

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, and
CANNON COCHRAN
MANAGEMENT SERVICES,
INC.

Appellants,

vs.

STATE OF NEVADA
DEPARTMENT OF BUSINESS
AND INDUSTRY, DIVISION OF
INDUSTRIAL RELATIONS,

Respondent.

Supreme Court No.: 83262

District Court Case No. A821892
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RESPONDENT DIVISION OF INDUSTRIAL RELATIONS'
ANSWERING BRIEF

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I.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this matter pursuant to NRS 233B.150, which allows an aggrieved party to obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction.

Appellants Las Vegas Metropolitan Police Department (hereinafter "LVMPD") and Cannon Cochran Management Services, Inc. (hereinafter "CCMSI") (hereinafter collectively "Appellants") appealed the August 19, 2020, determination of the State of Nevada Board for the Administration of the Subsequent Injury Account for Self-Insured Employers to the Eighth Judicial District Court, pursuant to NRS 616C.370 and NRS Chapter 233B, the Administrative Procedure Act, on a petition for judicial review on September 24, 2020.

On May 5, 2021, Respondent State of Nevada Department of Business of Industry, Division of Industrial Relations (hereinafter "Respondent" or "the Division") filed a Motion to Dismiss Appellants' petition for judicial review. On June 21, 2021, the District Court issued an order granting Respondent's Motion to Dismiss. Appellants filed an appeal of that order with this Court on July 19, 2021. The District Court's June 21, 2021, Order is a final judgment upon which appeal may be taken.

II.

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(9), as it involves an administrative agency case not involving a tax, water, or public utilities commission determination.

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III.

STATEMENT OF THE ISSUES

Whether the District Court properly granted the Division's Motion to Dismiss the Petition for Judicial Review ("PJR") for failure to comply with its statutory duty under NRS 233B.131(1) to file the transcript of the underlying proceedings before the administrative agency within 45 days after the service of the PJR and failure to timely file opening brief?

IV.

STATEMENT OF THE CASE

This appeal concerns the District Court's proper dismissal of Appellants' PJR of a determination by the Nevada Board for the Administration of the Subsequent Injury Account for Self-Insured Employers (hereinafter "Board") regarding a request for reimbursement from the Subsequent Injury Account. The Board issued its Findings of Fact, Conclusions of Law and Determination on August 19, 2020 (hereinafter "August 19, 2020 Findings"). On September 1, 2020, the Notice of Entry of the Board's August 19, 2020 Findings was issued.

Appellants filed their PJR with the District Court on September 24, 2020, related to the Board's August 19, 2020, Findings.

On November 9, 2020, the Board filed the Transmittal of Record on Appeal in Accordance with the Nevada Administrative Procedure Act. The related Notice of Transmittal of Administrative Record on Appeal was filed by the Board on November 10, 2020. Appellants, on the other hand, failed to file or transmit the transcript of the underlying Board hearing to the reviewing District Court within 45 days after filing their PJR pursuant to NRS 233B.131.

On April 5, 2021, Appellants filed their Opening Brief in support of their PJR. On May 5, 2021, Respondent filed a Motion to Dismiss the petition for Appellants' failure to comply with NRS 233B.131(1)(a). The District Court heard

1 Respondent's Motion to Dismiss on June 7, 2021. Thereafter, on June 21, 2021,
2 the District Court issued an Order Granting Respondent's Motion to Dismiss
3 based on Appellant's failure to comply with NRS 233B.131(1)(a). Appellants
4 filed an appeal of that order with this Court on July 19, 2021.

5 V.

6 STATEMENT OF RELEVANT FACTS

7 On April 10, 2018, Appellants submitted a written request for
8 reimbursement from the Subsequent Injury Account.

9 On April 18, 2018, Respondent Division issued its recommendation to the
10 Board. Appendix 0001-00042.

11 Respondent Division's recommendation was heard by the Board on June
12 27, 2018. Appendix 00050-00070.

13 On July 11, 2018, the Board issued a letter confirming its vote to approve
14 the request for reimbursement but for less than Appellants had requested.
15 Appendix 00071-00072.

16 On August 10, 2018, Appellants sent correspondence to the Board
17 indicating that they were appealing the Board's decision. Appendix 00075.

18 On September 26, 2018, the Board conducted a *de novo* hearing regarding
19 Appellants' appeal of the Board's determination. Appendix 00076-00090.

