

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHARI KASSEBAUM,

Appellant,

v.

THE STATE OF NEVADA, ex rel.
DEPARTMENT OF CORRECTIONS,

Respondent.

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Supreme Court No. 83942
Elizabeth A. Brown
Clerk of Supreme Court
District Court No. A811982

OPPOSITION TO APPELLANT’S MOTION TO CONSOLIDATE WITH
DOCKET NO. 84008¹

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Department of Corrections

¹ Respondent also joins in Respondent NDOC’s Opposition to Motion to Consolidate filed in Docket 84008 and all arguments made therein are incorporated into this Opposition.

COMES NOW, Respondent, STATE OF NEVADA, DEPARTMENT OF CORRECTIONS (NDOC), by and through its counsel, Aaron D. Ford, Attorney General, by Michelle Di Silvestro Alanis, Supervising Senior Deputy Attorney General, and hereby submits this Opposition to Appellant's Motion to Consolidate with Docket No. 84008. This Opposition is made and based on the Memorandum of Points and Authorities set forth below, any exhibits attached hereto, any other papers and pleadings on file in Appeal No. 84008 and all papers and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This is an appeal from a final order from the Eighth Judicial District Court denying a petition for judicial review. NDOC Employee, Shari Kassebaum (Kassebaum) sought judicial review of the administrative hearing officer decision dismissing her appeal for a lack of jurisdiction and affirming a 2-day (16 hour) suspension without pay.

In denying the petition for judicial review, the district court held NRS 284.390(1) establishes a mandatory 10-day deadline for employee disciplinary appeals. *See* Exhibit 1, Notice of Entry of Findings of Fact, Conclusions of Law and Order Denying Petition for Judicial Review. The district court further held NAC

284.6562 sets forth the mandatory requirements to satisfy the filing deadline under NRS 284.390 and the plain language of NAC 284.6562(2)(b) requires the appeal must be accompanied by the written notification of the appointing authority. *Id.* The district court further held Kassebaum's appeal did not include the written notification of appointing authority as required by NAC 284.6562(2)(b) and therefore, Kassebaum failed to file a proper and timely appeal. *Id.*

Kassebaum has another appeal pending in Appeal No. 84008 wherein she sought judicial review of the administrative hearing officer decision dismissing her appeal for a lack of jurisdiction and affirming a 15-day (120 hour) suspension without pay. *See* Docket for Appeal 84008. Kassebaum now seeks to have the instant case, Appeal No. 83942, consolidated with her other case, Appeal No. 84008.

Kassebaum's Motion to Consolidate must be denied for four reasons. First, Kassebaum failed to comply with NRAP 27(a) as her Motion does not include any legal standard or law to support her argument for consolidation. Second, judicial economy will not be served by the consolidation as these cases while on their face appear similar, had two different hearing officers who issued decisions based on different legal reasoning as well as two different district court judges who issued decisions based on different legal reasoning. Third, the Nevada Supreme Court does not have jurisdiction over Appeal No. 84008, thus it would be improper to consolidate this case with a case where this Court lacks jurisdiction. Fourth,

Kassebaum filed an untimely Notice of Appeal in in Appeal No. 84008 failing to vest jurisdiction with this Court. For the foregoing reasons, Appellant's Motion to Consolidate must be denied.

II.

RELEVANT FACTS AND PROCEDURAL HISTORY

On August 28, 2019, NDOC served Kassebaum with the final written notification of the appointing authority imposing a 2-day (16-hour) suspension without pay effective August 30, 2019. *See* Exhibit 2, Hearing Officer Gentile Decision and Order, p. 1. On September 12, 2019, Kassebaum filed an appeal and attached a typed statement totaling nine pages to the NPD-54, Appeal Form, explaining why she believed the action was not reasonable and in retaliation. *Id.* Employee's Appeal Form was not accompanied by the written notification of the appointing authority as required by NAC 284.6562(2)(b). *Id.*

On January 14, 2020, NDOC filed a motion to dismiss for Kassebaum's failure to comply with NAC 284.6562(2)(b). *See* Exhibit 3, NDOC's Motion to Dismiss. Kassebaum filed a "limited opposition" in which she **conceded** procedurally her notice of appeal was deficient. *See* Exhibit 4, Kassebaum, Opposition at 1. Kassebaum stated, she "concedes that under the revised NAC 284.6562(2)(b) it is now required" for an Appeal to include the written notification of the appointing authority. *Id.* She further stated, "Procedurally, Employer will

prevail on its motion to dismiss.” *Id.* Kassebaum only disagreed, to “the completely inaccurate facts set forth in the Motion.” *Id.* Yet, NDOC’s motion only provided the facts outlining the procedural defects. *See* Exhibit 3. Additionally, Kassebaum objected to the relevancy of several exhibits attached to the motion to dismiss. Exhibit 4 at 2. Kassebaum did not dispute she failed to comply with NAC 284.6562 or that it was mandatory and jurisdictional. *Id.*

On February 10, 2020, Hearing Officer Mark Gentile dismissed Kassebaum’s appeal. *See* Exhibit 2. Hearing Officer Gentile applied a strict compliance standard finding the appeal was deficient in that it did not include the mandatory document pursuant to NAC 284.6562. *Id.* at 2. Hearing Officer Gentile further noted Kassebaum did not dispute the facts and conceded the legal argument noting her appeal was deficient. *Id.*

Despite Kassebaum conceding the merits of the jurisdictional arguments in NDOC’s Motion to Dismiss, on March 10, 2020, Kassebaum filed a petition for judicial review in the district court seeking review of Hearing Officer Gentile’s decision. Kassebaum also filed a Motion to Consolidate in the district court seeking consolidation of her two cases as well as two other pending petitions for judicial review filed by two other NDOC employees. *See* Exhibit 5, Order denying Petitioner’s Motion to Consolidate in *Livingston v. NDOC*. The district court denied consolidation finding the petitions involved different hearing officers, different legal

standards, different legal arguments, and different concessions made by the petitioners at the administrative hearing. *Id.*

The petition for judicial review was fully briefed and Kassebaum argued for the first time that NAC 284.6562 is not a jurisdictional requirement and instead a claims processing rule. On November 19, 2021, the district court denied judicial review and affirmed Hearing Officer Gentile's dismissal of the administrative appeal. *See* Exhibit 1. The district court found the Personnel Commission validly exercised its authority under NRS 284.065 and adopted NAC 284.6562(2)(b), which imposes a mandatory requirement all administrative appeals under NRS 284.390 be "accompanied by the written notification of the appointing authority's decision regarding the proposed [disciplinary] action." *Id.* The district court also recognized NAC 284.6562 has the full force and effect of law and sets forth the mandatory requirements for submitting a proper and timely administrative appeal under NRS 284.390(1). *Id.* The district court also recognized the administrative hearing officer's interpretation of NAC 284.6562 was entitled to deference and that the proper and timely filing of a notice of appeal was jurisdictional. *Id.* The district court further recognized Kassebaum failed to oppose the underlying Motion to Dismiss and did not challenge the jurisdictional arguments in her administrative appeal failing to preserve the jurisdictional issue for appeal. *Id.* Accordingly, the district court affirmed the dismissal of Kassebaum's administrative appeal, which failed to attach

the written notification of her final discipline in accordance with NAC 284.6562(2)(b). *Id.*

III.

