Las Vegas, Nevada 89101  
Email: MAlanis@ag.nv.gov  
*Attorneys for Respondents*

Dated this 6<sup>th</sup> day of January 2022.

  
Signature



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

ANGELA J. LIZADA, ESQ.  
Nevada Bar No. 11637  
LIZADA LAW FIRM, LTD.  
711 S. 9<sup>th</sup> St.  
Las Vegas, NV 89101  
Phone: (702) 979-4676  
Fax: (702) 979-4121  
angela@lizardalaw.com  
Attorney for SHARI KASSEBAUM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SHARI KASSEBAUM,  
  
Petitioner,

v.

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

Respondent.

Case No.:  
Department No.:

**PETITION FOR JUDICIAL REVIEW**

COMES NOW, Petitioner SHARI KASSEBAUM, by and through ANGELA J. LIZADA, ESQ. of LIZADA LAW FIRM, LTD., her attorney of record and hereby Petitions the Court as follows:

**GENERAL ALLEGATIONS**

1. Shari Kassebaum (hereinafter "Sgt. Kassebaum") is and was employed as a Sergeant by the State of Nevada Department of Corrections (hereinafter referred to as "NDOC") at all times relevant to this matter.



1           2.     On or around June 17, 2019, Sgt. Kassebaum was served with an NPD-41  
2     Specificity of Charges ("SOC 1") recommending a fifteen-day suspension, the effective date of  
3     suspension was June 18, 2019.

4           3.     In or around August 2, 2019, Sgt. Kassebaum was served with an NPD-41  
5     Specificity of Charges ("SOC 2") recommending a two-day suspension, the effective date of the  
6     suspension was August 30, 2019 and August 31, 2019.

7           4.     Sgt. Kassebaum filed her appeal to SOC 1 and SOC 2 under NRS 284.387 within  
8     10 days of the effective date, however, she did not attach the NPD-41 to the appeals form.

9           5.     A State hearing officer dismissed Sgt. Kassebaum's two appeals, asserting that  
10    the failure to attach the NPD-41 was a jurisdictional defect.

11          6.     The Order dismissing Petitioner's appeal of SOC 2 was filed on February 12,  
12    2020.

13          7.     Previously, the State Hearing Officers in these cases have held that such a defect  
14    is not jurisdictional and did not require dismissal.

15          8.     This Court has jurisdiction pursuant to NRS 233B.130.

16                   **FIRST CAUSE OF ACTION**  
17                   **(Petition for Judicial Review Pursuant to NRS 233B.130)**

18          9.     Petitioner repeats and realleges the facts as set forth above in paragraphs 1  
19    through 8 as though fully set forth herein.

20          10.    Because of the inconsistent ruling, and the change in procedure without a change  
21    in law, Petitioner requests judicial review of the final decision of the State of Nevada Department  
22    of Personnel Hearing Officer, attached hereto as "Exhibit 1".

23          11.    Petitioner has been aggrieved by the final decision of the State of Nevada  
24    Department of Personnel Hearing Officer, and Petitioner's rights have been prejudiced because  
25    26    27    28

1 the final decision is in violation of a constitutional or statutory provisions, in excess of the  
2 statutory authority of the agency, affected by other error of law, is clearly erroneous in view of  
3 the reliable, probative, and substantial evidence on the whole record, and/or is arbitrary or  
4 capricious, and characterized by abuse of discretion.

5  
6 12. Petitioner reserves the right to file a Memorandum of Points and Authorities after  
7 a copy of the entire record on appeal has been transmitted to the Court in accordance with NRS  
8 233B.133.

9  
10 13. Petitioner reserves the right to request oral argument on the matter pursuant to  
11 NRS 233B.133(4).

12 WHEREFORE, Petitioner respectfully requests this Honorable Court:

13 1. Conduct a review of the final decision of the Nevada State Personnel Commission  
14 Hearing Officer and enter an Order setting aside the decision and remanding the matter back to  
15 the Hearing Officer to conduct a hearing on the merits;

16  
17 2. For such other relief as the Court may deem just and proper.

18 DATED this 10<sup>th</sup> day of March, 2020.

19  
20 LIZADA LAW FIRM, LTD.