20 The Board issued its Findings of Fact, Conclusions of Law and
21 Determination on August 19, 2020. Appendix 00125-00130. The accompanying
22 Notice of the Board's Determination was issued on September 1, 2020. Appendix
23 00131-00132.

24 On September 24, 2020, Appellants filed their PJR of the Board's
25 determination with the District Court. Appendix 00133-00146.

1 Respondent Division filed its Notice and Statement of Intent to Participate
2 on October 13, 2020. Appendix 00147-00150. The Board filed its Statement of
3 Intent to Participate on October 14, 2020. Appendix 00151-00153.

4 Notably, while Appellants had a statutory duty to file the original or
5 certified copy of the transcript with the District Court by November 9, 2020,
6 pursuant to NRS 233B.131(1)(a), they failed to do so. Instead, Appellants
7 haphazardly and improperly tried to rely on the Board's November 9, 2020, filing
8 of the Transmittal of Record on Appeal to somehow meet their non-delegable
9 statutory duty. Appendix 00154-00160.

10 On April 5, 2021, without excuse, Appellants untimely filed their Opening
11 Brief with the District Court. Appendix 00161-00182. Indeed, when Appellants
12 finally filed their Opening Brief, they filed it 105 days late. Appendix 00238-
13 00243, at para. 6. Further, Appellants' Opening Brief lacked citations to the
14 transcript of the underlying administrative proceeding. *Id.* at para. 8.

15 On May 5, 2021, Respondent Division filed a Motion to Dismiss the
16 Petition for Judicial Review, or in the Alternative Motion to Strike Petitioners'
17 Opening Brief and Motion to Extend Time to File Reply Memorandum of Points
18 and Authorities. Appendix 00183-00208. Respondent Division's Motion was
19 based on the clear and unambiguous terms of NRS 233B.131 that Appellants, as
20 the parties seeking judicial review, were required to file the transcript of the
21 underlying administrative proceedings but failed to do so. *Id.* The Board filed its
22 Joinder to the Division's Motion on May 11, 2021. Appendix 00209-00211.

23 Appellants filed their Opposition to the Motion on May 19, 2021.
24 Appendix 00212-00220. Respondent Division filed its Reply Brief on May 25,
25 2021. Appendix 00221-00233. The Board joined in Respondent Division's Reply
26 on June 1, 2021. Appendix 00234-00236.

1 On June 7, 2021, Respondent Division's Motion came on for hearing before
2 the District Court. Appendix 00237. Ultimately, the Court properly granted
3 Respondent Division's Motion to Dismiss, finding that the Appellants did not
4 meet their burden to show good cause for their delay under the *Scrimmer* factors
5 and that their extensive unexcused delay was mooted by their legally erroneous
6 position that they are not statutorily required to transmit the transcript to the Court.
7 Appendix 00238-00243.

8 The Notice of Entry of Order Granting Respondent Division's Motion to
9 Dismiss was filed on June 22, 2021. Appendix 00244-00249.

10 On July 13, 2021, Appellants filed their Motion for Reconsideration with
11 the District Court. Appendix 00250-00333. The District Court denied the Motion
12 on July 28, 2021. Appendix 00381. The Notice of Entry of Order Denying
13 Appellants' Motion for Reconsideration was filed on August 17, 2021. Appendix
14 00388-00398.

15 On July 19, 2021, Appellants filed its Notice of Appeal with this Honorable
16 Court. Appendix 00335-00345.

17 VI.

18 SUMMARY OF ARGUMENT

19 Respondent Division asserts that the District Court's dismissal of
20 Appellants' PJR was proper and not an abuse of discretion.

21 As the underlying matter involves the administration of the Subsequent
22 Injury Account, NRS 616B.545 through 616B.560 apply, as well as Nevada
23 Administrative Code ("NAC") 616B.770 through 616B.7714. Additionally, NRS
24 233B.121 through NRS 233B.150 provide the statutory framework for the
25 adjudication of contested administrative cases. Under the plain language of NRS
26 233B.131(1)(a), the party filing a petition for judicial review has 45 days to submit
27 to the reviewing court an original or certified copy of the transcript of the evidence
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1 resulting in the final decision of the agency. Appellants failed to do so without
2 any explanation, and therefore, the District Court properly found grounds for
3 dismissal.