LAW AND ARGUMENT

A. Legal Standard

When two or more parties are entitled to appeal from an order, they may file a joint notice of appeal. N.R.A.P. 3(b)(1). “When parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court ...or upon motion of a party.” N.R.A.P. 3(b)(2). The main consideration underlying the consolidation of appeals is promoting judicial economy. *See Jackson v. State*, 115 Nev. 21, 22, 973 P.2d 241, 241 (1999) (citing NRAP 3(b)).

B. The Motion Should Be Denied For Not Complying with NRAP 27(a)(2)

A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. NRAP 27(a)(2). Here, Kassebaum filed a Motion to Consolidate without citing any applicable court rules or case law outlining the legal standard for consolidation. Since Kassebaum’s Motion to Consolidate fails to state with particularity the grounds for the motion and the legal argument to support it, Kassebaum’s Motion does not comply with NRAP 27(a)(2) and should be denied.

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C. Consolidation Will Not Promote Judicial Economy

Consolidating Appeal No. 83942 with Appeal No. 84008 will not promote judicial economy. Kassebaum is correct she appealed two workplace suspensions under NRS 284.390 and NDOC moved to dismiss those appeals on similar jurisdictional grounds. Kassebaum also did not dispute NDOC's jurisdictional arguments in either administrative case and the cases were both dismissed. However, that is where the similarities between these cases end.

As discussed above, in this case, Appeal No. 83942, Kassebaum petitioned the district court for judicial review and the district court denied the petition for judicial review and affirmed the hearing officer. As noted earlier, the district court recognized that NAC 284.6562 has the full force and effect of law and sets forth the mandatory requirements for submitting a proper and timely administrative appeal under NRS 284.390(1). *Id.* The district court also recognized that the administrative hearing officer's interpretation of NAC 284.6562 was entitled to deference and that the proper and timely filing of a notice of appeal was jurisdictional. *Id.* Accordingly, the district court affirmed the dismissal of Kassebaum's administrative appeal, which failed to attach the written notification of her final discipline in accordance with NAC 284.6562(2)(b). *Id.*

By contrast, the district court in Appeal No. 84008 never actually ruled on any of the foregoing legal issues, but found that "the Hearing Officer's Decision did not

adequately analyze or consider whether NAC 284.6562(2)(b) is a claims processing rule or a jurisdictional requirement, and if NAC 284.6562(2)(b) is a claims processing rule whether the case should be dismissed or proceed to hearing on the merits . . .” *See* Exhibit 6, Notice of Entry Order granting judicial review in Appeal 84008. Accordingly, the district court found that “this matter must be remanded for assignment to a new Hearing Officer for proper consideration of the arguments raised by the parties.” *Id.* Upon remand, the administrative hearing officer again dismissed Kassebaum’s appeal, based on a legal analysis that was distinct from Appeal No. 83942. Namely, the Decision on Remand held that NAC 284.6562(2)(b) was a mandatory and jurisdictional requirement adopted to carry out the provisions of NRS 284.065(2)(d), NRS 284.383, and NRS 284.390. *See* Exhibit 7, Decision on Remand in Appeal No. 84008. However, the Decision on Remand was never subject to judicial review and is not at issue in Appeal No. 84008.

Accordingly, these appeals are not as similar as Kassebaum would have the Court believe. These appeals have different records on appeal, different transcripts, different attorneys, different procedural histories, and present different legal issues that will require separate briefing. Consolidating these appeals will not promote judicial economy but will merely guarantee longer briefs and lead to the parties litigating two separate cases within one convoluted appeal. This will directly prejudice the parties and incumber the Court’s ability to review these matters. As

such, judicial economy does not support the consolidation of these appeals and NDOC urges the Court to deny Kassebaum's Motion to Consolidate.

D. This Court Lacks Jurisdiction Over Appeal No. 84008, Making That Appeal Improper For Consolidation.

On January 24, 2022, NDOC moved this Court to dismiss Appeal No. 84008 on the following grounds: (1) this Court lacks jurisdiction to review Appeal No. 84008, because the order on appeal therein is not a final judgment under NRAP 3A(b)(1); (2) this Court lacks jurisdiction to review Appeal No. 84008, because the order on appeal therein is not a final judgment under NRS 233B.150; (3) Kassebaum cannot appeal under NRS 233B.150, because she is not an "aggrieved party"; (4) Appeal No. 84008 is moot and without a live controversy; and (5) Kassebaum's exclusive remedy was to seek judicial review of Hearing Officer Zentz's Decision on Remand. The legal issues are briefed at length in NDOC's Motion to Dismiss and Reply in Support of Motion to Dismiss in Appeal No. 84008, which are incorporated by reference as if fully set forth herein. NDOC's legal arguments in favor of dismissal apply equally to Kassebaum's Motion to Consolidate and confirm that these appeals are unfit for consolidation. Naturally, two appeals cannot be consolidated, if jurisdiction never vested in one of the appeals. As such, NDOC asks the Court to deny consolidation.