21 

22 ANGELA J. LIZADA, ESQ.

23 Nevada Bar No. 11637

24 711 S. 9<sup>th</sup> St.

25 Las Vegas, NV 89101

26 [angela@lizardalaw.com](mailto:angela@lizardalaw.com)

# EXHIBIT 1



1                   **BEFORE THE NEVADA DEPARTMENT OF ADMINISTRATION**  
2   **HEARINGS DIVISION**

3 SHARI KASSEBAUM,

4                   Petitioner-Employee,

5 v.

6 STATE OF NEVADA, *ex rel.* its  
7 DEPARTMENT OF CORRECTIONS,

8                   Respondent-Employer.

Appeal No. 2004780-MG

**FILED**

**FEB 12 2020**

**APPEALS OFFICE**

9  
10                   **ORDER RE: MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION**

11                   Petitioner-Employee, Shari Kassebaum, is represented in this action by and through her  
12 counsel, Angela Lizada, Esq., of Lizada Law Firm, Ltd. The Respondent-Employer, State of Nevada  
13 *ex rel.* its Department of Corrections is represented by and through its counsel, Aaron D. Ford,  
14 Attorney General for the State of Nevada, and Michelle DiSilvestro Alanis, Supervising Senior  
15 Deputy Attorney General.

16                   This is a Motion by Employer State of Nevada, *ex rel.*, Department of Corrections ("NDOC")  
17 to dismiss the appeal of Employee Shari Kassebaum for lack of jurisdiction.

18                   The underlying Specificity of Charges against Sergeant Kassebaum was served on August 9,  
19 2019. She was charged with a number of infractions arising, essentially, from alleged discourteous  
20 remarks made by her to certain co-workers and inmates regarding certain co-workers and  
21 supervisors. She was suspended for two (2) days without pay.

22                   The pre-disciplinary review was completed on August 23, 2019. Sergeant Kassebaum  
23 received a final decision on her suspension, pursuant to NAC 284.6561(7), on August 28, 2019. The  
24 effective date of the suspension was August 30, 2019.

25                   On September 12, 2019, Sergeant Kassebaum initiated the subject appeal by submitting an  
26 "Appeal of Dismissal, Suspension, Demotion or Involuntary Transfer" (Appeal Form), and attaching  
27 a nine (9) page addendum explaining why she believes the action taken was not reasonable and done  
28 in retaliation. The Appeal Form itself, at page 2, specifically states as follows: If you have received  
a Specificity of Charges or written notice of involuntary transfer, *you must* attach it to this appeal."

1 The appeal was deficient in that it did not include the mandatory document.

2 None of the above facts are disputed.

3 Respondent-Employer NDOC filed a Motion to Dismiss this appeal for failing to comply  
4 with requirements of NAC 284.6562(2) related to service of the notice of appeal. The administrative  
5 regulation reads as follows:

6 A permanent employee who has been dismissed, demoted or suspended may request  
7 a hearing before the hearing officer of the Commission pursuant to NAC 284.390  
8 withing 10 working days after the effective date of his or her dismissal., demotion or  
9 suspension. Such a request **must** be:

10 (a) Addressed and submitted as required pursuant to NAC 284.778; and

11 (b) Accompanied by a written notification of the appointing authority's  
12 decision regarding the proposed action provided to the employee pursuant to  
13 subsection 7 of NAC 284.6561.

14 Sergeant Kassebaum filed a "limited opposition" to the Motion to Dismiss the appeal.  
15 Sergeant Kassebaum conceded that, procedurally, her notice of appeal was deficient. However, she  
16 objected to the form of the Motion and the attachments as being unnecessarily derogatory towards  
17 Sergeant Kassebaum. I would note that there was absolutely nothing extraordinary, unusual, or  
18 inappropriate about the form of the Motion to Dismiss, or the attachments, although, I do agree that  
19 the decision of another hearing officer on similar facts is not controlling precedent.

20 Nevada law, quite clearly, reflects that a defect of appellate jurisdiction is never waived and  
21 that not even consent of the parties can confer appellate jurisdiction. *See Jasper v. Jewes*, 50 Nev.  
22 153, 254 P. 698 (1927); see also *Maitia v. Allied L. and L. Company*, 49 Nev.451, 248 P. 893 (1926).


