IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Electronically Filed
Nov 08 2018 04:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THOMAS ENGEL,
Appellant,
vs.
BOULDER CITY; PUBLIC AGENCY COMPENSATION TRUST; AND ALTERNATIVE SERVICE CONCEPTS, LLC,
Respondents.

No. 77212

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Docket 77212 Document 2018-903550

1. Judicial District Eighth Department XXXI

County Clark Judge Hon. Joanna S. Kishner

District Ct. Case No. A-16-730103-J

2. Attorney filing this docketing statement:

Attorney Evan Beavers, Esq. Telephone (775) 684-7555

Firm NEVADA ATTORNEY FOR INJURED WORKERS

Address 1000 East William Street
Suite 208
Carson City, Nevada 89701

Client(s) Thomas Engel

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Robert F. Balkenbush, Esq. Telephone (775) 786 2882

Firm Thorndal, Armstrong, Delk, Balkenbush & Eisinger

Address 6590 S. McCarran Blvd.
Suite B
Reno, Nevada 89509

Client(s) Boulder City, Employer; Public Agency Compensation Trust, Insurer; and Alternative Service Concepts, LLC, Third Party Administrator

Attorney _____ Telephone _____

Firm _____

Address

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☒ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

*In the Matter of the Contested Industrial Insurance Claim of Thomas Engel; Appeal Nos. 1406317-GK/1406547-GK; Dept. of Administration, Appeals Office; December 10, 2015.

*Boulder City, Public Agency Compensation Trust, Alternative Service Concepts, LLC, Petitioners, vs. Thomas Engel, and the Nevada Department of Administration Appeals Officer Gregory A. Krohn, Respondents; Case No. A-16-730103-J; Eighth Judicial District.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Litigation of a workers' compensation claim arising under Industrial Insurance Act (NRS Chapters 616A, B, C and D). Department of Administration Appeals Officer ruled injured worker/claimant was entitled to hip replacement surgery. Employer petitioned district court for judicial review under Administrative Procedure Act (NRS Chapter 233B). Claimant/Respondent moved district court to dismiss petition for failure to properly serve pursuant to NRS 233B.130(2)(c) thereby denying the district court jurisdiction under the Administrative Procedure Act. District court denied motion to dismiss. Claimant now appeals the order denying the motion to dismiss to the Nevada Supreme Court.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1) Whether NRS 233B.130(2)(c) requires serving a petition for judicial review of a decision by an appeals officer within the Department of Administration upon the Director of the Department of Administration.

2) If the petitioner seeking the jurisdiction of the district court under Chapter 233B fails to serve the Director of the Departmen of Administration within 45 days after filing the petition as required by NRS 233B.130(5), can good cause exist for the district court to extend the time for service to 16 months.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is presumptively assigned to the Court of Appeals under NRAP 17 (9) as an appeal of an administrative agency case not involving tax, water or public utilities commission determinations.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? Neither a bench trial nor a jury trial.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No motion for recusal or disqualification anticipated.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from September 20, 2018.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served See below

Was service by:

☐ Delivery

☐ Mail/electronic/fax

Order was signed September 13, 2018, by the Honorable Joanna S. Kishner and electronically filed September 20, 2018, but no notice of entry of the order was served or filed.

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed October 16, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
N/A.

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☒ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The original action was heard by an administrative appeals officer with the Department of Administration. Review of the resulting decision was sought in district court pursuant to NRS 233B.130. Appellant here sought dismissal for lack of jurisdiction. The district court issued a minute order June 22, 2018, remanding the matter to the appeals officer to allow the deposition of a particular witness. The district court entered its written order September 20, 2018, denying the respondent's motion to dismiss the petition for judicial review for lack of jurisdiction. NRS 233B.150 allows an aggrieved party to obtain review of a final judgment of the district court by appeal to the appellate court of competent jurisdiction. The respondent below, the appellant here, is aggrieved in that the district court lacks jurisdiction to review the appeals officer's decision and the district court's denial of the motion to dismiss based upon that lack of jurisdiction is a final judgment on jurisdiction.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Thomas Engel
Boulder City
Public Agency Compensation Trust
Alternative Service Concepts

(b) 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, *e.g.*, formally dismissed, not served, or other:

NRS 233B.130(2) mandates the petition for judicial review of the administrative decision name the agency as a respondent. The Department of Administration was named and served in the district court proceedings but did not enter an appearance in district court.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant Thomas Engel challenged the district court's jurisdiction to review the administrative appeals officer's decision, which motion was denied by order entered September 20, 2018.