E. Kassebaum did not file a timely notice of appeal in Case 84008

NRS 233B.150 instructs that appeals under the APA shall be taken as in other

civil cases. Under NRAP 4(a)(1), a notice of appeal “must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served.” Moreover, this Court has repeatedly held that an untimely notice of appeal fails to vest jurisdiction in this Court. *See Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

Here, the Notice of Appeal in Appeal No. 84008 challenges the district court’s interlocutory March 2, 2021, Order, which remanded this case back to the administrative hearing officer for further substantive proceedings. Kassebaum served a Notice of Entry of Order on March 3, 2021. *See* Exhibit 6. Therefore, Kassebaum had 30 days from March 3, 2021, to file a notice of appeal and vest jurisdiction with this Court. Thirty days from March 3, 2021, was April 2, 2021. However, Kassebaum did not file her Notice of Appeal in Appeal No. 84008 until December 21, 2021, which was *263 days after* the 30-day appeal deadline had expired. As such, the Notice of Appeal in Appeal No. 84008 was untimely and failed to vest jurisdiction in this Court, which thereby renders Appeal No. 84008 improper for consolidation with Appeal No. 83942.

IV.

CONCLUSION

Based on the foregoing, Respondent, STATE OF NEVADA, DEPARTMENT OF CORRECTIONS, respectfully requests the Court deny

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Appellant's Motion to Consolidate Appeal with Docket No.84008.

DATED this 7th day of February 2022.

AARON D. FORD
Attorney General

By: /s/ Michelle Di Silvestro Alanis
Michelle Di Silvestro Alanis
(Bar No. 10024)
Suprv. Senior Deputy Attorney General
Attorneys for Respondent
State of Nevada ex rel. Department of
Corrections

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Opposition complies with the formatting requirements of NRAP 27(d)(1), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This Opposition has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. font in Times New Roman; *or*

☐ This brief has been prepared in a monospaced typeface using Microsoft Word 2013 with 12 pt. font in Times New Roman.

2. I further certify that this Opposition complies with the page- or type-volume limitations of NRAP 27(d)(2), excluding the parts of the brief exemption by NRAP 32(a)(7)(C), it is either:

☐ Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or ____ lines of text; or

☒ Does not exceed 10 pages.

3. Finally, I hereby certify that I have read this Opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Opposition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

///

the event that the accompanying Opposition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7th day of February 2022.

AARON D. FORD
Attorney General

By: /s/ Michelle Di Silvestro Alanis
Michelle Di Silvestro Alanis
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 7th day of February, 2022, I have caused a copy of the foregoing ***OPPOSITION TO APPELLANT'S MOTION TO CONSOLIDATE WITH DOCKET NO. 84008*** to be served by electronic mail to the following:

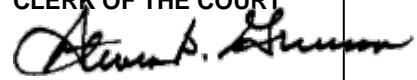
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*Attorney for State of Nevada
Department of Corrections*

/s/ Anela Kaheaku
An Employee of the Office of the
Attorney General

EXHIBIT 1

EXHIBIT 1



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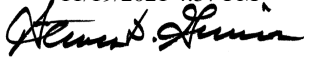
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I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

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

Angela Lizada, Esq.
Lizada Law Firm, Ltd.
711 S. 9th St.
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Page 3 of 3


CLERK OF THE COURT

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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
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 angela@lizardalaw.com

20 Joi Harper Jharper@danielmarks.net
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EXHIBIT 2

EXHIBIT 2

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

3 SHARI KASSEBAUM,
4 Petitioner-Employee,

Appeal No. 2004780-MG

5 v.

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

8 Respondent-Employer.

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 **NOTICE:** Pursuant to NRS 233B.130, should any party desire to appeal this final
9 **determination of the Appeals Officer, a Petition for Judicial Review must be filed with the**
10 **District Court within 30 days after service by mail of this decision.**
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1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Appeals Division, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing **ORDER RE: MOTION TO DISMISS APPEAL FOR LACK OF**
5 **JURISDICTION** was duly mailed, postage prepaid, **OR** transmitted via interoffice mail to the
6 following:
7

8 SHARI KASSEBAUM
9 7644 SPLASHING RIVER COURT
10 LAS VEGAS NV 89131

11 ANGELA LIZADA ESQ
12 LIZADA LAW FIRM LTD
13 711 S 9TH ST
14 LAS VEGAS NV 89101-7014

15 CHARLES DANIELS, DIRECTOR
16 DEPARTMENT OF CORRECTIONS
17 3955 W RUSSELL RD
18 LAS VEGAS NV 89118

19 CHRISTINA LEATHERS
20 CHIEF OF HUMAN RESOURCES
21 NEVADA DEPARTMENT OF CORRECTIONS
22 3955 W RUSSELL RD
23 LAS VEGAS NV 89118-2316

24 MICHELLE DI SILVESTRO ALANIS ESQ
25 SUPERVISING SR DEPUTY ATTORNEY GENERAL
26 OFFICE OF THE ATTORNEY GENERAL
27 555 EAST WASHINGTON AVE STE 3900
28 LAS VEGAS NV 89101

Dated this 12th day of February, 2020.



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

EXHIBIT 3

EXHIBIT 3

1 **BEFORE THE NEVADA PERSONNEL COMMISSION**
2 **HEARING OFFICER**

3 SHARI KASSEBAUM,)

4 Employee,)

) Appeal No. 2004780-MG

5 vs.)

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

) **DEPARTMENT OF CORRECTIONS MOTION**
) **TO DISMISS APPEAL FOR LACK OF**
8 Employer.) **JURISDICITON**
9))

10
11 Employer, State of Nevada, *ex rel.* Department of Corrections (NDOC), by and through counsel,
12 Aaron D. Ford, Attorney General for the State of Nevada, and Michelle Di Silvestro Alanis, Supervising
13 Senior Deputy Attorney General, pursuant to Hearing Officer Rule 5.1, hereby moves to dismiss
14 Employee, Shari Kassebaum's appeal for a lack of jurisdiction.

15 This motion is made and based upon the memorandum of points and authorities set forth below,
16 the exhibits attached hereto, and any other papers and pleadings on file herein.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. FACTS**

19 On August 9, 2019, NDOC served Employee, Shari Kassebaum (Employee), with a Specificity
20 of Charges (SOC), which recommended a suspension for two days (sixteen hours) without pay. *See*
21 Exhibit A, copy of Employee's Specificity of Charges (NPD-41). On August 23, 2019, NDOC Associate
22 Warden, James Scally, conducted a pre-disciplinary review with Employee pursuant to NAC 284.656.
23 *See* Exhibit B, Letter from Acting Director Harold Wickham with enclosed Pre-Disciplinary Hearing
24 Report. Following the review, AW Scally concurred with the recommended two-day suspension without
25 pay. *Id.* On August 28, 2019, NDOC served Employee with the written notification of Acting Director
26 Wickham's final decision regarding Employee's suspension pursuant to NAC 284.6561(7). *Id.* Employee
27 served her suspension starting August 30, 2019. *Id.*

28 On or about September 12, 2019, Employee filed the instant appeal by submitting an "Appeal of

1 Dismissal, Suspension, Demotion, or Involuntary Transfer” (Appeal Form) and attaching a typed
2 statement totaling nine pages to the NPD-54 explaining why she believed the action taken in retaliation.
3 *See* Exhibit C, copy of Employee’s Appeal Form. Employee’s Appeal Form was not accompanied by
4 the written notification of Acting Director Wickham as required by NAC 284.6562(2)(b). *Id.*

5 Because Employee’s appeal form fails to comply with the mandatory legal requirements set forth
6 in NAC 284.6562, Employee failed to file a complete and proper appeal with the Hearings Division.
7 Moreover, Employee’s defective appeal cannot be amended since the 10-day appeal period under NRS
8 284.390(1) has expired. Accordingly, Employee’s appeal is jurisdictionally defective and must be
9 dismissed with prejudice.