### 23 CONCLUSION

24 My obligation as a Hearing Officer is to apply and comply with Nevada law. NAC 284.6562  
25 sets forth the mandatory manner in which an appeal must be initiated. *Rust v. Clark County School*  
26 ...  
27 ...  
28 ...

1 *District*, 103 Nev. 686, 747 P.2d 1380 (1987) states that "the proper and timely filing of a notice of  
2 appeal is jurisdictional." The notice of appeal in this matter was, admittedly, deficient.

3 The Motion to Dismiss the appeal is GRANTED.

4 DATED this 10 day of February, 2020.

5  
6   
7 MARK L. GENTILE  
Hearing Officer

8  
9 **NOTICE:** Pursuant to NRS 233B.130, should any party desire to appeal this final  
10 determination of the Appeals Officer, a Petition for Judicial Review must be filed with the  
11 District Court within 30 days after service by mail of this decision.  
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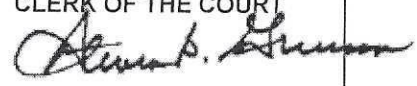
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MICHELLE DI SILVESTRO ALANIS ESQ  
SUPERVISING SR DEPUTY ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
555 EAST WASHINGTON AVE STE 3900  
LAS VEGAS NV 89101

VE

**Vanessa Curiel, Administrative Assistant IV**  
**Employee of the State of Nevada**





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](mailto: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  
12  
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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:

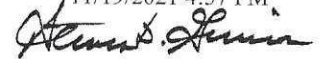
7  
8 Adam Levine, Esq.  
9 Law Office of Daniel Marks  
610 S. Ninth St.  
Las Vegas, NV 89101  
10 alevine@danielmarks.net

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. 9<sup>th</sup> 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  
Tel: (702) 486-3268  
Fax: (702) 486-3773  
[malanis@ag.nv.gov](mailto:malanis@ag.nv.gov)  
*Attorneys for Respondent State of Nevada*  
*ex rel. Department of Corrections*

**DISTRICT COURT****CLARK COUNTY, NEVADA**

SHARI KASSEBAUM,  
  
Petitioner,

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

vs.

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

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

Respondents.

This matter having come on for hearing on the 22<sup>nd</sup> 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

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Good morning Michelle,

You have his permission to sign 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](mailto: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](mailto:ALevine@danielmarks.net)>; Anela P. Kaheaku <[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)>  
**Cc:** Joi Harper <[JHarper@danielmarks.net](mailto: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](mailto:ALevine@danielmarks.net)>; Anela P. Kaheaku <[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)>  
**Cc:** Joi Harper <[JHarper@danielmarks.net](mailto: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](mailto:ALevine@danielmarks.net)>  
**Sent:** Tuesday, November 16, 2021 4:25 PM  
**To:** Michelle D. Alanis <[MAlanis@ag.nv.gov](mailto:MAlanis@ag.nv.gov)>; Anela P. Kaheaku <[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)>  
**Cc:** Joi Harper <[JHarper@danielmarks.net](mailto:JHarper@danielmarks.net)>  
**Subject:** RE: Kassebaum v NDOC, Case No. A-20-81182-J

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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](mailto: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](mailto:ALevine@danielmarks.net)>; Anela P. Kaheaku <[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)>  
**Cc:** Joi Harper <[JHarper@danielmarks.net](mailto: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](mailto:ALevine@danielmarks.net)>; Anela P. Kaheaku <[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)>  
**Cc:** Joi Harper <[JHarper@danielmarks.net](mailto: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](mailto:ALevine@danielmarks.net)>  
**Sent:** Tuesday, November 2, 2021 4:19 PM  
**To:** Anela P. Kaheaku <[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)>  
**Cc:** Joi Harper <[JHarper@danielmarks.net](mailto:JHarper@danielmarks.net)>; Michelle D. Alanis <[MAlanis@ag.nv.gov](mailto: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](mailto: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](mailto:AKaheaku@ag.nv.gov)

**From:** Anela P. Kaheaku

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

**To:** Adam Levine <[alevine@danielmarks.net](mailto:alevine@danielmarks.net)>

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

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1 CSERV

2 DISTRICT COURT  
3 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