

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SHARI KASSEBAUM,

Appellant,

vs.

THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS,

Respondents.

Supreme Court No. 84008  
Dist. Court Case No. 4810424  
Electronically Filed  
Jan 14 2022 10:09 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION TO DISMISS**

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COMES NOW, NEVADA DEPARTMENT OF CORRECTIONS, by and through its counsel, Aaron D. Ford, Attorney General, by Kevin A. Pick, Senior Deputy Attorney General, and hereby moves this Court to dismiss this appeal for lack of jurisdiction. This Motion is made and based on the Memorandum of Points and Authorities set forth below, any exhibits attached hereto, and all papers and pleadings on file herein.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I.**

#### **INTRODUCTION AND PROCEDURAL HISTORY**

At all times relevant, Appellant Shari Kassebaum (“Kassebaum”) was a correctional sergeant employed at NDOC. On June 20, 2019, Kassebaum was served with a Specificity of Charges that recommended she be suspended for 15 days as a result of falsifying her timesheets and leaving her prison post without authorization. Kassebaum was suspended for 15 days effective July 11, 2019.

Kassebaum then appealed her suspension. However, Kassebaum failed to submit a complete and proper appeal within the 10-day appeal period under NRS 284.390(1). Namely, Kassebaum’s appeal failed to include the necessary attachments required under NAC 284.6562(2)(b). Nor did Kassebaum cure her incomplete and defective appeal within the 10-day appeal period.

Accordingly, NDOC moved to dismiss Kassebaum’s appeal as jurisdictionally defective, because NRS 284.390(1) and NAC 284.6562(2)(b) are mandatory and because Kassebaum failed to timely file a complete and proper appeal. In response, Kassebaum (who was represented by counsel) filed a “Limited

\* \* \*

Opposition to Motion to Dismiss Appeal” and conceded “that procedurally, employer will prevail on its Motion to Dismiss.”

The assigned administrative hearing officer (Cara Brown) ultimately granted NDOC’s motion to dismiss. Hearing Officer Brown cited Kassebaum’s non-opposition and that Kassebaum had conceded the legal basis for dismissal; furthermore, Hearing Officer Brown also independently found that “it is undisputed that there was no compliance with the substance or any reasonable objective of NAC 284.6562(2)(b).” On these dual grounds, Hearing Officer Brown granted NDOC’s Motion to Dismiss.

Kassebaum then filed a Petition for Judicial Review in 8th Judicial District Court Case No. A810424. The parties briefed judicial review, with Kassebaum changing her mind and now arguing for the first time that NAC 284.6562 was a non-jurisdictional claims processing rule.

On March 2, 2021, the District Court granted judicial review and remanded the matter back to Hearing Officer Brown for further proceedings. *See* Exhibit No. 1 (Order Granting Judicial Review). Specifically, the District Court 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 . . .” *Id.* 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.*<sup>1</sup>

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<sup>1</sup> Hearing Officer Brown retired in the interim, so a new hearing officer was needed on remand.

This case was then assigned to Hearing Officer Robert Zentz, who issued a new “Decision on Remand” on December 9, 2021. *See* Exhibit No. 2. The Decision on Remand included an entirely new legal analysis on these dispositive legal issues. Hearing Officer Zentz ruled that NAC 284.6562(2)(b) was a mandatory and jurisdictional requirement, which was adopted to carry out the provisions of NRS 284.065(2)(d), NRS 284.383, and NRS 284.390. *Id.* As such, Hearing Officer Zentz dismissed Kassebaum’s administrative appeal. *Id.*

However, instead of seeking judicial review of the dispositive Decision on Remand, Kassebaum filed a Notice of Appeal challenging the interlocutory March 2, 2021, Order Granting Judicial Review, which (again) merely remanded this matter back to the Hearing Officer for further substantive consideration and did not rule on any dispositive legal issues.

NDOC now moves this Court to dismiss Kassebaum’s appeal, based on the legal arguments analyzed below.

## **II. LAW AND ARGUMENT**

### **A. THE MARCH 2, 2021, ORDER IS NOT AN APPEALABLE FINAL JUDGMENT AND THIS COURT LACKS JURISDICTION TO CONSIDER THIS APPEAL.**