Respondent Boulder City and Public Agency Compensation Trust sought review of the administrative appeals officer's decision in district court, which review resulted in a minute order on June 22, 2018, remanding back for further action by the appeals officer.

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 or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

No claims remain in district court but no written order has been entered memorializing the minute order remanding the matter to the appeals officer for further handling.

(b) Specify the parties remaining below:

The parties remaining in district court, until such time as an order for remand is entered, remain the same as the parties in this appeal.

(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 (*e.g.*, order is independently appealable under NRAP 3A(b)):

The order denying the motion to dismiss for lack of jurisdiction placed the respondent in district court in the position of defending the petitioners' attacks on the appeals officer's decision. The respondent in district court was aggrieved because the district court is without jurisdiction. NRS 233B150 allows appeal as in other cases. If the district court lacks jurisdiction, the order denying the dismissal is void and the Supreme Court has authority for review. Landreth v. Malik, 127 Nev. 175, 179-180, 251 P.3d 163 (2011).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

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.

Thomas Engel
Name of appellant

11/08/2018
Date

Evan Beavers, Esq.
Name of counsel of record

Signature of counsel of record

Nevada, Carson City
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of November , 2018 , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Robert F. Balkenbush, Esq.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509

Dated this _____ day of November , 2018

Signature

Electronically Filed
9/20/2018 3:05 PM
Steven D. Grierson
CLERK OF THE COURT

ORDR
Robert F. Balkenbush, Esq.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
Tel.: (775) 786-2882
Fax.: (775) 786-8004
Attorneys for: Boulder City, Employer, Alternative Service Concepts, LLC, Third Party Administrator, and Public Agency Compensation Trust, Insurer

DISTRICT COURT

COUNTY OF CLARK, NEVADA

BOULDER CITY, PUBLIC AGENCY COMPENSATION TRUST, ALTERNATIVE SERVICE CONCEPTS, LLC

Petitioners,

vs.

THOMAS ENGEL, and the NEVADA DEPARTMENT OF ADMINISTRATION APPEALS OFFICER GREGORY A. KROHN,

Respondents.

_____/

Case No. A-16-730103-J

Dept. No. XXXI

ORDER DENYING RESPONDENT ENGEL'S MOTION FOR RECONSIDERATION AND AMENDED ORDER DENYING RESPONDENT ENGEL'S AMENDED MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

I. Introduction

The instant matter comes before the Court pursuant to a January 12, 2016, Petition for Judicial Review, filed in respect of a December 10, 2015, Decision and Order issued by Appeals Officer Gregory Krohn in Appeal Nos. 1406317-GK and 1406547-GK. In short, the underlying matter involves a contested workers' compensation claim. In the underlying contested workers' compensation claim, the claimant or injured employee is Respondent Thomas Engel (hereinafter "Engel"), the employer is Boulder City, the insurer is the Public Agency Compensation Trust

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(hereinafter, "PACT"), and the insurer's third party claim administrator is Alternative Service Concepts, LLC. (hereinafter, "ASC").

By amended motion to dismiss, Engel has moved the Court to dismiss the Petition, based on an assertion of improper service of the Petition and the resultant absence of subject matter jurisdiction. Specifically, Engel argues that Petitioners failed to strictly comply with the year 2015 service requirement set forth in NRS 233B.130(2)(c)(2), when they served the Petition on, *inter alia*, Bryan Nix, as opposed to Patrick Cates. Mr. Nix is the Senior Appeals Officer of the Hearings Division of the Nevada Department of Administration (hereinafter "NDA"), and is tasked with overseeing petitions for judicial review of decisions made by Appeals Officers in contested workers' compensation cases. Mr. Cates is the Director of the NDA, which is comprised of ten (10) divisions (one of which is the Hearings Division) and each division is overseen by an administrator appointed by the Director (Senior Appeals Officer Nix is the supervising administrator of the Hearings Division).

After initial argument on Engel's amended motion to dismiss, the parties agreed that an evidentiary hearing would assist the Court in deciding the motion. Accordingly, on May 25, 2017, a date mutually agreed upon by the parties, the Court held an evidentiary hearing on the motion to dismiss. The only witness called to testify was Bryan Nix, and his testimony was taken by telephone. Mr. Nix was called to testify as to how petitions for judicial review, of decisions made by Appeals Officers in contested workers' compensation claims, are processed by the NDA.