10 **II. LAW & ARGUMENT**

11 **A. Legal Standard**

12 Chapter 284 of the Nevada Administrative Code governs the process by which a state employee
13 may appeal a termination. Mandatory requirements must be satisfied to initiate an appeal. “A permanent
14 employee who has been dismissed, demoted or suspended may request a hearing before the hearing
15 officer of the Commission pursuant to NRS 284.390, within 10 working days after the effective date of
16 his or her dismissal, demotion or suspension.” NAC 284.6562(1). “Such a request *must* be:

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

18 (b) **Accompanied by the written notification of the appointing**
19 **authority’s decision** regarding the proposed action provided to the
20 employee pursuant to subsection 7 of NAC 284.6561.

21 NAC 284.6562(2) (Emphasis added).

22 A request for hearing must be addressed to the Administrator and submitted on the form provided
23 by the Division of Human Resource Management (DHRM). *See* NAC 284.778(1) and Hearing Officer
24 Rule 2.1 (c). The form provided by DHRM specifically states, “[t]his appeal form *must be accompanied*
25 *by the written notification of the appointing authority’s decision regarding the proposed action*
26 *provided to the employee pursuant to subsection 7 of NAC 284.6561.*”

27 The Supreme Court has repeatedly affirmed that the word “must,” as used in NAC 284.6562(2)
28 and the DHRM appeal form, imposes a mandatory requirement. *See Washoe Cty. v. Otto*, 128 Nev. 424,

432, 282 P.3d 719, 725 (2012); *see also*, *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013) (“The word ‘shall’ is generally regarded as mandatory.”)

Moreover, regulations adopted by the Personnel Commission, such as NAC 284.6562, have the full force and effect of law. *Turk v. Nev. State Prison*, 94 Nev. 101, 104, 575 P.2d 599, 601 (1978). Indeed, “[w]hen the legislature creates a specific procedure for review of administrative agency decisions, such procedure is controlling.” *Crane v. Continental Telephone*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989). Likewise, the powers of an administrative agency, such as the hearing division, are limited to those powers “specifically set forth by statute.” *See Clark Cty. Sch. Dist. v. Clark Cty. Classroom Teachers Ass’n*, 115 Nev. 98, 102, 977 P.2d 1008, 1010 (1999).

The requirements of NAC 284.6562 are not only mandatory, but timely compliance with NAC 284.6562 is also jurisdictional. *Rust v. Clark Co. School Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (“[t]he proper and timely filing of a notice of appeal is jurisdictional.”); *see also* 73A C.J.S. *Public Administrative Law and Procedure* § 338 (2004) (“Since jurisdiction is dependent on statutory provisions, the extent of the jurisdiction is limited to that conferred by statute, and courts may lack jurisdiction under, or in the absence of, statutory provisions.” (Footnotes omitted)).

Accordingly, in order to successfully invoke a hearing officer’s jurisdiction to consider the reasonableness of disciplinary action, a petitioning employee must comply with the mandatory and jurisdictional requirements for filing such an appeal under NRS 284.390 and NAC 284.6562. Otherwise, an incomplete/defective appeal fails to vest jurisdiction in the hearings division. Furthermore, since NRS 284.390(1) creates a 10-day appeal period for review of employee discipline, a defective appeal cannot be amended outside of the statutory filing period. *See Otto*, 128 Nev. at 435 (citing *Commissioner v. Bethlehem Steel Corp.*, 703 N.E.2d 680, 683 (Ind. Ct. App. 1998) (when a petition is “statutorily defective,” a court does not obtain jurisdiction over it; thus, the district court “[has] no jurisdiction to allow an amendment relating back to the original day of filing”)).

B. Kassebaum failed to comply with the mandatory requirements of NAC 284.6562(2) and failed to vest jurisdiction with the Hearing Officer

Here, the August 28, 2019, written notification from Acting Director Wickham included an effective date of August 30, 2019 for Employee’s suspension. Exhibit B. As such, Employee had 10

1 workdays (September 16, 2019) to file a timely appeal under NRS 284.390(1). Employee filed her appeal
2 form on September 12, 2019; however, Employee failed to attach the August 28, 2019 written notification
3 of the appointing authority's decision. Therefore, Employee filed an incomplete and defective appeal in
4 violation of the mandatory and jurisdictional requirements of NAC 284.6562.

5 As discussed above, NAC 284.6562 has the full force and effect of law, while NRS 284.390(1)
6 instructs that a complete (i.e. non-defective) appeal must be filed within 10 days of the effective date of
7 discipline in order to vest jurisdiction in the hearing division. *See Turk*, 94 Nev. at 104; *see also Rust*,
8 103 Nev. at 688. Accordingly, since Employee failed to file a complete appeal within the 10-day appeal
9 period, Employee has failed to invoke the jurisdiction of the Hearing Officer.

10 These same legal arguments were recently affirmed by Hearing Officer Zentz in Case No.
11 1915389-RZ, *Donyil Livingston v. NDOC*. *See* Exhibit D, Decision and Order. Therein, Hearing Officer
12 Zentz granted NDOC's motion to dismiss for lack of jurisdiction. Hearing Officer Zentz found that Mr.
13 Livingston's appeal did not comply with the express provisions of NAC 284.6562(2)(b) and was not
14 proper, since Livingston's appeal was not accompanied by a copy of the written notification of the
15 appointing authority's decision. *Id.* Additionally, Hearing Officer Zentz found that Mr. Livingston's
16 incomplete appeal could not be cured because NAC 284.6562(2)(b) instructs that an appeal "must" be
17 "accompanied" by written notification of the appointing authority's decision and, regardless, the 10-day
18 time period to file a complete and proper appeal had expired. *Id.* Furthermore, this Hearing Officer has
19 also granted a similar motion to dismiss with the same legal arguments in Case No. 1910816-MG, *Ervin*
20 *Raab v. DPS*. *See* Exhibit E, Order granting Motion to Dismiss.

