

1 KIRK T. KENNEDY, ESQ.
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Attorney for Appellant

Electronically Filed
Aug 17 2021 08:50 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

6 REGINALD BINGHAM,) No. 83353
7 Appellant,)
8 vs.)
9 STATE OF NEVADA; PUBLIC)
10 EMPLOYEES' RETIREMENT SYSTEM)
11 OF THE STATE OF NEVADA,)
12 Respondent.)

13 **DOCKETING STATEMENT**

14 1. Judicial District: Eighth Department: 29 County: Clark

15 Judge: David Jones

16 District Court Docket No: A-21-832163-W

17 2. Attorney filing this docket statement:

18 Kirk T. Kennedy, Esq.

19 815 S. Casino Center Blvd.

20 Las Vegas, NV 89101

21 (702) 385-5534

22 Attorney for Appellant

23 3. Attorney representing respondent:

24 Ian Carr, Deputy Attorney General, Office of the Attorney General, 100 N. Carson St.,
25 Carson City, NV 89701, (775) 684-1250
26
27
28

4. Nature of disposition below:

☐ Judgment after bench trial	☐ Grant/Denial of NRCP 60(b) relief
☐ Judgment after jury verdict	☐ Grant/Denial of injunction
☐ Summary Judgment	☐ Grant/Denial of declaratory relief
☐ Default Judgment	☐ Review of agency determination
☒ Dismissal	☐ Divorce decree
	- other disposition:

5. This appeal does not raise any issues regarding child custody, venue, adoption, termination of parental rights, the grant/denial of an injunction or TRO, or juvenile matters.

6. Pending and prior proceedings in this court.: Bingham had a prior appeal regarding a separate claim against PERS and the State of Nevada. This appeal was denied by the Supreme Court in case number 69927 in 2017.

7. Pending and prior proceedings in other courts: None.

8. Nature of this action: Appellant filed a petition for review of the Nevada PERS refusal to allow a hearing on his claims related to disability benefits. Respondent filed a motion to dismiss in the district court, which was granted. This appeal now follows.

9. Issues on appeal:

a. Whether the district court abused its discretion in granting the Respondent's motion to dismiss.

10. Pending proceedings in this court raising the same or similar issues: None.

11. Constitutional issues: None

12. Other issues: None.

13. Assignment to the Court of Appeals or retention in the Supreme Court: This case may be presumptively assigned to the Court of Appeals under NRAP 17(b) as this case involves a judgment not in excess of \$250,000.

14. Trial: N/A

15. Judicial disqualification: N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: June 25, 2021, copy attached.

17. Date written notice of entry of judgment or order served on July 7, 2021. Copy attached with proof of service.

18. If the time for filing the notice of appeal was tolled by a post-judgment motion? No.

19. Date notice of appeal was filed: August 6, 2021

20. Specify statute or rule governing the time limit for filing the notice of appeal: NRAP Rule 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from: NRAP 3A(b)(1).

Explain how the authority provides a basis for appeal from the judgment or order:

This is an appeal from a final judgment of the district court. Direct appellate review is permissible.

22. List of all parties involved in the action in the district court:

Plaintiff: Reginald Bingham

Defendant: State of Nevada; Public Employees Retirement System of the State of Nevada

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal: None.

23. Give a brief description of each party's claims: Bingham sought judicial review of PERS' refusal to allow him a hearing on his disability benefits claim. The Respondent filed a motion to dismiss alleging that the claim was time barred. The district court agreed with the Respondent and dismissed the matter.

24. Did the judgment or order appealed from adjudicate all the claims alleged below and

the rights and liabilities of all the parties to the action below: Yes.

25. If you answered No to the immediately previous question, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes: ____ No: ____

(d) Did the district court make an express determination, pursuant to NRCP 54(b) that there is no just reason for delay and an express direction for the entry of judgment:

Yes: ____ No: ____

26. If you answered No to any part of question 25, explain the basis for seeking appellate review:

27. Attach file stamped copies of the following documents:

-latest filed complaint, counterclaims, cross-claims or third party claims

-any tolling motions and orders

-orders of NRCP 41(a) dismissals formally resolving each claim asserted in action below even if not an issue on appeal

-any other order challenged on appeal

-notices of entry of each attached order

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of Appellant: Reginald Bingham

Name of counsel of record: Kirk T.
Kennedy, Esq.