Mr. Nix's testified that he is the Senior Appeals Officer of the Hearings Division of the Nevada Department of Administration (hereinafter "NDA"), and has been in this position for over 25 years and is tasked with overseeing petitions for judicial review of decisions made by Appeals Officers in contested workers' compensation cases. Concerning the year 2015 agency service requirement set forth in NRS 233B.130(2)(c)(2), Mr. Nix testified that many petitioners are currently confused as to whom at the NDA is the intended person to be served with the petition. Mr. Nix testified that some petitions are being served twice, both on his office in southern Nevada and Mr. Cates' office in Carson City, because it is unclear in the statute as to

whom at the NDA is to be served with the petitions. According to Mr. Nix, any petitions served on Director Cates at the NDA in Carson City are just forwarded to Mr. Nix, and nothing is substantively done on the petitions at Director Cates' office. In brief, Mr. Nix testified that regardless of where and upon whom the petitions are served at the NDA, the petitions all eventually end up in the hands of Mr. Nix, who is the official at the NDA who directly supervises the appeals process in southern Nevada (Clark County) and northern Nevada. Mr. Nix also testified that he needs to receive service of a petitions for judicial review, because as the supervisor of the Hearings Division, he is responsible for creating and implementing the time-limited process for preparation of the record on appeal and the filing of this record with the District Court. *See*, NRS 233B.131. Lastly, Mr. Nix testified that neither the NDA nor the actual Appeals Officer in the Hearings Division that decides the underlying contested workers' compensation case ever appears as a party before the District Court for the briefing and argument of a filed petition for judicial review.

Before the evidentiary hearing on the motion to dismiss was conducted, Petitioners served the Petition upon Mr. Cates. At the evidentiary hearing conducted on May 25, 2017, citing NRS 233B.130(5), Petitioners asked this Court to find the existence of good cause for extension of the time for service of the Petition, namely ambiguity in the statutory subsection (NRS 233B.130(2)(c)(2)); and specifically ambiguity as to whom at the NDA is the intended person to be served with the petition.

Based upon the applicable record before the Court, including the testimony of Mr. Nix, and evidence presented at the evidentiary hearings, as well as briefing of the motion, by minute order entered on June 2, 2017, the Court denied Engel's amended motion to dismiss. Thereafter, by written order filed March 28, 2018, this Court formally denied Engel's amended motion to dismiss.

On April 16, 2018, Engel filed a motion for reconsideration of this Court's March 28, 2018, order denying Engel's amended motion to dismiss the petition for judicial review. In connection with this motion, Engel requested that the motion be heard on an order shortening time. On April 20, 2018, Boulder City, PACT and ASC filed their brief in opposition to the

motion for reconsideration. On April 26, 2018, the Court conducted a hearing on the motion for reconsideration, and now the Court finds and concludes as follows.

II. Decision

In *Washoe County. v. Otto*, the Nevada Supreme Court held that in order to invoke a district court's jurisdiction to consider a petition for judicial review, a petitioner must strictly comply with the procedural requirements of the Nevada Administrative Procedure Act (hereinafter "NAPA"). *Washoe County v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012). The Court further held that non-compliance with the NAPA's procedural requirements is grounds for dismissal, because a court exercises "special statutory jurisdiction" when reviewing an administrative determination. *Otto*, 128 Nev. at 432, 282 P.3d at 725 (citing *Ultsch v. Ill. Mun. Retirement Fund*, 226 Ill. 2d 169, 874 N.E.2d 1, 7 (2007) .

The jurisdictional procedural requirements of the NAPA are located within NRS 233B.130(2), which provides as follows:

> Petitions for judicial review must:
>
> (a) Name as respondents the agency and all parties of record to the administrative proceeding;
>
> (b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred;
>
> (c) Be served upon:
>
> (1) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and
>
> (2) The person serving in the office of administrative head of the named agency; and
>
> (d) Be filed within 30 days after service of the final decision of the agency. Cross-petitions for judicial review must be filed within 10 days after service of a petition for judicial review.

