

**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. A810424  
Electronically Filed  
Feb 07 2022 09:11 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**OPPOSITION TO MOTION TO CONSOLIDATE**

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*Department of Corrections*

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 submits this Opposition to Appellant's Motion to Consolidate Appeal Nos.: 84008 and 83942. This Opposition 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.**

#### **PROCEDURAL HISTORY OF APPEAL NO. 84008**

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 attempted to appeal her suspension, but failed to submit a complete and proper appeal within the 10-day appeal period under NRS 284.390(1). Specifically, Kassebaum's appeal failed to include the necessary attachments required under NAC 284.6562(2)(b) and Kassebaum failed to 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 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 recognized 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),” based on her interpretation of the Personnel Commission’s own regulations. On these two independent grounds, Hearing Officer Brown granted NDOC’s Motion to Dismiss.

Kassebaum then filed a Petition for Judicial Review in Eighth 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 substantive proceedings. *See* Exhibit No. 1 (Order Granting Judicial Review in Appeal No. 84008). 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 reassigned to Hearing Officer Robert Zentz, who issued a new “Decision on Remand” on December 9, 2021. *See* Exhibit No. 2 (Decision on Remand in Appeal No. 84008). 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 Decision on Remand in accordance with NRS 284.390 and NRS 233B.130, Kassebaum filed a Notice of Appeal challenging the interlocutory March 2, 2021, Order Granting Judicial Review, which (again) remanded this matter back to the Hearing Officer for further substantive consideration and did not rule on any dispositive legal issues.

On January 24, 2021, NDOC moved to dismiss Appeal No. 84008 for lack of jurisdiction, mootness, and on the grounds that Kassebaum has violated the exclusive remedy language of NRS 233B.130(6).

While the parties were briefing NDOC’s Motion to Dismiss, Kassebaum filed the present Motion to Consolidate, which seeks to consolidate Appeal No. 84008 with Kassebaum’s other appeal (Appeal No. 83942). Appeal No. 83942 involves a 2-day suspension that Kassebaum appealed under NRS 284.390 but was also dismissed by the assigned hearing officer as jurisdictionally defective. That hearing officer decision was later upheld by the district court on judicial review. However, of particular note to this Opposition, Appeal No. 84008 and 83942 involve: different lawyers; different transcripts; different records on appeal; different administrative

orders with different legal analyses; different district court orders with different legal analyses; and different procedural histories.

As discussed herein, Kassebaum's Motion to Consolidate must be denied because: (1) Appeal No. 84008 is jurisdictionally defective and must be dismissed; (2) the Notice of Appeal in Appeal No. 84008 was untimely and the Court lacks jurisdiction over Appeal No. 84008; and (3) consolidation will not promote judicial economy, but will merely force the parties to litigate two separate cases within one convoluted and long-winded appeal – thus prejudicing the parties and hindering the Court's review of these cases.

## **II. LAW AND ARGUMENT**

### **A. THIS COURT LACKS JURISDICTION OVER APPEAL NO. 84008, WHICH RENDERS THAT APPEAL IMPROPER FOR CONSOLIDATION.**

At the outset, Appeal No. 84008 and 83942 are improper for consolidation, because this Court lacks jurisdiction over Appeal No. 84008, which must be dismissed as a matter of law.

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 – rather than institute Appeal No. 84008. These 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.

**B. THE COURT LACKS JURISDICTION OVER APPEAL NO. 84008 BECAUSE THE NOTICE OF APPEAL WAS UNTIMELY, WHICH RENDERS THAT APPEAL IMPROPER FOR CONSOLIDATION.**

Even if the interlocutory March 2, 2021, Order at issue in Appeal No. 84008 was a "final judgment" under NRAP 3A(b)(1) and NRS 233B.150, and even if Kassebaum was an "aggrieved party" under NRS 233B.150, and even if Appeal No. 84008 was not moot, and even if judicial review was not Kassebaum's exclusive remedy, this Court would still lack jurisdiction over Appeal No. 84008 because Kassebaum's Notice of Appeal would be untimely. This lack of jurisdiction renders Appeal No. 84008 improper for consolidation with Appeal No. 83942.

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); *see also Healy v. Volkswagenwerk*, 103 Nev. 329, 741 P.2d 432 (1987).

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 No. 3 (Notice of Entry of Order Appeal No. 84008). Therefore, Kassebaum had 30 days from March 3, 2021, to file a notice of appeal and vest jurisdiction with this Court. 30 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.