In *Wells Fargo Bank, N.A. v. O'Brien*, this Court considered the threshold jurisdictional question of whether, in the administrative context, a district court order remanding a matter to an administrative agency is an appealable order. 129 Nev. 679, 680, 310 P.3d 581, 583 (2013). In *O'Brien*, homeowners petitioned the district court for judicial review, asserting that Wells Fargo had breached the parties' agreement to temporarily halt foreclosure proceedings. *Id.* The district court found that Wells Fargo had violated the agreement and granted judicial review, while then

directing Wells Fargo to participate in and pay for “further mediation.” Wells Fargo appealed the order, but the Nevada Supreme Court found that, “in the administrative context, a district court order remanding a matter to an administrative agency is not an appealable order, unless the order constitutes a final judgment on the merits and remands merely for collateral tasks, such as calculating benefits found due.” *Id.* at 680–81. The Court also noted that “[t]he second mediation will readdress the merits of the foreclosure matter, and, if appropriate, any party will then be able to petition for judicial review of that mediation.” *Id.* at 681 (emphasis added). In support of its decision, the Court stressed that “[t]o promote judicial economy and efficiency by avoiding piecemeal appellate review, appellate jurisdictional rules have long required finality of decision before this court undertakes its review.” *Id.* at 680 (citing NRAP 3A(b)(1)). As such, the Court found that it lacked jurisdiction over the appeal. *Id.* at 681.

As applied to this matter, the Court similarly lacks jurisdiction over this appeal, because the March 2, 2021, Order Granting Judicial Review is not a final judgment that is appealable under NRAP 3A(b)(1). The March 2, 2021, Order specifically held that Hearing Officer Brown had not addressed certain legal issues that the District Court found significant. *See* Exhibit No. 1. Therefore, rather than issuing a final judgment, the District Court remanded the case back to the Hearing Officer for “proper consideration of the arguments raised by the parties.” *Id.* The subsequent Decision on Remand then addressed the merits of the parties’ legal arguments and dismissed Kassebaum’s administrative appeal. *See* Exhibit No. 2. As such, the Decision on Remand was exactly the same as the second mediation in *O’Brien*, which addressed the merits of the foreclosure matter. Like the second

mediation in *O'Brien*, Kassebaum had an opportunity to seek judicial review of the Decision on Remand, which was the appropriate avenue through which to proceed and not a direct appeal of the interlocutory March 2, 2021, Order. *See* NRS 284.390(9); *see also* NRS 233B.130(1).

Accordingly, the March 2, 2021, Order is clearly not a final judgment on the merits, since the Order *remanded* this entire case back to the administrative hearing officer for an entirely new final ruling on dispositive legal issues. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (“a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court . . .”). Frankly, the Decision on Remand is evidence that the interlocutory March 2, 2021, Order was **not** a final and appealable judgment; otherwise, there would have been no need for Hearing Officer Zentz to issue an entirely new final decision. Moreover, the March 2, 2021, Order did not remand for merely collateral tasks, such as calculating benefits, but remanded for the Hearing Officer to consider foundational and dispositive jurisdictional issues. *Id.* As such, the March 2, 2021, Order is clearly not an appealable final judgment and this appeal must be dismissed for lack of jurisdiction under NRAP 3A(b)(1).

What is more, the March 2, 2021, Order is no different from the interlocutory order at issue in *Clark County Liquor v. Clark*, which remanded that case back to an administrative body for further substantive proceedings. 102 Nev. 654, 730 P.2d 443 (1986). The Supreme Court in *Clark* likewise found that no appeal lies from an order remanding a case to an administrative body for further substantive action. *Id.*

Similarly, in *State Taxicab Auth. v. Greenspun*, the Supreme Court held that “[n]o statute or court rule authorizes an appeal from an interlocutory order of the

district court remanding a matter to an administrative agency” and therefore the State Taxicab Authority had no right to appeal from a district court's interlocutory order of remand. 109 Nev. 1022, 1025, 862 P.2d 423, 424 (1993).

More recently, in May of 2021, this Court issued an unpublished decision in *Brunson v. Dep't of Bus. & Indus., Real Est. Div*, wherein the Supreme Court held that a district court order on a petition for judicial review was not the final judgment and therefore not appealable, because the order directed the Nevada Commission of Appraisers of Real Estate to “re-examine the evidence in relation to conclusion of law and to re-evaluate its order based upon the outcome of this re-examination.” 485 P.3d 766 (May 7, 2021) (Unpublished). In other words, the order at issue in *Brunson* was not a final appealable order, because it remanded the matter back to an administrative agency for further substantive proceedings.

Here too, the March 2, 2021, Order was not a final judgment and therefore not appealable, because it remanded this case back to Hearing Officer Zentz to render new substantive legal determinations on: (1) whether NAC 284.6562(2)(b) is a jurisdictional rule or a claims processing rule; and (2) if a claims processing rule, whether the case should still be dismissed. *See* Exhibit No. 1. Accordingly, pursuant to this Court’s holdings in *O’Brien*, *Clark*, *Greenspun*, and *Brunson*, the March 2, 2021, Order is not a final appealable order and this Court lacks jurisdiction over this appeal. *See* NRAP 3A(b)(1). To hold otherwise would invite the exact type of piecemeal appellate review that this Court has repeatedly eschewed. As such, NDOC respectfully moves the Court to dismiss this appeal for lack of jurisdiction.