4 Moreover, Appellants continually admit, even in their Appeal Brief filed
5 with this Court, that they failed to comply with their statutory duty to file the
6 transcript within 45 days of service of its PJR. Appellants further mistakenly hold
7 on to their mistaken belief that this failure is not jurisdictional and does not
8 mandate dismissal. However, as detailed further below, this Court has repeatedly
9 held that strict compliance with the statutory requirements of NRS Chapter 233B
10 is a precondition to jurisdiction by the court for judicial review.

11 Still, even though the District Court gave Appellants an opportunity to
12 assert good cause to remediate their failure to comply with NRS 233B.131,
13 Appellants were unable to provide any reasoning that good cause supported their
14 failure to comply. Even more, Appellants never offered an affidavit to support
15 their contention that good cause existed for their failure. Appendix 00240, at para.
16 15. Finally, District Court Judge Joe Hardy, Jr., expressly stated the underlying
17 policy reason requiring Petitioners to transmit the record. Appendix 00240, at
18 para. 13 ("Indeed, the legislative history of the 2015 amendment to NRS 233B.131
19 shows that the underlying policy for requiring petitioners to transmit the transcript
20 to the court was to decrease the burden on taxpayers.").

21 VII.

22 LEGAL ARGUMENT

23 A. Standard of Review

24 Pursuant to the Nevada Administrative Procedure Act, codified in NRS
25 Chapter 233B, when a party alleges that a final decision of an administrative
26 agency is erroneous, the aggrieved party may file a petition for judicial review.
27 NRS 233B.135. This Court reviews a district court's order granting a motion to
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dismiss de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d. 402, 404 (2014). Similarly, this Court reviews issues of statutory construction de novo. *Id.* (citing *Pub. Agency Comp. Trust v. Blake*, 124 Nev. 863, 265 P.3d 694 (2011)); see also *Nev. State Bd. of Architecture v. Eighth Jud. Dist. Ct.*, 449 P.3d 1262, 1264, 2019 Nev. LEXIS 59, at **5-6 (2019).

B. The plain language and structure of NRS 233B.131 required Appellants to transmit the transcript of the underlying proceedings to the District Court upon its service of the petition for judicial review.

NRS 233B.131 provides in pertinent part:

NRS 233B.131 Transmittal of record of proceedings to reviewing court by party and agency; shortening of or corrections or additions to record; additional evidence; modification of findings and decision by agency based on additional evidence.

1. Within 45 days after the service of the petition for judicial review or such time as is allowed by the court:

(a) The party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency.

(b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review.

➡ The record may be shortened by stipulation of the parties to the proceedings. A party unreasonably refusing to stipulate to limit the record, as determined by the court, may be assessed by the court any additional costs. The court may require or permit subsequent corrections or additions to the record.

(Emphasis added.)

1 This Court has held that it will look to the rule's language, and consider
2 policy and equity principles, in order to determine if a rule's provisions require
3 strict or substantial compliance. *Markowitz v. Saxon Special Servicing*, 129 Nev.
4 660, 664, 310 P.3d 569, 571-72 (2013) (citing *Leyva v. Nat'l Default Servicing*
5 *Corp.*, 127 Nev. 470, 475-76, 255 P.3d 1275, 1278 (2011)). "Generally, a rule is
6 mandatory and requires strict compliance when its language states a specific 'time
7 and manner' for performance." *Id.* (citing *Leven v. Frey*, 123 Nev. 399, 408 n.31,
8 168 P.3d 712, 718 n.31 (2007)). "Time and manner refers to when performance
9 must take place and the way in which the deadline must be met." *Id.* (citing
10 *Village League to Save Incline Assets, Inc. v. State Bd. of Equalization*, 124 Nev.
11 1079, 1088, 194 P.3d 1254, 1260 (2008)). In contrast to time and manner
12 provisions, form and content provisions "dictate who must take action and what
13 information that party is required to provide." *Id.* (citing *Einhorn v. BAC Home*
14 *Loans Servicing, LP*, 128 Nev. 689, 696, 290 P.3d 249, 254 (2012) (stating that
15 "who brings which documents ... is a matter of 'form'")). "Because they do not
16 implicate notice, form and content-based rules are typically directory and may be
17 satisfied by substantial compliance...". *Id.* at 664-65.