21 Similar to *Livingston* and *Raab*, Employee's appeal is jurisdictionally defective due to her failure
22 to attach the written notification of the appointing authority and cannot be amended or otherwise corrected
23 at this time.

24 ////

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1 **III. CONCLUSION**

2 Because Employee's appeal form fails to comply with the mandatory legal requirements set forth
3 in NAC 284.6562, the Hearing Officer lacks jurisdiction to conduct a hearing regarding Employee's
4 suspension and the appeal must be dismissed with prejudice.

5 DATED: January 14, 2020.

6 AAROD D. FORD
7 ATTORNEY GENERAL

8
9 By: /s/ Michelle Di Silvestro Alanis
10 Michelle Di Silvestro Alanis (Bar No. 10024)
11 Supervising Senior Deputy Attorney General
12 Attorneys for Respondent-Employer
13 Nevada Department of Corrections
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on January 14, 2020,
3 service of the **DEPARTMENT OF CORRECTIONS MOTION TO DISMISS** was made this date by
4 depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, or via e-mail,
5 addressed as follows:

6
7 Angela Lizada
8 Lizada Law Firm, Ltd.
9 711 S. 9th St.
Las Vegas, NV 89101

(U.S. Mail and Email: angela@lizadalaw.com)

10 Mark Gentile
11 Appeals Officer
12 2200 S. Rancho Dr., #220
Las Vegas, NV 89102

(U.S. Mail and Email: vanessa.curiel@admin.nv.gov)

13
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15 /s/ Anela Kaheaku
16 An employee of the Office of Attorney General
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EXHIBIT 4

EXHIBIT 4

ANGELA J. LIZADA, ESQ.
Nevada Bar No. 11637
LIZADA LAW FIRM, LTD.
711 S. 9TH St.
Las Vegas, NV 89101
Phone: (702) 979-4676
Fax: (702) 979-4121
angela@lizadalaw.com
Attorney for Shari Kassebaum

**BEFORE THE NEVADA PERSONNEL COMMISSION
HEARING OFFICER**

SHARI KASSEBAUM,

Petitioner-Employee,

v.

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

Respondent-Employer.

Appeal No.: 2004780-MG

**LIMITED OPPOSITION TO MOTION
TO DIMISS APPEAL**

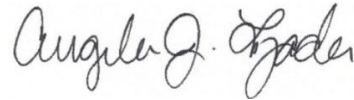
COMES NOW Petitioner, SHARI KASSEBAUM (“Sgt. Kassebaum”), by and through Angela J. Lizada, Esq., her attorney, and hereby opposes Respondent’s Motion to Dismiss Appeal. This Limited Opposition is made and based on the enclosed Memorandum of Points and Authorities and the pleadings and papers on file herein.

Sgt. Kassebaum concedes that under the revised NAC 284.6562(2)(b) it is now required to provide the Employer a copy of the SOC that Employer served on the Employee. Sgt. Kassebaum concedes that procedurally, Employer will prevail on its Motion to Dismiss, however, Sgt. Kassebaum disagrees to the completely inaccurate facts set forth in the Motion. Sgt. Kassebaum will continue her pursuit of her federal lawsuit against NDOC for its discrimination and retaliation, regardless of whether NDOC manages to continue to sweep issues under the rug with technicalities on the personnel/administrative level.

1 Sgt. Kassebaum also objects to the Exhibits attached, outside of Exhibit D. The only issue
2 argued is that the appeal did not include the written notification issued by the appointing
3 authority. Exhibit C is the appeal, so it is relevant. Exhibits A and B are submitted for NDOC to
4 make one last accusatory public statement against Sgt. Kassebaum. Further, Exhibit D's
5 inclusion is simply a copy of a Decision entered by another hearing officer. The decision of a
6 hearing officer in another case is in no way controlling in this matter, and in fact, is completely
7 irrelevant. The language of NAC 284.6562 is clear, and neither the Hearing Officer nor opposing
8 counsel need a non-controlling authority to be submitted to explain what it means when the NAC
9 states that employee must submit the written notification of the appointing authority's decision.
10

11
12 Dated this 24th day of January, 2020.

13 LIZADA LAW FIRM, LTD.

14 

15 ANGELA J. LIZADA, ESQ.
16 Nevada Bar No. 11637
17 711 S. 9th St.
18 Las Vegas, NV 89101
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day and pursuant to NRCP 5(b), I submitted a true and correct copy of the foregoing **LIMITED OPPOSITION TO MOTION TO DISMISS**, by email to the following:

Michelle Di Silvestro Alanis, Esq.
Deputy Attorney General

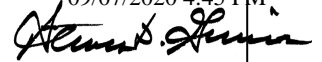
Mark Gentile
Hearing Officer

Dated this 24th day of January, 2020.

/s/ Angela J. Lizada, Esq.
An Employee of Lizada Law Firm, Ltd.

EXHIBIT 5

EXHIBIT 5


CLERK OF THE COURT

1 **ODM**
2 AARON D. FORD
3 Attorney General
4 KEVIN A. PICK
5 Senior Deputy Attorney General
6 Nevada Bar No. 11683
7 State of Nevada
8 Office of the Attorney General
9 5420 Kietzke Lane, Suite 202
10 Reno, Nevada 89511
11 Tele: (775) 687-2100
12 Fax: (775) 688-1822
13 Email: kpick@ag.nv.gov
14 *Attorneys for Respondent State of Nevada*
15 *ex rel. Department of Corrections*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 DONYIL LIVINGSTON,
13
14 Petitioner,

Case No. A-19-806415-J
Dept. No. IV

14 v.

15 STATE OF NEVADA ex rel, its
16 DEPARTMENT OF CORRECTIONS, and
17 STATE OF NEVADA ex rel, its
18 DEPARTMENT OF ADMINISTRATION
19 PERSONNEL COMMISSION, HEARING
20 OFFICER,

Respondents.