Subparagraphs (1) and (2) of paragraph (c) of subsection 2 of NRS 233B.130 were enacted in year 2015 after the Nevada Supreme Court's decision in *Otto*. On June 2, 2017, when this Court entered its minute order denying Engel's amended motion to dismiss, neither the Nevada Supreme Court nor the Nevada Court of Appeals had expressly interpreted these newly enacted

subparagraphs. By March 28, 2018, however, when the written order formerly denying Engel's amended motion to dismiss was filed, and as a matter of first impression, the Nevada Supreme Court had expressly interpreted subparagraph (1), not subparagraph (2), of paragraph (c) of subsection 2 of NRS 233B.130. See, *Heat & Frost Insulators & Allied Workers Local 16 v. Labor Comm'r*, 134 Nev. Adv. Rep. 1, 408 P.3d 156 (January 4, 2018)[1]. In the case, however, subparagraph (2), not subparagraph (1), of paragraph © of subsection 2 of NRS 233B.130 is at issue. In this regard, as previously noted, in *Heat & Frost Insulators*, the Supreme Court did not expressly interpret subparagraph (2), much less hold that there was no ambiguity in subparagraph (2) of paragraph © of subsection 2 NRS 233B.130.[2] Moreover, and consistent with this Court's March 28, 2018 order, the Supreme Court specifically held in *Heat & Frost Insulators* that subsection 5 of NRS 233B.130 permits a District Court, upon a showing of good cause, to extend the time for service of a petition for judicial review beyond the 45-day period after the

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[1] While it was an error for this Court to conclude in its formal March 28, 2018, order denying Engel's amended motion to dismiss the petition for judicial review that neither the Supreme Court nor the Court of Appeals had expressly interpreted subparagraph (1) of paragraph (c) of subsection 2 of NRS 233B.130, ultimately, the holding in the *Heat & Frost Insulators* decision has no effect on the ruling made by this Court in it March 28, 2018 order. Indeed, in the *Heat & Frost Insulators* decision, the Supreme Court interpreted subparagraph 1 of paragraph (c) of subsection 2 of NRS 233B.130 consistent with this Court's interpretation of subparagraph 1 in its March 28, 2018 order, namely that service of a petition for judicial review upon the Attorney General is mandatory and jurisdictional. In this regard, however, it is un-controverted that Petitioners timely served the Attorney General with the petition.

[2] Hence, the holding in the *Heat & Frost Insulators'* decision does not conflict at all with this Court's March 28, 2018 order, which concluded, *inter alia*, that subparagraph (2) of paragraph (c) of subsection 2 of NRS 233B.130 was ambiguous, and permitted or allowed the petition for judicial review to be served upon the Senior Appeals Officer Bryan Nix, who was the administrative head of the Hearings Division of the Nevada Department of Administration and the official tasked with supervision of petitions for judicial review of decisions made by Appeals Officers in contested workers' compensation cases. *See, March 28, 2018 Order Denying Engel's Amended Motion to Dismiss at pp. 2-3, 4-7.* Concerning such petitions, as noted in this Court's March 28, 2018 order, the duties of Mr. Nix included, but were not limited to the duty of timely preparation and filing the record on appeal with the district court. *Id.*

filing of the petition.[3]

Turning now to the matter of the interpretation of subparagraph (2) of paragraph © of subsection 2 of NRS 233B.130, when the language of a statute is plain and unambiguous, a court should give the language its ordinary meaning and not go beyond it. *Nev. Dept. of Corrections v. York Claims Services*, 131 Nev. Adv. Op. 25, 348 P.3d 1010, 1013 (Nev. 2015). Here, however, upon reviewing subparagraph (2) of paragraph © of subsection 2 of NRS 233B.130, the Court finds the provision to be ambiguous on its face. The statute is also ambiguous in that it is unclear whether the phrase "person serving in the office of administrative head of the named agency" means any official who supervises the administrative activities at issue, or just the Director of the entire agency himself. Engel argues that the phrase must be strictly construed to mean that only the Director of the agency is to be served.[4] Petitioners argue that the phrase means has a broader

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[3] Indeed, in *Heat & Frost Insulators*, the Nevada Supreme Court stated that a motion to extend the time for service may be filed by a party with the District Court either before or after the 45-day period has expired. On this point, and following the evidentiary hearing conducted in this case on May 28, 2017, this Court concluded in its minute order of June 2, 2017, and in its formal written order filed March 28, 2018, that even if Patrick Cates, not Bryan Nix, was the proper recipient of service of the petition, good cause existed to extend the time to serve the petition upon Mr. Cates. Mr. Cates is Director of the Nevada Department of Administration (NDA), and the NDA consists of 10 divisions, and each division has an administrator appointed by Mr. Cates. *See, March 28, 2018 Order Denying Engel's Amended Motion to Dismiss at pp. 4-5 & note 1.* While his title is Senior Appeals Officer, Mr. Nix is the appointed administrator of the Hearings Division of the NDA. *See, March 28, 2018 Order Denying Engel's Amended Motion to Dismiss at pp. 2-3, 4-7.* Lastly, in its March 28, 2018 order, this Court noted that Mr. Cates had been served with the petition before it ruled on Engel's amended motion to dismiss. *Id.; see also June 2, 2017 Minute Order.*