18 NRS 233B.131(1)(a) unambiguously mandates that the Appellants "shall
19 transmit" to the court an original or certified copy of the transcript of the evidence
20 resulting in the final agency decision. Therefore, NRS 233B.131(1)(a) is a "time
21 and manner" rule, stating deadlines for performance. This Court has determined
22 that "[t]he word 'shall' is a term of command; it is imperative or mandatory, not
23 permissive or directory." *Great Basin Water Network v. Taylor*, 234 P.3d 912,
24 2010 Nev. LEXIS 21, at **12 (2010) (citing *Blaine Equip. Co. v. State, Purchasing*
25 *Div.*, 122 Nev. 860, 867, 138 P.3d 820, 824 (2006) (alternation in original) (quoting
26 *Adkins v. Oppio*, 105 Nev. 34, 37, 769 P.2d 62, 64 (1989)).

1 In the instant case, Appellants, as the parties who filed the PJR, had the
2 mandatory duty to transmit to the District Court, as the reviewing court, an
3 original or certified copy of the transcript. NRS 233B.131(1)(a). Appellants filed
4 their PJR on September 24, 2020. Therefore, pursuant to NRS 233B.131(1), the
5 clock started ticking for them to transmit a copy of the transcript to the reviewing
6 court within 45 days at that time. Appellants never filed the transcript prior to the
7 deadline nor without leave of court to untimely do so – that fact is undisputed. As
8 such, Appellants’ failure to file the transcript did not vest the District Court with
9 jurisdiction to entertain Appellants’ PJR. Accordingly, the District Court properly
10 granted Respondent Division’s Motion to Dismiss.

11 Moreover, Appellants argue that the phrase “shall” is only “presumptively
12 mandatory”. (Appellants’ Brief at 9:17-25.) However, what Appellants fail to
13 note is that the statute, on its face, allows the District Court to require or permit
14 subsequent “corrections” or “additions” to the record. These terms beg the
15 consideration that in order for a party to “correct” or “add” documents to the
16 record, a record must have already been submitted in the first place.

17 Additionally, Appellants’ reasoning that NRS 233B.131(1)(b) serves as a
18 form of safe harbor for their failure to comply with their own statutory duty is
19 equally flawed. In fact, Appellants argue that their own non-compliance was
20 somehow Respondent Division’s fault because Respondent Division failed to
21 transmit the entire record. Appellants failed to cite any legal authority for this
22 conclusion, and the simple reason is because there is none. *Maresca v. State*, 103
23 Nev. 669, 673, 748 P.2d 3, 6 (1987) (*citing Carson v. Sheriff*, 87 Nev. 357, 360-
24 61, 487 P.2d 334, 336 (1971) and *Freeman v. Town of Lusk*, 717 P.2d 331 (Wyo.
25 1986)) (“It is appellant’s responsibility to present relevant authority and cogent
26 argument; issues not so presented need not be addressed by this court.”). Should
27 the Court adopt Appellants’ position, then the plain language of NRS 233B.131

1 would fall to the wayside. As this Court has recently held in *Whitfield v. Nev.*
2 *State Pers. Comm'n*, 492 P.3d 571, 137 Nev. Adv. Rep. 34 (2021), plain language
3 controls, and the unambiguous language from the Legislative Branch cannot be
4 disregarded by the Judicial Branch. *Id.*; see also *State, Div. of Ins. v. State Farm*,
5 995 P.2d 482 (2000) (citing *State v. Jepsen*, 46 Nev. 193, 196, 209 P. 501, 502
6 (1922); *Erwin v. State*, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995);
7 *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497, 503, 797 P.2d 946, 949
8 (1990)) (“Where the language of a statute is plain and unambiguous, and its
9 meaning clear and unmistakable, there is no room for construction, and the courts
10 are not permitted to search for meaning beyond the statute itself.”). Indeed,
11 Appellants claim that NRS 233B.131(1)(b) requires that Respondent Division file
12 the *complete* record instead of the “remainder” of the record. (Appellant Brief at
13 11:13-12:2.) However, even a cursory glance at the language of NRS 233B.131
14 shows that the onus is on the petitioner (e.g., Appellants in this matter) to transmit
15 the transcript and that the agency only shall transmit the “remainder” of the record
16 of the proceeding under review. Accordingly, the District Court properly found
17 that Appellants had the statutory responsibility to transmit the record and
18 transcript to the reviewing Court, that Appellants failed to do so, and therefore
19 properly granted Respondent Division’s Motion to Dismiss.

