

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

2 LAS VEGAS METROPOLITAN  
3 POLICE DEPARTMENT; AND  
4 CANNON COCHRAN MANAGEMENT  
5 SERVICES, INC.,

6                   Appellants,

7                   v.

8 STATE OF NEVADA DEPARTMENT  
9 OF BUSINESS AND INDUSTRY,  
10 DIVISION OF INDUSTRIAL  
11 RELATIONS; AND STATE OF  
12 NEVADA BOARD FOR THE  
13 ADMINISTRATION OF THE  
14 SUBSEQUENT INJURY ACCOUNT  
15 FOR SELF-INSURED EMPLOYERS,

16                   Respondents.

Supreme Court Case No. 83262  
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Clerk of Supreme Court  
District Court Case No. 120821920

17                   **APPELLANTS' REPLY BRIEF**

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**Statutes**

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NRS 233B.131 ..... 1, 2, 3

1 I.

2 REPLY

3  
4 Appellants believe the district court's dismissal of its petition was an abuse  
5 of discretion based on erroneous interpretation of NRS 233B.131(1). Specifically,  
6 there is no basis in the Nevada Administrative Procedure Act to dismiss a petition  
7 for judicial review for failure to comply with NRS 233B.131(1). The requirements  
8 under that statute are not mandatory such that failure to comply would result in  
9 such a severe sanction as denying the appealing party its due process. This  
10 punishment is made even more egregious because the facts show that Appellants  
11 detrimentally relied upon the statements and actions of the AG and DIR, the very  
12 parties now advocating dismissal, based upon that reliance.  
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16 NRS 233B.131(1) requires two things, yet the legislature references twice  
17 the permissive nature of the requirements (twice in a section consisting of a mere  
18 142 words), beginning by noting transmittal of the record of proceedings may be  
19 made within 45 days or "such time as allowed by the court" and concluding that  
20 the court "may require or permit subsequent corrections or additions to the record."  
21 This is not mandatory language, certainly not definitive enough to lead to the  
22 harshest sanction of having an appeal dismissed outright.  
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1 Appellants believe that the phrase “shall” as used in NRS 233B.131(1) is  
2 only presumptively mandatory in this situation. DIR and AG counter by stating  
3 that because no record had been submitted, there was no basis for the District  
4 Court to permit corrections or additions to the record as allowed by statute. In point  
5 of fact, there was a record submitted—the one submitted by the DIR and AG on  
6 November 9, 2020. The AG stated the “entire record of the proceedings under  
7 review by this Court” were filed “[p]ursuant to NRS 233B.131” and the DIR  
8 certified that the “documents submitted herewith comprise the record of the  
9 administrative proceeding.” (APP at 157.) There is absolutely a record that could  
10 have been corrected or added to if the court found it necessary.  
11

12 DIR and AG also apparently take issue with the fact that Appellants’  
13 Opening Brief “lacked citations to the transcript of the underlying administrative  
14 proceeding.” Respondent Brief at 4:13-14. There is no requirement that a party cite  
15 to the transcript of the underlying proceedings. The record submitted by the DIR  
16 and AG provided ample documentary evidence to support Appellants’ legal  
17 position in the underlying matter.  
18

19 The punishment in this situation is made even more harsh by the fact that the  
20 two administrative agencies operating under the NIIA do not apply NRS 233B.131  
21 the same way in practice. Despite DIR’s contention that the language of NRS  
22 233B.131 is plain and unambiguous, the DIR does not transmit the transcript of the  
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1 proceedings in a judicial review proceeding, yet the Hearings Division does. We  
2 have two administrative agencies under the penumbra of the State of Nevada's  
3 executive branch who apparently approach the requirements of NRS 233B.131(1)  
4 differently. Appellants' reliance upon those governing administrative agencies to  
5 its detriment substantially prejudices its rights, especially considering the grave  
6 consequence of an outright dismissal of the appeal.  
7

## 8 II.

### 9 CONCLUSION

10 Appellants do not dispute that they did not file the transcript within 45 days  
11 of service of their petition per NRS 233B.131(1). However, Appellants argue that  
12 this omission is not jurisdictional and does not mandate dismissal, nor was good  
13 cause the proper standard of review. In support of this position, Appellants posit  
14 they relied upon certifications and representations made by Respondents that the  
15 entire record had been transmitted to the district court; that equitable remedies  
16 forestall dismissal; and that public policy supports hearing this case on the merits.  
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1 Based upon the foregoing, Appellants respectfully request this court to  
2 reverse the district court's order dismissing their petition and remand for the  
3 petition to continue on its merits.  
4

5 Dated this 2 day of March, 2022.

6 Respectfully submitted,  
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1 CERTIFICATE OF COMPLIANCE

2 1. I hereby certify that this brief complies with the formatting  
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and  
4 the type style requirements of NRAP 32(a)(6) because this brief has been prepared  
5 in a proportionally spaced typeface using Microsoft Word in Times New Roman  
6 font size 14.  
7

8  
9 2. I further certify that this brief complies with the type-volume  
10 limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief  
11 exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14  
12 points or more, and contains 637 words and 52 lines of text.  
13

14 3. Finally, I hereby certify that I have read this appellate brief, and to the  
15 best of my knowledge, information, and belief, it is not frivolous or interposed for  
16 any improper purpose. I further certify that this brief complies with all applicable  
17 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires  
18 every assertion in the brief regarding matters in the record to be supported by a  
19 reference to the page and volume number, if any, of the transcript or Appendix  
20 where the matter relied on is to be found.  
21  
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27



1 4. I understand that I may be subject to sanctions in the event that the  
2 accompanying brief is not in conformity with the requirements of the Nevada  
3 Rules of Appellate Procedure.  
4

5 Respectfully submitted,  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on  
3 the 3 day of March, 2022, service of the attached **APPELLANTS' REPLY**  
4 **BRIEF** was made this date by depositing a true copy of the same for mailing, first  
5 class mail, and/or electronic service as follows:

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