In her Response to NDOC's Motion to Dismiss Appeal No. 84008, Kassebaum offered a one-sentence argument that the interlocutory March 2, 2021, Order somehow retroactively became a final judgment once Hearing Officer Zentz issued his subsequent December 9, 2021, Decision on Remand. NDOC can predict that Kassebaum will offer a similar argument to address her untimely Notice of Appeal. However, there is not a single case, statute, or rule that supports Kassebaum's retroactivity argument. Furthermore, a host of binding Nevada Supreme Court decisions instruct that no statute or court rule authorizes an appeal from an interlocutory order of the district court remanding a matter to an administrative agency. *See Wells Fargo Bank, N.A. v. O'Brien*, 129 Nev. 679, 680, 310 P.3d 581, 583 (2013); *see also State Taxicab Auth. v. Greenspun*, 109 Nev. 1022, 1025, 862 P.2d 423, 424 (1993); *Clark County Liquor v. Clark*, 102 Nev. 654, 730 P.2d 443 (1986); *Brunson v. Dep't of Bus. & Indus., Real Est. Div.*, 485 P.3d 766 (May 7, 2021) (Unpublished). Therefore, even if the interlocutory March 2, 2021, Order somehow qualifies as a "final judgment" under NRAP 3A(b)(1) and NRS

233B.150 (and it does not), Kassebaum's Notice of Appeal would be untimely, and this Court would still lack jurisdiction over Appeal No. 84008.

**C. CONSOLIDATION WILL NOT PROMOTE JUDICIAL ECONOMY.**

Aside from the fact that Kassebaum's Motion fails to cite the applicable rule or legal standard for consolidation, 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)). However, consolidating these appeals will not promote judicial economy.

Kassebaum is correct that she appealed two workplace suspensions under NRS 284.390 and that NDOC moved to dismiss those appeals on similar jurisdictional grounds. Kassebaum also did not dispute NDOC's jurisdictional arguments in either administrative case and said cases were dismissed. However, that is where the similarities between these cases end.

In Appeal No. 83942, Kassebaum petitioned the district court for judicial review and the district court ultimately affirmed the hearing officer decision. The district court in Appeal No. 83942 found that the Personnel Commission validly exercised its authority under NRS 284.065 and adopted NAC 284.6562(2)(b), which imposes a mandatory requirement that all administrative appeals under NRS 284.390 be "accompanied by the written notification of the appointing authority's decision regarding the proposed [disciplinary] action." *See* Exhibit No. 4 (Order Denying Judicial Review in Appeal No. 83942). The district court also 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 . . ." *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.* 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 No. 2. However, this 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.


### III.

#### CONCLUSION

Based on the foregoing, Respondent, THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS, respectfully requests the Court deny Appellant's Motion to Consolidate Appeal Nos.: 84008 and 83942.

DATED this 7th day of February 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 Opposition 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 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: 

\_\_\_\_\_  
KEVIN A. PICK  
Senior Deputy Attorney General  
Nevada Bar No. 11683  
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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **OPPOSITION TO MOTION TO CONSOLIDATE** in accordance with this Court's electronic filing system and consistent with NEFCR 9 on February 7, 2022.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

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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 in Appeal No. 84008)

Exhibit No. 2 (Decision on Remand in Appeal No. 84008)

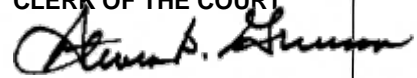
Exhibit No. 3 (Notice of Entry of Order Appeal No. 84008)

Exhibit No. 4 (Order Denying Judicial Review in Appeal No. 83942)

# EXHIBIT 1

## Order Granting Petition for Judicial Review

# EXHIBIT 1



FFCO  
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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



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**FINDINGS OF FACT**

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

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

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

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

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

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

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

8. Kassebaum filed a timely Petition for Judicial Review of the Hearing Officer's decision 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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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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23 *Attorneys for Respondent State of Nevada*  
24 *ex rel Department of Corrections*

# 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

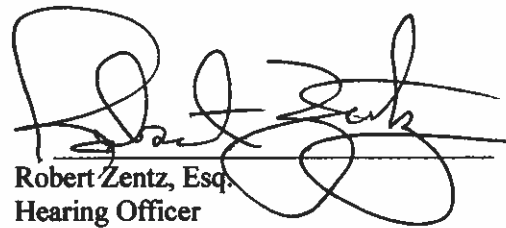
1 discipline and the date the request for hearing is filed. Clearly, this is a regulation was designed to  
2 carry out the provisions of NRS 284.383. Further, no challenge was presented to the District Court  
3 regarding the requirement found in NAC 284.778(1) that the employee use the form provided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

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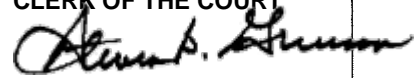
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Erick Alamo Villalba, Administrative Assistant IV  
Employee of the State of Nevada

# EXHIBIT 3

Notice of Entry of Order  
Appeal No. 84008

# EXHIBIT 3



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11 (702) 386-0536; FAX (702) 386-6812  
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 ///

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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 2<sup>nd</sup> day of March 2021 a copy of which is attached hereto.