20 **C. It is undisputed that Appellants failed to transmit the transcript**
21 **to the District Court, and Appellants’ failure to comply with those**
22 **requirements warranted dismissal of their Petition for Judicial**
23 **Review.**

24 While Appellants plead that Respondent Division’s Motion to Dismiss
25 should have been denied on equitable grounds, there are instances, such as this,
26 where a petitioner’s failure to comply with its statutory duties will serve as a bar.
27 Strict compliance with the procedures of NRS 233B, the Administrative
28 Procedure Act, is a prerequisite for this Court’s jurisdiction to attach. *Private*

1 *Investigator's Licensing Bd. v. Atherley*, 98 Nev. 514, 515, 654 P.2d 1019 (1982)
2 (“...[n]ot every administrative decision is reviewable.”). Only those decisions
3 that are challenged according to NRS 233B’s procedures invoke the district
4 court’s jurisdiction. *Id.* **“When a party seeks judicial review of an**
5 **administrative decision, strict compliance with the statutory requirements**
6 **for such review is a precondition to jurisdiction by the court of judicial**
7 **review,”** and **“[n]oncompliance with the requirements is grounds for**
8 **dismissal.”** *Kame v. Employment Security Dep’t*, 105 Nev. 22, 25, 769 P.2d 66,
9 68 (1989) (emphasis added) (*quoting Teepe v. Review Bd. of Indiana Emp. Sec.*
10 *Div.*, 200 N.E.2d 538, 539 (Ind. Ct. App. 1964); *see also Ultsch v. Ill. Mun. Ret.*
11 *Fund*, 226 Ill.2d 169, 178, 874 N.E.2d 1, at **7 (Ill. 2007) (stating that “Because
12 review of a final administrative decision may be obtained only as provided by
13 statute, a court exercises ‘special statutory jurisdiction’ when it reviews an
14 administrative decision. Special statutory jurisdiction is limited to the language
15 of the statute conferring it and the court has no powers from any other source. A
16 party seeking to invoke a court’s special statutory jurisdiction must strictly
17 comply with the procedures prescribed by the statute.”) (internal citation omitted).

18 This Court has further held that a rule providing a time limit for filing an
19 administrative appeal is not procedural, but jurisdictional. *K-Kel, Inc. v. State,*
20 *Dep’t of Taxation*, 134 Nev. 78, 80-81, 412 P.3d 15, 17 (2018) (recognizing that
21 the statutory time period for filing a petition for judicial review under NRS
22 Chapter 233B as jurisdictional). Moreover, the Court has consistently treated time
23 limitations set forth in workers’ compensation statutes as “establishing a
24 jurisdictional bar to further review when the required action is not taken within
25 the time period delineated by those statutes.” *Williams v. United Parcel Servs.*,
26 129 Nev. 386, 390, 302 P.3d 1144, 1146 (2013) (*quoting Seino v. Employers Ins.*
27 *Co. of Nev.*, 121 Nev. 146, 150, 111 P.3d 1107, 1110 (2005) (“Statutory periods

1 for requesting administrative review of workers' compensation determinations are
2 mandatory and jurisdictional."); *Reno Sparks Convention Visitors Auth. v.*
3 *Jackson*, 112 Nev. 62, 66-7, 910 P.2d 267, 270 (1996) (recognizing that the failure
4 to appeal administrative determination within prescribed time period precluded
5 consideration of the appeal)).

6 In the underlying appeal, Appellants filed their PJR on September 24, 2020.
7 Thus, pursuant to NRS 233B.131(1)(a), and as correctly ruled upon by the District
8 Court, Appellants' deadline to transmit the transcript of the administrative
9 proceeding was November 9, 2020. It is also undisputed that Appellants failed to
10 file or transmit the transcript of the underlying Board hearing to the reviewing
11 District Court within 45 days after filing their PJR pursuant to NRS 233B.131, a
12 fact to which Appellants continue to highlight, even in their Brief to this Court.
13 (See Appellants' Brief at 7:4-5.) Importantly, Appellants' failure to transmit the
14 transcript to the District Court rendered the record of the underlying
15 administrative proceeding incomplete, and the lack of completeness of the record
16 prevented the District Court from conducting a judicial review based upon the
17 whole record, as required by NRS 233B.135.

