

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: Electronically Filed  
Feb 18 2022 01:33 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION TO  
MOTION TO CONSOLIDATE WITH DOCKET NO. 84008**

LAW OFFICE OF DANIEL MARKS

DANIEL MARKS, ESQ.

Nevada State Bar No. 002003

[office@danielmarks.net](mailto:office@danielmarks.net)

Adam Levine, Esq.

Nevada State Bar No. 004673

[alevine@danielmarks.net](mailto:alevine@danielmarks.net)

610 South Ninth Street

Las Vegas, Nevada 89101

(702) 386-0536: FAX (702) 386-6812

*Attorneys for Appellant*

*Shari Kassebaum*

**APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION TO  
MOTION TO CONSOLIDATE WITH DOCKET NO. 84008**

COMES NOW Appellant Shari Kassebaum by and through undersigned counsel Adam Levine, Esq. of the Law Office of Daniel Marks and hereby submits her Reply to Opposition to Motion to Consolidate as follows:

NDOC's Opposition argues that the motion should be denied for not complying with NRAP 27(a)(2) which states "motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it". Kassebaum's motion does state with particularity the grounds for the Motion and the legal argument necessary to support it – that both appeals arise out of and address common issues of law which are: (1) is the requirement under NAC 284.6562(2) that an appeal of discipline must be accompanied by the final decision of the appointing authority jurisdictional or alternatively a claims processing rule, and (2) whether the denial of the appeals hearing for the failure to attach such a piece of paper which is already in the possession of the employer violate the 14<sup>th</sup> Amendment's due process clause.

Consolidation will promote judicial economy. In both cases Kassebaum's appeal of her discipline was dismissed because her former counsel did not attach the final decision of the appointing authority to the appeals form. The reasoning of both hearing officers was based upon their interpretation of NAC 284.6562(2) being jurisdictional and therefore not subject to cure.

The procedural differences between the two appeals are not significant. In this appeal (83942) the district court denied judicial review outright. In Docket 84008 the district court granted judicial review to a limited extent by sending the matter back to the hearing officer to consider the issue of jurisdiction versus claims processing rule and the constitutional arguments raised by Kassebaum. On remand the hearing officer rejected these arguments (to the extent he actually consider them). However, both cases will have to address the common legal issues as to whether the regulation is “jurisdictional” in nature, and the requirements of due process established for suspensions by *Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807 (1997).

Finally, NDOC argues that consolidation should not occur because the Notice of Appeal in Docket No. 84008 was not filed within 30 days of the district court’s Order granting judicial review. However, as pointed out in the Opposition to Motion to Dismiss in that Docket No., the Notice of Appeal was filed within 30 days of the district court’s Order *becoming a final judgment* which occurred after the proceedings on remand had ended. Obviously, if this Court grants the Motion to Dismiss in Docket No. 84008, there will be nothing to consolidate with. However, assuming that the Motion to Dismiss is not granted, consolidation is appropriate.

For all of the reasons set forth above, Kassebaum's Motion to Consolidate should be GRANTED.

DATED this 18<sup>th</sup> day of February 2022.

LAW OFFICE OF DANIEL MARKS



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DANIEL MARKS, ESQ.

Nevada State Bar No. 002003

ADAM LEVINE, ESQ.

Nevada State Bar No. 004673

610 South Ninth Street

Las Vegas, Nevada 89101

*Attorneys for Appellant*

**CERTIFICATE OF COMPLIANCE WITH NRAP 28(e)**  
**AND NRAP 32(a)(8)**

I hereby certify that I have read this Appellant's Reply to Respondent's Opposition to Motion to Consolidate With Docket No. 84008 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 Appellant's Reply to Respondent's Opposition to Motion to Consolidate With Docket No. 84008 complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e), which requires every assertion in the regarding any material issue which may have been overlooked to be supported by a reference to the page of the transcript or appendix where the matter overlooked is to be found.

I further certify that this Appellant's Reply to Respondent's Opposition to Motion to Consolidate With Docket No. 84008 is formatted in compliance with NRAP 32(a)(4-6) as it has one (1) inch margins and uses New Times Roman - font size 14 has 7 pages, double-spaced, and contains 1000 words. I understand that I may be subject to sanction in the event that the accompanying Appellant's

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Reply to Respondent's Opposition to Motion to Consolidate With Docket No. 84008 is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 18<sup>th</sup> day of February 2022.

LAW OFFICE OF DANIEL MARKS



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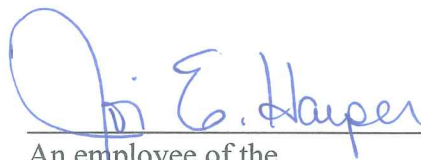
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
*Attorneys for Appellant*

**CERTIFICATE OF SERVICE BY ELECTRONIC MEANS**

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 18<sup>th</sup> day of February 2022, I did serve the above and forgoing APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION TO MOTION TO CONSOLIDATE WITH DOCKET NO. 84008, 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](mailto:MAlanis@ag.nv.gov)  
Tel: (702) 486-3268  
Fax: (702) 486-3773  
*Attorneys for Respondents*  
*Attorneys for State of Nevada*  
*Department of Corrections*

Kevin A. Pick  
Senior Deputy Attorney General  
Office of the Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511  
Tel: (775) 687-2129  
Fax: (775) 688-1822  
*Attorneys for State of Nevada*  
*Department of Corrections*



An employee of the  
LAW OFFICE OF DANIEL MARKS