~~PROPOSED~~
ORDER DENYING PETITIONER'S
MOTION TO CONSOLIDATE

21 This matter comes before the Court pursuant to Petitioner's May 7, 2020, Motion to
22 Consolidate, which sought to consolidate Case Nos.: A-20-810424-P, A-20-81982-J, and A-20-
23 813237-J within the present case. Respondent Nevada Department of Corrections (hereinafter,
24 NDOC) filed its Opposition to Motion to Consolidate on May 20, 2020, and the Petitioner filed
25 his Reply in Support of Consolidation on June 2, 2020. The Court, having reviewed the record
26 and considered the parties' respective pleadings, and good cause appearing, hereby decides as
27 follows:

28 * * *

1 I.

2 **PROCEDURAL HISTORY**

3 This matter is brought by former NDOC employee Donyil Livingston (Petitioner), who
4 on December 23, 2019, filed a Petition for Judicial Review and Petition for Injunctive and
5 Extraordinary Relief Pursuant to NRS 289.120. Through this case, Petitioner Livingston seeks
6 judicial review of the administrative hearing officer decision affirming his termination from
7 NDOC, and Petitioner Livingston also asks the Court to provide various declaratory and
8 injunctive relief under NRS 289.120.

9 Petitioner Livingston now brings this Motion to Consolidate, asking that the Court
10 consolidate the following cases:

- 11 • *Livingston v. NDOC*, Case No. A-19-806415-J (Department 4);
12 • *Kassebaum v. NDOC*, Case No. A-20-810424-P (Department 31);
13 • *Kassebaum v. NDOC*, Case No. A-20-811982-J (Department 24); and
14 • *Ray Allen v. NDOC*, Case No. A-20-813237-J (Department 11).

15 The Petitioner maintains that consolidation is appropriate because each case was
16 dismissed at the administrative level on the basis of the employee's non-compliance with NAC
17 284.6562(2)(b) and the failure to file a complete and timely appeal. In response, NDOC argues
18 that consolidation is improper because: (1) NRS Chapter 233B does not allow for the
19 consolidation of petitions for judicial review; (2) NRCP 42 does not apply to petitions for
20 judicial review pursuant to NRCP 81(a); (3) consolidation is premature under EDCR 2.50; and
21 (4) these cases are not so similar as to justify consolidation and consolidation will not conserve
22 judicial resources.

23 II.

24 **LEGAL DISCUSSION**

25 The Petitioner's central argument in favor of consolidation is that these four petitions for
26 judicial review involve the same legal issue. However, this argument fails to accurately portray
27 the differences between these cases, which renders consolidation inappropriate. Namely, three
28 of the four petitions name different hearing officers as respondents on judicial review. These

1 cases also involve different legal standards applied at the administrative level, as *Livingston v.*
2 *NDOC* (Case No. A-19-806415-J), *Kassebaum v. NDOC* (Case No. A-20-811982-J), and *Allen*
3 *v. NDOC* (Case No. A-20-813237-J) applied a strict compliance standard but *Kassebaum v.*
4 *NDOC* (Case No. A-20-810424-P) applied a substantial compliance standard. These cases also
5 involve different legal arguments and concessions made by the petitioners at the administrative
6 level, as the petitioners in *Kassebaum v. NDOC* (Case No. A-20-811982-J) and *Kassebaum v.*
7 *NDOC* (Case No. A-20-810424-P) conceded the merits of the very jurisdictional arguments
8 now being challenged on judicial review, while the petitioner in *Allen v. NDOC* (Case No. A-
9 20-813237-J) did not even oppose dismissal at the administrative level. Moreover, as an entirely
10 separate matter, these four cases do not involve the same legal issues, because Petitioner
11 Livingston has simultaneously asserted an action for declaratory and injunctive relief.

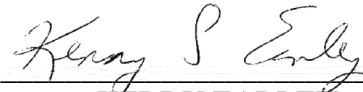
12 As such, pursuant to NRCP 42(A)(2), the Court finds that these cases are not appropriate
13 for consolidation.

14 **ORDER**

15 IT IS HEREBY ORDERED that Petitioner's May 7, 2020, Motion to Consolidate is
16 hereby DENIED.

17 DATED: August ____, 2020.

Dated this 7th day of September, 2020

18 

19 KERRY EARLEY

District Court Judge

20 BB8 031 5886 7FE9

21 Kerry Earley
22 District Court Judge
23
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27
28

1 Respectfully submitted by:

2 AARON D. FORD
3 Attorney General

4 By: 

5 Kevin A. Pick (Bar No. 11683)
6 Senior Deputy Attorney General
7 *Attorneys for Respondent State of Nevada*
8 *ex rel. Department of Corrections*

9 Approved as to form only by:

10 By: _____

11 Adam Levine, Esq. (Bar No. 004673)
12 Law Offices of Daniel Marks
13 610 South Ninth Street
14 Las Vegas, Nevada 89101
15 alevine@danielmarks.net
16 *Attorney for Petitioner*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4		
5		
6	Donyil Livingston, Petitioner(s)	CASE NO: A-19-806415-J
7	vs.	DEPT. NO. Department 4
8	State of 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 Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

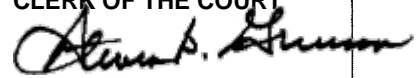
14 Service Date: 9/7/2020

15 Daniel Marks	Office@danielmarks.net
16 Glenda Guo	gguo@danielmarks.net
17 Kevin Pick	kpick@ag.nv.gov
18 Virginia Brownell	vbrownell@ag.nv.gov

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EXHIBIT 6

EXHIBIT 6



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6 ADAM LEVINE, ESQ.
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10 Las Vegas, Nevada 89101
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12 Email: office@danielmarks.net
13 *Attorneys for Petitioner*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SHARI KASSEBAUM,

11 Petitioners,

12 v.

13 STATE OF NEVADA ex rel, its DEPARTMENT
14 OF CORRECTIONS, and STATE OF NEVADA ex
15 rel, its DEPARTMENT OF ADMINISTRATION
16 PERSONNEL COMMISSION, HEARING
17 OFFICER, CARA BROWN

18 Respondents.

Case No.: A-20-810424-P

Dept. No.: 31

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

18 ///

19 ///

20 ///

21 ///


22 ///

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

3 PLEASE TAKE NOTICE that an Order Granting Petition for Judicial Review was entered in
4 the above-entitled action on the 2nd day of March 2021 a copy of which is attached hereto.