Date: 8/17/21


Signature of counsel of record

State and County: Clark County, Nevada

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CERTIFICATE OF SERVICE

I hereby affirm that on this 17th day of August, 2021, I mailed a copy via first class U.S. Mail of the foregoing docketing statement to the Respondents and the Settlement Judge at the addresses below:

Ian Carr
Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701

Ishi Kunin, Esq.
10161 Park Run Drive, #150
Las Vegas, NV 89145



Law Office of Kirk T. Kennedy, Esq.

Steven D. Grierson

PET
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
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Las Vegas, NV 89101
(702) 385-5534
email: ktkennedylaw@gmail.com
Attorney for Petitioner

CASE NO: A-21-832163-W
Department 29

DISTRICT COURT

CLARK COUNTY, NEVADA

REGINALD BINGHAM,
Petitioner/Claimant,

Case No:
Dept. No:

vs.

STATE OF NEVADA,
Respondent,
PUBLIC EMPLOYEES RETIREMENT
SYSTEM,
Administrative Agency.

PETITION FOR WRIT OF MANDAMUS

COMES NOW, the Petitioner, REGINALD BINGHAM, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., who files this petition for writ of mandamus against the Respondent, State of Nevada Public Employees Retirement System.

This Petition for mandamus relief is filed pursuant to N.R.S. 34.150 et seq., as there is no plain, speedy or adequate remedy in the ordinary course of law to address the Petitioner's claim regarding his statutory rights under N.R.S. 286 et seq. to a hearing before the Respondent PERS Board related to his claims for disability retirement benefits. Specifically, Petitioner alleges as follows:

1. Petitioner Bingham had a previous hearing before the Respondent PERS Board on January 21, 2015, wherein his claim to receive PERS disability benefits was argued, heard and decided against by the PERS Board. Of note, Bingham was a previous

Exh 1

employee of the City of Las Vegas and had a claim for benefits under PERS disability retirement provisions as set forth in NRS 286.620 et seq.

2. Bingham challenged the PERS Board denial of benefits by filing a petition for judicial review in the district court, which was denied in 2015. That denial was reviewed on appeal by the Nevada Supreme Court, which upheld the district court order by decision filed February 10, 2017, in case number 69927.

3. Subsequently, on or about 2020, Bingham discovered information regarding one of the PERS Board members who participated, argued and voted against Bingham at his PERS Board hearing in 2015. Petitioner determined that PERS Board member at the time, Mr. Mark Vincent, the PERS Chairman in 2015, was also employed as the Chief Financial Officer with the City of Las Vegas at the same time as the underlying hearing.

4. The participation by the Chairman in Petitioner Bingham's hearing was a potential and/or arguable conflict of interest, which, at a minimum, exhibited implied bias against Bingham's pending disability claim for benefits, as Bingham's former employer was the City of Las Vegas. The record of the proceedings does not indicate that the Chairman disclosed his employment capacity at the time of the previous hearing and, instead, participated in the hearing which was adverse to Petitioner.

5. On or about 2020, upon discovery of this information, Bingham requested a hearing before the PERS Board on his disability claim status, given the alleged and potential improprieties discovered from the earlier Board hearing on his claims. Respondent has repeatedly and arbitrarily ignored, denied and refused to allow Bingham any hearing to address these concerns before the PERS Board.

6. Petitioner Bingham is entitled to mandamus relief under NRS 34 et seq. as he has no other plain, speedy or adequate remedy against the Respondent State agency which is refusing to allow a hearing on Bingham's claims, in light of the potential conflict of interest concerns noted herein.

7. Petitioner moves pursuant to NRS 34.190 for a Court order to compel the Respondent to allow Bingham a new hearing on his disability claims before the current PERS Board, or to appear before the Court to show cause why the relief should not be granted.

Alternatively, the Respondent should be ordered to appear before the Court to address the concerns raised by Petitioner's action herein.

WHEREFORE, Petitioner prays that this Court grant the requested relief set forth herein.

