

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

District Court: Electronically Filed
Feb 18 2022 01:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION TO
MOTION TO CONSOLIDATE WITH DOCKET NO. 83942**

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Shari Kassebaum

**APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION TO
MOTION TO CONSOLIDATE WITH DOCKET NO. 83942**

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

NDOC's Opposition argues that consolidation should not occur because the Notice of Appeal was not filed within 30 days of the district court's Order granting judicial review. However, as pointed out in the Opposition to Motion to Dismiss currently pending, the Notice of Appeal was filed within 30 days of the district court's Order becoming a final judgment which occurred after the proceedings on remand had ended. Obviously, if this Court grants the Motion to Dismiss there will be nothing to consolidate with. However, assuming that the Motion to Dismiss is not granted, consolidation is appropriate.

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

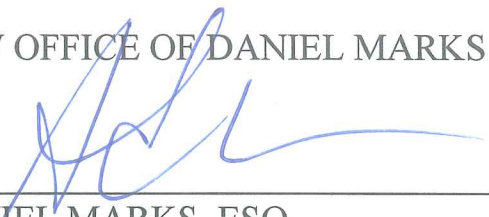
The procedural differences between the two appeals are not significant. In this appeal (84008) the district court granted judicial review to a limited extent by sending the matter back to the hearing officer to consider the issue of jurisdiction

versus claims processing rule and the constitutional arguments raised by Kassebaum. On remand the hearing officer rejected these arguments (to the extent he actually considered them). In Docket 83942 the district court simply denied judicial review outright. However, both cases will have to address the common legal issues as to whether the regulation is “jurisdictional” in nature, and the requirements of due process established for suspensions by *Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807 (1997).

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

DATED this 18th day of February 2022.

LAW OFFICE OF DANIEL MARKS



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

I hereby certify that I have read this Appellant's Reply to Respondent's Opposition to Motion to Consolidate With Docket No. 83942 and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose.

I further certify that this Appellant's Reply to Respondent's Opposition to Motion to Consolidate With Docket No. 83942 complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e), which requires every assertion in the regarding any material issue which may have been overlooked to be supported by a reference to the page of the transcript or appendix where the matter overlooked is to be found.

I further certify that this Appellant's Reply to Respondent's Opposition to Motion to Consolidate With Docket No. 83942 is formatted in compliance with NRAP 32(a)(4-6) as it has one (1) inch margins and uses New Times Roman - font size 14 has 6 pages, double-spaced, and contains 857 words. I understand that I may be subject to sanction in the event that the accompanying Appellant's Reply

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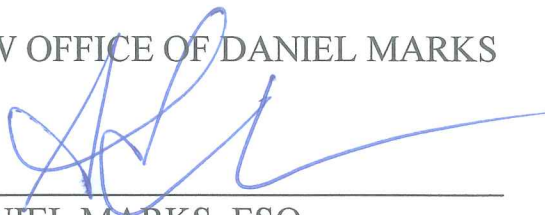
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to Respondent's Opposition to Motion to Consolidate With Docket No. 83942 is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 18 day of February 2022.

LAW OFFICE OF DANIEL MARKS



DANIEL MARKS, ESQ.

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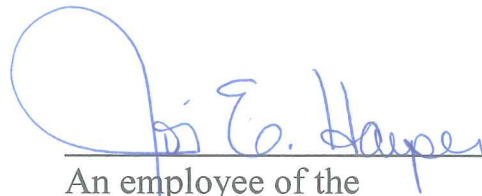
Attorneys for Appellant

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 17th day of February 2022, I did serve the above and forgoing APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION TO MOTION TO CONSOLIDATE WITH DOCKET NO. 83942, by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, at the following:

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