5 DATED this 3rd day of March 2021.

6 LAW OFFICE OF DANIEL MARKS

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16 Attorneys for Petitioner

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Kevin Pick, Esq.
Sr. Deputy Attorney General
OFFICE OF THE ATTORNEY GENERAL
Attorney for Respondent NDOC
e-mail: kpick@ag.nv.gov


An employee of the
LAW OFFICE OF DANIEL MARKS



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10 Las Vegas, Nevada 89101
11 (702) 386-0536: FAX (702) 386-6812
12 Attorneys for

DISTRICT COURT
CLARK COUNTY, NEVADA

11 SHARI KASSEBAUM,
12 Petitioners,

Case No.: A-20-810424-P
Dept. No.: 31

13 v.

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

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

17 Respondents.

18
19 This matter having come on for hearing on Petitioner's Petition for Judicial Review on the 18th
20 day of February, 2021 at the hour of 9:30 a.m. with Petitioner Shari Kassebaum being represented by
21 and through Adam Levine, Esq. of the Law Office of Daniel Marks and Respondents Nevada
22 Department of Corrections being represented by Kevin A. Pick, Esq. Deputy Attorney General and the
23 remaining Respondents having declined to file a Notice of Intent to Participate; and the Court having
24 heard arguments from the parties hereby makes the following findings of fact and conclusions of law:

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

1 FINDINGS OF FACT

2 1. Shari Kassebaum (hereafter "Kassebaum") was a post-probationary member of the
3 classified service of the State of Nevada employed as a Corrections Sergeant with the Department of
4 Corrections (hereafter "NDOC").

5 2. Effective July 12, 2019 Kassebaum received a disciplinary suspension of 15 days.

6 3. NRS 284.390(1) provides in pertinent part "Within 10 working days after the effective
7 date of an employee's dismissal, demotion or suspension pursuant to NRS 284.385, the employee who
8 has been dismissed, demoted or suspended may request in writing a hearing before the hearing officer
9 of the Commission to determine the reasonableness of the action."

10 4. Kassebaum filed an appeal of the disciplinary suspension on the NPD-54 "Appeal of
11 Dismissal, Suspension, Demotion or Involuntary Transfer" form provided by the State of Nevada
12 Department of Administration within the 10 working days provided for by NRS 284.390. However,
13 Kassebaum did not attach to that NPD-54 form the written notification of the appointing authority's
14 decision as provided for under NAC 284.6562(2)(b). Kassebaum's Appeal was assigned Case No.
15 2001869 and assigned to Hearing Officer Cara L. Brown.

16 5. NDOC filed a Motion to Dismiss Kassebaum's Appeal arguing that the failure to attach
17 the written notification as provided for under NAC 284.6562(2)(b) was a jurisdictional defect which
18 could not be cured after the expiration of the 10 working days to file the Appeal.

19 6. Kassebaum's former counsel filed a "Limited Opposition" which conceded that
20 Employer would prevail on its Motion.

21 7. Hearing Officer Brown agreed with NDOC that the requirement was jurisdictional and
22 dismissed the Appeal.

23 8. Kassebaum filed a timely Petition for Judicial Review of the Hearing Officer's decision
24 under NRS 233.130.

1 9. In briefing in support of the Petition for Judicial Review, Kassebaum asserts that NAC
2 284.6562(2)(b) is not jurisdictional, but rather a claims processing rule for which a violation may be
3 waived if not timely asserted, or alternatively cured, that the Appeals form violated due process
4 because its Instructions inform employees they can supplement the form, and that the dismissal of her
5 Appeal unconstitutionally deprived her of a right to a post-deprivation hearing of the sort required by
6 the 14th Amendment's Due Process Clause.

7 10. NDOC asserted in its briefing that NAC 284.6562(2)(b) is jurisdictional, that NAC
8 284.6562(2)(b) is not a claims processing rule, that dismissal is still required even if NAC
9 284.6562(2)(b) is a claims processing rule, that Kassebaum is judicially estopped from making the
10 contrary arguments asserted in her Petition, that Kassebaum is raising new issues for the first time on
11 appeal, that deference must be shown to Hearing Officer Brown's interpretation of NAC
12 284.6562(2)(b), and that Kassebaum had the opportunity to obtain a post-deprivation hearing but failed
13 to take advantage of the administrative procedure.

14 11. Kassebaum asserted in her Reply Brief that the elements of judicial estoppel were not
15 met, that jurisdictional and constitutional claims may be asserted for the first time on appeal, that the
16 requirements to waive a constitutional right to a hearing were not met, and that they Hearing Officer's
17 interpretation was not entitled to deference as it is purely a question of statutory construction and other
18 Hearing Officers had reached the opposite conclusion.

19 12. The Hearing Officer's Decision did not analyze whether NAC 284.6562(2)(b) is a claims
20 processing rule and, if so, whether the appeal should be dismissed or proceed to a hearing on the merits.

21 13. It was agreed by the parties before the Court that Hearing Officer Brown has recently
22 resigned from her position as a Hearing Officer.

23 14. If any of these Findings of Fact are properly considered as Conclusions of Law, they
24 shall be so construed.

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- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- ...
- (c) Affected by other error of law;

16. Because the Hearing Officer's Decision did not adequately analyze or consider whether NAC 284.6562(2)(b) is a claims processing rule or a jurisdictional requirement, and if NAC 284.6562(2)(b) is a claims processing rule whether the case should be dismissed or proceed to a hearing on the merits, this matter must be remanded for assignment to a new Hearing Officer for proper consideration of the arguments raised by the parties.

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

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1 DECISION

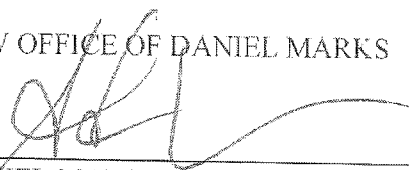
2 For all the reasons set forth above the Petition for Judicial Review is *granted*. The Order of the
3 Hearing Officer in Case No. 2001869-CB filed January 14, 2020 dismissing Kassebaum's Appeal with
4 prejudice is *reversed* and remanded back to the Department of Administration for assignment of a new
5 Hearing Officer for further proceedings to determine whether the Appeal should be dismissed, or
6 alternatively heard on the merits.