[4] Patrick Cates is the Director Cates of the NDA, which is comprised of ten (10) divisions. *See, Exhibit 3 to Engel's Amended Motion to Dismiss.* Mr. Cates, however, has appointed administrators over each of the 10 divisions within the NDA. *See generally, Id.* These administrators include: (1) Evan Dale, Administrative Services; (2) Shanna Rahming, Enterprise IT Services; (3) Keith Wells, Fleet Services; (4) Bryan Nix, Hearings and Appeals; (5) Peter Long, Human Resource Management; (6) Jeff Haag, Public Works, (7) Gus Nunez, Purchasing; (8) Ana Andrews, Risk Management; (9) Jeff Kintop, State Library, Archives and Public Records; (10) and Connie Lucido, Office of Grant Procurement. It is thus clear that Senior Appeals Officer Nix is the appointed "administrator" of workers' compensation hearings and appeals.

interpretation and means the official who supervises the administrative activities at issue and which meets the practical needs of the parties.[5] *See generally*, NRS 233B.131.The Court finds that both of the parties' viewpoints are reasonable interpretations of the statute and, therefore, the statute is ambiguous.

Nevada precedent provides that if a statute is open to more than one reasonable interpretation, it is ambiguous, and a court may look to its legislative history to ascertain the legislature's intent. *York Claims Services*, 131 Nev. Adv. Op. 25, 348 P.3d at 1013. The legislative history of NRS 233B.130(c)(2) shows that the intent of adding NRS 233B.130(c)(2) was partially to ensure that petitions for judicial review were being properly served upon the State to ensure due process rights of litigants (which would include pro se litigants).[6] In light of this goal, the Court finds that the legislative intent behind NRS 233B.130(2)(c)(2) is better served by interpreting the phrase "person serving in the office of administrative head of the named agency" to mean an official who supervises the actual administrative activities in the

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[5] In accordance with NRS 232.215 and NAC 616C.260(3), the Senior Appeals Officer has been officially designated to "supervise the administrative, technical and procedural activities of the [Hearings] Division." Logically, as the supervisor of all "administrative, technical and procedural activities" of the Division, it is reasonable to view Senior Appeals Officer Nix as the person serving in the "office of administrative head" of the Hearings Division for purposes of NRS 233B.130(2)(c)(2). Furthermore, it is reasonable to conclude that accepting service of process is an activity that clearly falls within the "administrative, technical and procedural activities"of the Hearings Division. Moreover, and arguably, in the case at bar "office of administrative head" means the official charged with directly supervising the administrative activities of the Hearings Division of the NDA. *See generally*, Black's Law Dictionary 1438 (6th Ed.1990) (defining "supervisor" as "one having authority over others, to superintend and direct").

[6] As herein previously noted, however, Mr. Nix testified that neither the NDA nor the actual Appeals Officer in the Hearings Division that decides the underlying contested workers' compensation case ever appear as a party before the District Court and participate in the briefing and argument of the filed petition for judicial review. Mr. Nix also testified that he needs to receive service of a petition for judicial review, because as the supervisor of the Hearings Division, he is responsible for creating and implementing the time-limited process for preparation of the record on appeal and the filing of this record with the District Court. *See*, NRS 233B.131.

locale where the matter is pending, such as Mr. Nix; rather than this phrase being interpreted to solely mean the appointed Director of the NDA who oversees many different areas of operation through individuals such as Mr. Nix.