18 Although Respondent Division proffers that NRS 233B.131 provides for
19 mandatory compliance, the District Court afforded Appellants potential avenues
20 to seek relief from its failure to comply with its statutory requirements.
21 Specifically, while NRS 233B.131(1)(a)'s language is plain and unambiguous, the
22 District Court sought explanation from Appellants as to whether there was good
23 cause for a delay in transmitting the transcript, given the statute's allowance for a
24 court to alter the 45-day deadline. Despite this reprieve, Appellants' sole
25 argument was that it was Respondent who was statutorily required to file the
26 complete record of the underlying administrative proceeding. In the underlying
27 appeal, Appellants failed to show, with an affidavit or otherwise, why they were
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1 unable to comply with the statutory requirements. Indeed, records produced by
2 Respondent show that counsel for Appellants was ready to litigate another
3 administrative appeal during this pertinent timeframe. Appendix 00352-00377, at
4 00371 (Appellants' counsel recognizing need for the transcript).

5 Nevertheless, the District Court afforded Appellants with an opportunity to
6 show good cause as to missed deadline for filing the transcript under the *Scrimmer*
7 factors. *Scrimmer v. Eighth Jud. Dist. Ct.*, 116 Nev. 507 (2000). In *Scrimmer*, this
8 Court concluded that there were several non-exhaustive considerations that
9 governed a district court's analysis of good cause under NRCP 4(i) (dealing with
10 enlargement of time for service of process), including:

11 (1) difficulties in locating the defendant; (2) the defendant's efforts at
12 evading service or concealment of improper service until after the 120-
13 day period has lapsed; (3) the plaintiff's diligence in attempting to serve
14 the defendant; (4) difficulties encountered by counsel; (5) the running
15 of the applicable statute of limitations; (6) the parties' good faith
16 attempts to settle the litigation during the 120-period; (7) the lapse of
17 time between the end of the 120-day period and the actual service of
18 process on the defendant, (8) the prejudice to the defendant caused by
19 the plaintiff's delay in serving process, (9) the defendant's knowledge
20 of the existence of the lawsuit, and (1) any extensions of time for
21 service granted by the district court.

22 *Scrimmer*, 116 Nev. at 516. This Court further held that the underlying policy
23 behind these considerations was "to encourage the diligent prosecution of
24 complaints." *Id.*

25 In this case, Appellants did not proffer any scintilla of proof that good cause
26 existed for its failure to transmit the transcript to the District Court. Instead,
27 Appellants "pass the buck", disregard their statutory obligations under NRS
28 233B.131, and assert that the complete record was not provided to the District
Court because Respondent Division and the Board did not provide it, which is a
fallacy in and of itself.

1 Further, taking the policy underlying the *Scrimmer* factors, which is to
2 encourage the diligent prosecution of complaints, Appellants should not be found
3 to do so. Rather, it is undisputed that Appellants did not forward the transcript to
4 the District Court. Moreover, doubling down on their misapplication of NRS
5 233B.131, Appellants opted to sit and wait for Respondent Division and the Board
6 to file the record of proceedings. Such tactic, to sit and wait, does not comport
7 with the policy of diligent prosecution.

8 **D. This Court should disregard Appellants' arguments regarding**
9 **equitable remedies.**

10 This Court has previously held that issues raised for the first time on appeal
11 are waived, and this Court will not consider such arguments on appeal. *Delgado*
12 *v. American Family Ins. Group*, 125 Nev. 564, 571, 217 P.3d 563, 567 (2009)
13 (*citing Kahn v. Morse & Mowbray*, 121 Nev. 464, 480, n. 24, 117 P.3d 227, 238
14 n. 24 (2005)). In its Brief to this Court, Appellants raise the defenses of equitable
15 estoppel and waiver to the District Court's granting of the Motion to Dismiss.
16 (Appellant Brief at 13:10-14:23.) However, Appellants failed to raise these
17 arguments in their underlying Opposition to the Motion to Dismiss before the
18 District Court. Appendix 00212-00220. Instead, the first time Appellants raised
19 these defenses was in their Motion for Reconsideration, filed with the District
20 Court on July 13, 2021. Appendix 00250-00333. Given that Appellants failed to
21 raise these issues in its Opposition to the Motion to Dismiss in the underlying
22 matter, this Court should preclude any such arguments thereto by Appellants in
23 the instant appeal.

24 Nevertheless, should this Court consider Appellants' arguments related to
25 equitable estoppel and waiver, Appellants should still not be afforded such relief.
26 Equitable estoppel generally comprises of four elements:

1 (1) The party to be estopped must be apprised of the true facts; (2) he
2 must intend that his conduct shall be acted upon, or must so act that the
3 party asserting estoppel has the right to believe it was so intended; (3)
4 the party asserting the estoppel must be ignorant of the true state of
facts; (4) he must have relied to his detriment on the conduct of the
party to be estopped.