Dated this 12th day of March, 2021.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

DECLARATION OF COUNSEL

STATE OF NEVADA }
COUNTY OF CLARK }ss:

Under penalties of perjury, I, KIRK T. KENNEDY, ESQ., declare and affirm as follows:

I am an attorney duly licensed to practice law in Nevada and I am counsel for the Petitioner in this matter. I have read the foregoing petition and I know the contents thereof; and that the same is true of my own knowledge, except for those matters stated on information and belief and as to those matters I believe them to be true.

I am authorized by the Petitioner herein to file this writ of mandamus action.

Executed under penalties of perjury in accordance with the laws of the State of Nevada on this 12th day of March, 2021.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.

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AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that this document contains no social security numbers.

Dated this 12th day of March, 2021.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

Steven D. Grierson

1 NOT
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6 (702) 385-5534
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8 Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

9 REGINALD BINGHAM,
10
11 Petitioner/Claimant,

Case No: A-21-832163-W
Dept. No: 29

12 vs.

13 STATE OF NEVADA,

14 Respondent,

15 PUBLIC EMPLOYEES RETIREMENT
16 SYSTEM,

17 Administrative Agency.

NOTICE OF APPEAL

18 NOTICE IS HEREBY GIVEN that the Petitioner, REGINALD BINGHAM, by
19 and through his undersigned counsel, KIRK T. KENNEDY, ESQ., does hereby appeal to
20 the Nevada Supreme Court from the district court's decision and order granting the
21 Respondent's motion to dismiss the above-entitled matter, filed by notice of entry of
22 order on July 7, 2021. See Notice and Order, attached.

23 Dated this 6th day of August, 2021.

24 /s/Kirk T. Kennedy
25 KIRK T. KENNEDY, ESQ.
26 Nevada Bar No: 5032
27 815 S. Casino Center Blvd.
28 Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby affirm that on this 6th day of August, 2021, I mailed via first class U.S. Mail and served via electronic service a copy of the foregoing to Respondents at the address below:

Ian Carr
Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701-4717

/s/Kirk T. Kennedy
Law Office of Kirk T. Kennedy

AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that this document contains no social security numbers.

Dated this 6th day of August, 2021.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner



1 **NEOJ**
2 **AARON D. FORD**
3 **Attorney General**
4 **IAN CARR, Bar No. 13840**
5 **Deputy Attorney General**
6 **State of Nevada**
7 **100 N. Carson Street**
8 **Carson City, Nevada 89701-4717**
9 **Tel: (775) 684-1250**
10 **Email: ICarr@ag.nv.gov**

11 *Attorneys for Respondents, the*
12 *State of Nevada and the Public*
13 *Employees' Retirement System*
14 *of Nevada*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **REGINALD BINGHAM,**

18 **Petitioner,**

19 **vs.**

20 **STATE OF NEVADA, PUBLIC**
21 **EMPLOYEES' RETIREMENT SYSTEM**
22 **OF THE STATE OF NEVADA,**

23 **Respondents.**

24 **Case No.: A-21-832163-W**

25 **Dept. No.: XXIX**

26 **NOTICE OF ENTRY OF ORDER**

27 **PLEASE TAKE NOTICE** that an Order Granting Respondents' Motion to Dismiss was
28 signed in the above-entitled matter on the 25th day of June, 2021.

A copy of said Order is attached hereto as Exhibit 1.

DATED this 7th day of July, 2021.

AARON D. FORD
Attorney General

By: /s/ Ian Carr
IAN CARR
Deputy Attorney General
State of Nevada
(775) 684-1250
ICarr@ag.nv.gov
Attorneys for Respondents

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on this 7th day of July, 2021, I filed the foregoing **NOTICE OF ENTRY**
4 **OF ORDER**, via this Court's electronic filing system. Parties who are registered with this
5 Court's electronic filing system will be served electronically.
6

7 /s/ Karen Easton

8 An employee of the Office of the
9 Nevada Attorney General
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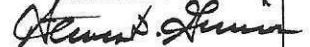
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INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1	Order Granting Respondents' Motion to Dismiss	4

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

1 **ORDM**
2 **AARON D. FORD**
3 Attorney General
4 **IAN CARR, Bar No. 13840**
5 Deputy Attorney General
6 State of Nevada
7 100 N. Carson Street
8 Carson City, Nevada 89701-4717
9 Tel: (775) 684-1250
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11 *Attorneys for Respondents, the*
12 *State of Nevada and the Public*
13 *Employees' Retirement System*
14 *of Nevada*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **REGINALD BINGHAM,**

12 Petitioner,

13 vs.