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**B. THE MARCH 2, 2021, ORDER IS NOT AN APPEALABLE FINAL JUDGMENT UNDER NRS 233B.150.**

NRS 233B.150 governs appeals under the Administrative Procedures Act (APA) and only permits an appeal of a “final judgment.” A “final judgment” is one that disposes of “all the issues presented in the case, and **leaves nothing for the future consideration** of the court . . .” *Lee*, 116 Nev. at 426 (emphasis added). Moreover, an order granting or denying a petition for judicial review “is an appealable final judgment **if it fully and finally resolves the matters** as between all parties.” *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 303, 300 P.3d 724, 726 (2013) (emphasis added).

Here, the March 2, 2021, Order clearly did not “fully and finally” dispose of all issues presented in this case. Nor did it leave “nothing for future consideration.” Rather, it remanded this case back to the administrative hearing officer for further substantive proceedings on dispositive legal issues. *See* Exhibit No. 1. As such, not only must Kassebaum’s appeal be dismissed pursuant to *O’Brien*, *Clark*, *Greenspun*, and *Brunson*, but this appeal must also be dismissed because the March 2, 2021, Order is not an appealable “final judgment” under NRS 233B.150.

**C. KASSEBAUM IS NOT AN “AGGRIEVED PARTY” UNDER NRS 233B.150.**

Under NRS 233B.150 “[a]n aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction . . .” To be “aggrieved,” a party “must be adversely and substantially affected by the challenged judgment.” *Jacinto*, 129 Nev. at 303.

Here, in addition to the fact that the March 2, 2021, Order is not a “final judgment,” Kassebaum is also not an “aggrieved party.” Again, the Order did not resolve any issues whatsoever but remanded the entire case back to the Hearing



Officer for further consideration; therefore, Kassebaum was not “adversely and substantially” affected by the March 2, 2021, Order. *See Jacinto*, 129 Nev. at 303. Furthermore, the District Court *granted* Kassebaum’s Petition for Judicial Review; therefore, it is highly dubious for Kassebaum to argue that she was somehow aggrieved by an order that *granted* her petition. As such, Kassebaum is not an “aggrieved party” and cannot invoke NRS 233B.150.

**D. THE MARCH 2, 2021, ORDER IS MOOT.**

As a general rule, this Court will decline to hear a moot case. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). That general rule comports with the Court’s duty “to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it.” *NCAA v. Univ. of Nev.*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Therefore, “a controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot.” *Personhood Nev.*, 126 Nev. at 602 (citations omitted).

Here, the March 2, 2021, Order presents no live controversy, because it failed to actually decide anything whatsoever. In other words, the March 2, 2021, Order is not a judgment which carries anything *into effect*. Rather, the Order merely remanded this case back to the administrative hearing officer to issue a new legal ruling on the dispositive legal issues in controversy – but the Order itself did not rule on those legal issues. *See* Exhibit No. 1. In fact, Kassebaum’s Docketing Statement identifies that main issue now on appeal as “[w]hether the requirement to attach the written decision of the appointing authority under NAC 284.6562 is jurisdictional,

or alternatively only a claims processing rule . . .” However, the March 2, 2021, Order did not even reach a decision on these issues but remanded these issues back to the Hearing Officer for a new final decision. *See* Exhibit No. 1. As such, NDOC urges this Court to dismiss Kassebaum’s appeal of the March 2, 2021, Order as moot and without a live controversy.

**E. JUDICIAL REVIEW IS/WAS KASSEBAUM’S EXCLUSIVE REMEDY TO CHALLENGE THE DECISION ON REMAND.**

Additionally, NDOC also urges this Court to consider: what would happen to the Decision on Remand if Kassebaum successfully appeals the March 2, 2021, Order? The answer is that the Decision on Remand would be nullified and Kassebaum would have entirely evaded judicial review of that final administrative decision, thus making an end-run around NRS 284.390 and the Administrative Procedures Act (APA) in general.

However, this Court does not have inherent appellate authority over administrative decisions and the judiciary can only exercise authority to review executive agency decisions if permitted by the Nevada Legislature under the APA. *Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 724 (2012). Moreover, “[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). NRS 284.390(9) specifically instructs that any petition for judicial review of the decision of the hearing officer (such as the Decision on Remand herein) must be filed in accordance with the provisions of NRS Chapter 233B. NRS 233B.130(1) then permits an aggrieved party to appeal a final administrative decision in a contested case and NRS 233B.130(6) instructs that “[t]he provisions of this chapter are the **exclusive means** of judicial review of,

or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.” (Emphasis added).

As such, judicial review is the exclusive means by which Kassebaum can challenge the Decision on Remand and not by appealing an earlier interlocutory order that remanded the case back to the agency for further substantive and dispositive proceedings. Accordingly, NDOC urges the Court to dismiss this matter, because judicial review was Kassebaum’s exclusive remedy to challenge the Decision on Remand and not via this improper appeal of an interlocutory order for remand.