5 *Mahban v. MGM Grand Hotels*, 100 Nev. 593, 596 (1984) (citing *Cheger, Inc. v.*
6 *Painters & Decorators*, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)).
7 Additionally, a “waiver is the intentional relinquishment of a known right.”
8 *Mahban*, 100 Nev. at 596.

9 In this matter, Appellants assert that they detrimentally relied on
10 certifications by Respondent Division and the Board that the entire record was
11 included in their transmissions to the District Court. (Appellant Brief 14:6-20.)
12 Although Appellants may have relied on the transmission by Respondent Division
13 and the Board, such reliance does not negate Appellants’ responsibility under
14 NRS 233B.131(1)(a) to firstly, and independently, provide the record on appeal
15 and transcript. The Legislature structurally separated into different subsections
16 the Appellant’s duty to transmit the transcript from the Respondents’ duty to
17 transmit the remainder of the record. Appellants had a legal obligation to transmit
18 the transcript, which they failed to do – they cannot subsequently claim that
19 someone other than themselves had the same duty statutorily mandated upon
20 them.

21 With regard to Appellants’ argument that Respondent Division waived its
22 right to raise the issue that Appellants untimely filed their brief, Appellants cite to
23 no legal authority that Respondent Division should have raised such issue within
24 a certain time period. Again, this is because there is no legal authority to support
25 this conclusion. Once Respondent Division believed that it was necessary to raise
26 the issue with the District Court, and once Respondent Division believed that there
27 was sufficient support for its position, Respondent Division filed its Motion to
28

Dismiss. Accordingly, this Court should find that Appellants' arguments related to equitable remedies have no merit.

VIII.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court AFFIRM the District Court's Order Dismissing Appellants' Petition for Judicial Review.

Dated this 4th day of February, 2022.

Respectfully submitted,

DIVISION OF INDUSTRIAL RELATIONS

By: 

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CERTIFICATE OF COMPLIANCE WITH NRAP 28.2

I, CHRISTOPHER ECCLES, ESQ., hereby certify that:

1. This brief 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 brief has been prepared in a proportionally-spaced typeface in 14-point font in Times New Roman.
2. This brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 4,484 words and does not exceed 30 pages.
3. I have read this appellate brief, 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 brief 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 4th day of February, 2022.

Respectfully submitted,

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Attorney for Respondent Division of Industrial Relations

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: **Respondent Division of Industrial Relations' Answering Brief in Supreme Case No. 83262**

Person(s) Served: Daniel L. Schwartz, Esq. L. Michael Friend, Esq. LEWIS BRISBOIS BISGAARD & SMITH LLP 2300 W. Sahara Avenue, Suite 900, Box 28 Las Vegas, Nevada 89102-4375 <i>Attorneys for Appellants</i>	U.S. Mail _____ via State Mail room (regular or certified) circle one _____ deposited directly with U.S. Mail Service _____ Overnight Mail _____ Interdepartmental Mail _____ Messenger Service _____ Facsimile fax number: _____ _____ Electronic Service
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17 18 19 20 21 22 23 24	Person(s) Served: Aaron D. Ford, Esq. Karissa D. Neff, Esq. OFFICE OF THE ATTORNEY GENERAL 555 East Washington Ave., Suite 3900 Las Vegas, Nevada 89101 <i>Attorneys for Respondent Board for the Administration of Subsequent Injury Account for Self-Insured Employers</i>	U.S. Mail <input type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service <input type="checkbox"/> Facsimile fax number: _____ <input checked="" type="checkbox"/> Electronic Service

25 DATED this 4th day of February, 2022.

26
27
28
State of Nevada Employee

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Respondent
Division of Industrial Relations' Answering Brief filed in or submitted for
Supreme Court Case number **83262**.

✓ Does not contain the social security number of any person

or

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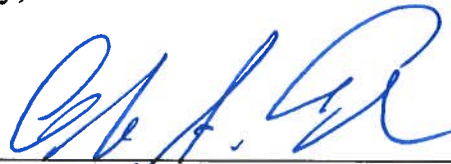
A. A specific state or federal law, to wit:

N/A

or

B. For the Administration of a public program or for an application
for a federal or state grant.

Dated this 4th day of February, 2022.



Christopher A. Eccles, Esq.
Division of Industrial Relations