14 **STATE OF NEVADA, PUBLIC**
15 **EMPLOYEES' RETIREMENT SYSTEM**
16 **OF THE STATE OF NEVADA,**

17 Respondents.

Case No.: A-21-832163-W

Dept. No.: XXIX

**ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS**

18 This matter comes before the Court pursuant to Respondents' Motion to Dismiss,
19 which was filed on May 27, 2021. On June 8, 2021 Petitioner filed his Opposition to
20 Respondents' Motion to Dismiss. On June 14, 2021, Respondents filed their Reply in
21 Support of the Motion to Dismiss. The Court heard oral argument on the matter on the
22 morning of June 22, 2021. After reviewing the relevant papers, the Court finds Petitioner
23 Reginald Bingham's case to be wanting, at law. Accordingly, the Court finds and concludes
24 as follows:

25 **A. This Case Is Barred by the Applicable Statute of Limitations**

26 Under NRS Chapter 286, a PERS member can only qualify for disability retirement
27 if still employed by a PERS-eligible employer at the time of application. See NRS
28 286.620(1)(b). Furthermore, a PERS member may only apply for reconsideration of a PERS
Board's denial of a disability retirement application within 45 days, if the member discovers

1 evidence which was not known during the original hearing. *See* NRS 286.630(4).

2 The Court finds that Bingham's original hearing regarding his disability retirement
3 application occurred on January 21, 2015. In February 2020, Bingham corresponded with
4 PERS requesting a rehearing; in March 2020 and August 2020, Bingham and PERS
5 exchanged correspondence regarding PERS' rejection of Bingham's request due to
6 untimeliness. In January 2021, Bingham corresponded with the PERS Board with the
7 same request, but the PERS Board did not respond. Bingham should have sought a
8 rehearing within the 45-day timeframe prescribed by NRS 286.630(4), but did not, instead
9 filing this writ petition seeking a rehearing on April 1, 2021, more than six years untimely.
10 Therefore, the Court concludes that this case is time-barred pursuant to NRS 286.630(4),
11 notwithstanding Bingham's allegations of a conflict of interest against the former PERS
12 Board Chairman that presided over his original disability retirement application hearing.
13 The Court finds that the former PERS Board Chairman's employment as City of Las Vegas
14 CFO at the time was publicly known; Bingham should have raised the issue at the original
15 hearing or during the 45-day reconsideration period as prescribed by NRS 286.630(4).

16 Therefore, this case is time-barred, and must be dismissed in its entirety, with
17 prejudice.

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1 **B. Order**

2 Therefore, after reviewing all the papers relevant to Respondents' Motion to Dismiss
3 and hearing the arguments of the parties, the Court hereby **GRANTS** Respondents' Motion
4 to Dismiss and dismisses this case in its entirety, with prejudice.

5 **IT IS SO ORDERED.**

Dated this 25th day of June, 2021

6 

7
8 HONORABLE DAVID JONES
DISTRICT COURT JUDGE
9 638 BFA 530A 9EE8
David M Jones
10 District Court Judge

11
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15
16 Submitted by:

17 AARON D. FORD
18 Attorney General
19 /s/ Ian Carr

20 IAN CARR (Bar No. 13840)
Deputy Attorney General
21 State of Nevada
100 N. Carson Street
22 Carson City, Nevada 89701-4717
Tel: (775) 684-1250
Email: ICarr@ag.nv.gov

23
24 Approved as to form and content by:

25 /s/ Kirk Kennedy

26 KIRK T. KENNEDY, ESQ. (Bar No. 5032)
27 Law Office of Kirk T. Kennedy
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Reginald Bingham, Plaintiff(s)

CASE NO: A-21-832163-W

7 vs.

DEPT. NO. Department 29

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order of Dismissal was served via the court's electronic eFile system to
13 all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/25/2021

15 Ian Carr

icarr@ag.nv.gov

16 Kirk Kennedy

ktkennedylaw@gmail.com
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