7 DATED this 2nd day of March 2021.

8 
9 JAMES S. KISHNER
DISTRICT COURT JUDGE

10 Respectfully submitted by:

11 LAW OFFICE OF DANIEL MARKS

12 
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ADAM LEVINE, ESQ.
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17 Attorneys for Petitioner

18 Approval as to Form and Content:

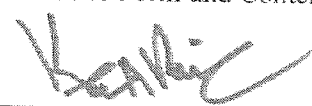
19 
20 AARON D. FORD, Nevada Attorney General
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23 Attorneys for Respondent State of Nevada
ex rel Department of Corrections
24

EXHIBIT 7

EXHIBIT 7

BEFORE THE NEVADA STATE PERSONNEL COMMISSION

APPEALS OFFICE

HEARING OFFICER

SHARI KASSEBAUM,

PETITIONER/EMPLOYEE,

VS.

STATE OF NEVADA, DEPARTMENT OF
CORRECTIONS,

RESPONDENT/EMPLOYER.

CASE NO.: 2111458-RZ

DECISION ON REMAND

THIS MATTER COMES before this Hearing Officer based on an order of remand issued by the

Honorable Judge Joanna S. Kishner, 8th Judicial District Court Department 31 in Case No.: A-20-810424-P.

In that proceeding the Court found Hearing Officer Brown failed to adequately “analyze whether NAC 284.6562(2)(b) is a claims processing rule or a jurisdictional requirement, and if NAC 284.6562(2)(b) is a claims processing rule whether the case should be dismissed or proceed to a hearing on the merits.”¹

Based on that finding the Court remanded the matter for analysis and consideration of the following: (1) Is NAC 284.6562(2)(b) a claims processing rule, or a jurisdictional requirement? And (2) if NAC 284.6562(2)(b) is a claims processing rule should the case be dismissed or proceed to a hearing on the merits.

In these proceedings Shari Kassebaum (Employee) is represented by the law office of Daniel Marks and Adam Levine, Esq. The State of Nevada, Department of Corrections (Employer) is

¹ When this matter was before Hearing Officer Brown it was assigned Case #2001869-CB.

represented by Arron D. Ford, Attorney General for the State of Nevada and senior deputy attorney general Kevin Pick, Esq.

1. Is NAC 284.6562(2)(b) a claims processing rule, or a jurisdictional requirement?

This Hearing Officer finds NAC 284.6562(2)(b) is a jurisdictional requirement and is a regulation adopted to carry out the provisions of NRS Chapter 284 as required by NRS 284.065(2)(d), NRS 284.383 and NRS 284.390.

The right to seek a hearing to determine the reasonableness of disciplinary action before the Hearing Officer of the Commission is limited and to be invoked the employee must present evidence establishing that the requested hearing for determination of reasonableness of discipline is properly before a Hearing Officer.

ANALYSIS

NRS Chapter 284 establishes that to properly bring the matter for hearing regarding the reasonableness of the disciplinary action the employee as the burden of proof must establish the following at the time of filing:

1. That the employee requesting the hearing holds the status of a permanent State employee as defined by NRS 284.290. The employee cannot be a probationary employee.
2. That the hearing is limited to disciplinary action in which the employee has been “dismissed, demoted or suspended.”
3. That a timely request for hearing must be served or postmarked within 10 working days after the effective date of the employee’s dismissal, demotion, or suspension.

If the employee fails to provide evidence of these prerequisites a Hearing Officer lacks the jurisdiction to entertain the matter.

It must be noted that the requirement of attaching the written notification of the appointing authority’s decision regarding the proposed action establishes all the requirements stated above. The notice includes a statement of the employee’s employment status, the specific discipline imposed and the effective date of that discipline. When that notice is submitted with the form provided by the Division of Human Resource Management there is no issue with respect to the effective date of the

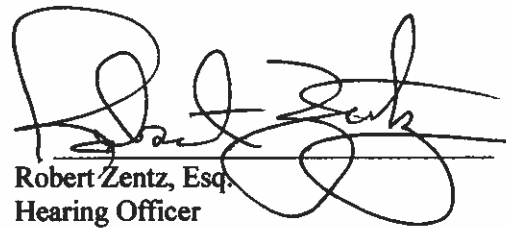
1 discipline and the date the request for hearing is filed. Clearly, this is a regulation was designed to
2 carry out the provisions of NRS 284.383. Further, no challenge was presented to the District Court
3 regarding the requirement found in NAC 284.778(1) that the employee use the form provided by the
4 Division of Human Resource Management. At the time of this request that form was designated as
5 NPD-54, and it explicitly requires the written notification of the appointing authority's decision be
6 attached.

7
8 **DECISION**

9 Based upon the foregoing and good cause appearing:

10 NAC 284.6562(2)(b) is a regulation adopted by the Nevada Personnel Commission to carry out
11 the provisions of NRS Chapter 284. It's requirement of attaching the appointing authority's decision
12 regarding the proposed action is reasonable and a jurisdictional mandate.

13
14 DATED this 9th day of December 2021.

15
16
17 
18 Robert Zentz, Esq.
Hearing Officer

19 **NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final**
20 **determination of the Hearing Officer a Petition for Judicial Review must be filed with the**
21 **District Court within 30 days after service by mail of this decision.**

1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of the State of Nevada, Department of Administration,
3 Appeals Division, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing **DECISION ON REMAND** was duly mailed, postage prepaid, **OR** transmitted via
5 interoffice mail to the following:
6

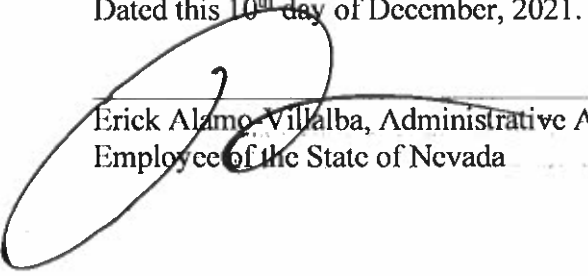
7 SHARI KASSEBAUM
8 7644 SPLASHING RIVER COURT
9 LAS VEGAS NV 89131

10 ADAM LEVINE ESQ
11 LAW OFFICES OF DANIEL MARKS
12 610 S 9TH ST
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14 DEPARTMENT OF CORRECTIONS
15 CHARLES DANIELS, DIRECTOR
16 3955 W RUSSELL RD
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18 KEVIN PICK ESQ, SENIOR DEPUTY ATTORNEY GENERAL
19 OFFICE OF THE ATTORNEY GENERAL
20 5420 KIETZKE LANE STE 202
21 RENO NV 89511

22 Dated this 10th day of December, 2021.

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Erick Alamo Villalba, Administrative Assistant IV
Employee of the State of Nevada