### III.

#### CONCLUSION

Based on the foregoing, Respondent, THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS, respectfully requests the Court to dismiss this appeal for lack of jurisdiction.

DATED this 14th day of January 2022.

AARON D. FORD  
Attorney General

By:   
\_\_\_\_\_  
KEVIN A. PICK  
Senior Deputy Attorney General  
Nevada Bar No. 11683  
*Attorneys for NDOC*

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this motion complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This motion 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 brief 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 Motion, 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 Motion 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 brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of January 2022.

AARON D. FORD  
Attorney General

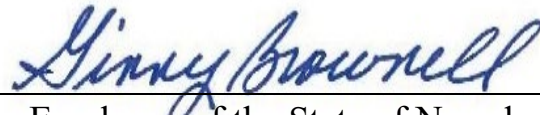
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## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 14th day of January 2022, I filed and served a true copy of the foregoing **MOTION TO DISMISS** through the Supreme Court Electronic Filing System or by U.S. Mail, postage prepaid, to the following:

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A handwritten signature in blue ink that reads "Ginny Brownell". The signature is written in a cursive, flowing style.

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An Employee of the State of Nevada, Office  
of the Attorney General

## **INDEX OF EXHIBITS**

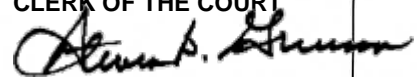
Exhibit No. 1	Order Granting Judicial Review
Exhibit No. 2	Decision on Remand

# EXHIBIT 1

## Order Granting Petition for Judicial Review

# EXHIBIT 1





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DISTRICT COURT  
CLARK COUNTY, NEVADA

SHARI KASSEBAUM,

Petitioners,

v.

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

Respondents.

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

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

This matter having come on for hearing on Petitioner's Petition for Judicial Review on the 18<sup>th</sup> day of February, 2021 at the hour of 9:30 a.m. with Petitioner Shari Kassebaum being represented by and through Adam Levine, Esq. of the Law Office of Daniel Marks and Respondents Nevada Department of Corrections being represented by Kevin A. Pick, Esq. Deputy Attorney General and the remaining Respondents having declined to file a Notice of Intent to Participate; and the Court having 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.



1 CONCLUSIONS OF LAW

2 15. Pursuant to NRS 233B.135 the court may remand a final decision of an administrative  
3 agency, or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced  
4 because the decision of the agency is:

5 (a) In violation of constitutional or statutory provisions;

6 (b) In excess of the statutory authority of the agency;

7 ...

8 (c) Affected by other error of law;

9 The arguments and authorities raised by Petitioner in her Petition implicate all three (3)  
10 subsections of NRS 233B.135 identified above.

11 16. Because the Hearing Officer's Decision did not adequately analyze or consider whether  
12 NAC 284.6562(2)(b) is a claims processing rule or a jurisdictional requirement, and if NAC  
13 284.6562(2)(b) is a claims processing rule whether the case should be dismissed or proceed to a hearing  
14 on the merits, this matter must be remanded for assignment to a new Hearing Officer for proper  
15 consideration of the arguments raised by the parties.

16 17. The Court need not reach Petitioner's constitutional argument that dismissal of her  
17 Appeal violates the 14th Amendment's Due Process Clause as there are adequate statutory grounds to  
18 grant her Petition. *Spears v. Spears*, 95 Nev. 416, 596 P.2d 210 (1979); *Union Pacific R. R. Co. v.*  
19 *Adams*, 77 Nev. 282, 362 P.2d 450 (1961).

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

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23 ///

24 ///

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 JOANNA S. KISHNER  
DISTRICT COURT JUDGE

10 Respectfully submitted by:

11 LAW OFFICE OF DANIEL MARKS

12   
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24

# EXHIBIT 2

## Decision on Remand

# EXHIBIT 2

## 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, 8<sup>th</sup> 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.”<sup>1</sup>

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

<sup>1</sup> 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



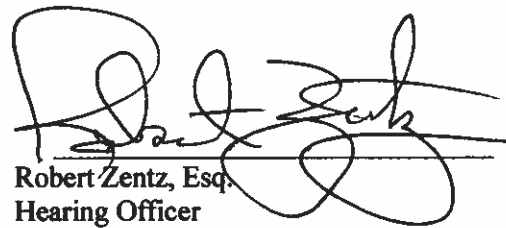
1 discipline and the date the request for hearing is filed. Clearly, this is a regulation was designed to  
2 carry out the provisions of NRS 284.383. Further, no challenge was presented to the District Court  
3 regarding the requirement found in NAC 284.778(1) that the employee use the form provided 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.

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