5             DATED this 3<sup>rd</sup> 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.  
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OFFICE OF THE ATTORNEY GENERAL  
*Attorney for Respondent NDOC*  
e-mail: [kpick@ag.nv.gov](mailto:kpick@ag.nv.gov)

  
An employee of the  
**LAW OFFICE OF DANIEL MARKS**



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11 (702) 386-0536: FAX (702) 386-6812  
12 Attorneys for

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 SHARI KASSEBAUM,  
12 Petitioners,

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

17 Respondents.

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

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

18  
19 This matter having come on for hearing on Petitioner's Petition for Judicial Review on the 18<sup>th</sup>  
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

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**FINDINGS OF FACT**

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

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

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

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

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

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

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

8. Kassebaum filed a timely Petition for Judicial Review of the Hearing Officer's decision 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 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 are so construed.

Year	Number of cases	Percentage of cases
1990	10	10.0
1991	15	15.0
1992	20	20.0
1993	25	25.0
1994	30	30.0
1995	35	35.0
1996	40	40.0
1997	45	45.0
1998	50	50.0
1999	55	55.0
2000	60	60.0
2001	65	65.0
2002	70	70.0
2003	75	75.0
2004	80	80.0
2005	85	85.0
2006	90	90.0
2007	95	95.0
2008	100	100.0
2009	105	105.0
2010	110	110.0
2011	115	115.0
2012	120	120.0
2013	125	125.0
2014	130	130.0
2015	135	135.0
2016	140	140.0
2017	145	145.0
2018	150	150.0
2019	155	155.0
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2021	165	165.0
2022	170	170.0
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2045	285	285.0
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2059	355	355.0
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2061	365	365.0
2062	370	370.0
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2067	395	395.0
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2073	425	425.0
2074	430	430.0
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2079	455	455.0
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2084	480	480.0
2085	485	485.0
2086	490	490.0
2087	495	495.0
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DECISION

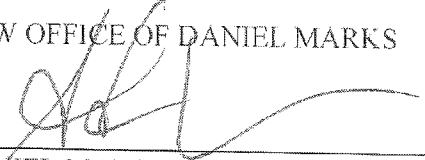
For all the reasons set forth above the Petition for Judicial Review is *granted*. The Order of the Hearing Officer in Case No. 2001869-CB filed January 14, 2020 dismissing Kassebaum's Appeal with prejudice is *reversed* and remanded back to the Department of Administration for assignment of a new Hearing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

DATED this 2nd day of March 2021.


  
DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICE OF DANIEL MARKS

  
\_\_\_\_\_  
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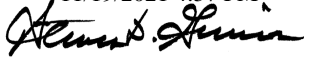
Approval as to Form and Content:

  
\_\_\_\_\_  
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*Attorneys for Respondent State of Nevada  
ex rel Department of Corrections*

# EXHIBIT 4

Notice of Entry of Order  
Appeal No. 83942

EXHIBIT 4

  
CLERK OF THE COURT

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MICHELLE DI SILVESTRO ALANIS (Bar No. 10024)  
Supervising Senior Deputy Attorney General  
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*Attorneys for Respondent State of Nevada  
ex rel. Department of Corrections*

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

SHARI KASSEBAUM,  
  
Petitioner,

vs.

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

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

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

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

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

**A. FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **B. CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **C. ORDER**

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

4 DATED: \_\_\_\_\_

Dated this 19th day of November, 2021

6 

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

9 Respectfully submitted by:

10 AARON D. FORD  
11 Attorney General

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

15 Approved as to form and content:

16 LAW OFFICE OF DANIEL MARKS  
17

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

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

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**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](mailto:JHarper@danielmarks.net)

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

Good morning Adam,

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

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

I look forward to hearing from you. Thank you.

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

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**From:** Michelle D. Alanis  
**Sent:** Tuesday, November 16, 2021 5:18 PM  
**To:** Adam Levine <[ALevine@danielmarks.net](mailto:ALevine@danielmarks.net)>; Anela P. Kaheaku <[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)>  
**Cc:** Joi Harper <[JHarper@danielmarks.net](mailto:JHarper@danielmarks.net)>  
**Subject:** RE: Kassebaum v NDOC, Case No. A-20-81182-J

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

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

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

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No.

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

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**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

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

Adam,

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

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

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

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

Hi Adam,

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

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

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

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

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

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

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

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

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

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

Hello.

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

Thank you,

Reply/Forward From:

**Anela Kaheaku, LS II**

[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)

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**From:** Anela P. Kaheaku

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

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

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

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

Good afternoon,

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

Thank you,

Anela Kaheaku, LS II

State of Nevada\*Office of the Attorney General

Personnel Division

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

[AKaheaku@ag.nv.gov](mailto:AKaheaku@ag.nv.gov)

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.

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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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