Further, it is apparent from Mr. Nix's testimony at the May 25, 2017, hearing that many petitioners are confused as to who is the intended person at the NDA to be served with the petition. Mr. Nix testified that some petitions are being served twice, both on his office and Mr. Cates' office, because the statute is unclear as to whom at the NDA is to be served with the petitions. Mr. Nix's testimony also shows that it is more reasonable to allow petitions for judicial review to be served upon Mr. Nix, as the official at the NDA who supervises the handling of the administrative activities associated with the petition. In this regard, requiring petitions for judicial review to be solely served upon the Director of NDA is impractical, because according to Mr. Nix any petitions that are served on Mr. Cates are just forwarded to Mr. Nix, and nothing substantively is done on the petitions at the Director's office level. In short, regardless of where and upon whom the petitions are served at the NDA, the petitions eventually end up in the hands of the official who directly supervises the appeals process both in southern Nevada (Clark County) and northern Nevada, namely Mr. Nix. If the Court were to interpret the phrase "person serving in the office of administrative head of the named agency" to mean only Mr. Cates as the Director of the NDA, this would mean that petitions for judicial review relating to Clark County matters (which are oftentimes filed by pro se litigants) would need to be served in Carson City upon the office of Mr. Cates (or whomever is the appointed Director of the NDA) and then these same petitions would just be sent right back to Clark County to be reviewed and handled by Mr. Nix, as the supervising official of such appeals. This Court believes that the Nevada Legislature did not intend such an absurd result which could cause pro se litigants unnecessary time and expense. An interpretation of NRS 233B.130(2)(c)(2) that allows petitions for judicial review to be served upon an official who actually supervises this administrative activity, such as Mr. Nix, is consistent with the language of this statute, promotes efficiency, appears to best achieve the legislature's intent, and facilitates timely preparation and filing of the record on appeal.

The foregoing reading or interpretation of NRS 233B.130(2)(c)(2) is also consistent with

a reading of subparagraph one of this cited provision. Specifically, NRS 233B.130(2)(c)(1) designates a specific person, the Attorney General, and thereafter lists other alternative specific individuals upon whom service of the petition is to be made. If the Legislature intended subsection 2 to have that same specificity, the legislature could easily have set forth similar language in that subsection. Instead subsection 2 merely states a "person serving in the office of administrative head" of the named agency.

Lastly, even if Mr. Nix was not the proper recipient of service of the Petition, Mr. Cates was served with the Petition in this case. NRS 233B.130(5) requires a petition for judicial review to be served upon the agency and every party within 45 days of the filing of the petition. However, subsection 5 also gives the district court discretion to extend the time for service upon a showing of good cause. In this case, the Court finds good cause exists to grant an extension of time for service of the Petition, due to the ambiguity in the statute and the procedural issues that exist in the present case, as well as to allow the case to be heard on the merits consistent with case law.

III. Order

Concerning Engel's motion for reconsideration, it was an error for this Court to conclude in its formal March 28, 2018, order denying Engel's amended motion to dismiss the petition for judicial review that neither the Supreme Court nor the Court of Appeals had expressly interpreted subparagraph (1) of paragraph (c) of subsection 2 of NRS 233B.130. Ultimately, however, the holding in the *Heat & Frost Insulators* decision has no adverse effect on the ruling made by this Court in it March 28, 2018 order. Indeed, Engels' motion for reconsideration truly raised no new issues of fact or law to support a ruling contrary to the March 28, 2018 order already filed denying Engel's amended motion to dismiss. *See, Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for re-hearing be granted"). Moreover, Engel's motion for reconsideration did not demonstrate that this Court's March 28, 2018 order denying his amended motion to dismiss was clearly erroneous. *See, generally, Masonry & Tile Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev.737, 941 P.2d

486 (1987). Hence, apart from the error herein previously noted, Engel's motion for reconsideration is hereby denied.

Furthermore, and for all of the foregoing reasons, the Court hereby again affirms its March 28, 2018 order which GRANTED Petitioners' request pursuant to NRS 233B.130(5) for an extension of time for service of the petition. Further, because Petitioners had already served Mr. Cates with the Petition before the evidentiary hearing on Engel's amended motion to dismiss, the Court hereby again affirms the finding and conclusion in its March 28, 2018 order that compliance with NRS 233B.130(5) has occurred.

This Court also again affirms its March 28, 2018 order that Engel's amended motion to dismiss the petition for judicial review is DENIED without prejudice.

Dated this 13 day of September, 2018

JOANNA S. KISHNER

DISTRICT COURT JUDGE
JOANNA S. KISHNER

Submitted by:
THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

By: _____
ROBERT F. BALKENBUSH, ESQ.
State Bar No. 1246
6590 South McCarran Blvd., Suite B
Reno, NV 89509
(775) 786-2882
Attorneys for Petitioners *City of Boulder City; Alternative Service Concepts; and Public Agency Compensation Trust*

Approved as to form:

NEVADA ATTORNEY FOR INJURED WORKERS

By: _____
EVAN BEAVERS, ESQ.
State Bar No. 3399
Evan Beavers, Esq.
Nevada Attorney for Injured Workers
1000 E. William Street, Suite 208
Carson City, NV 89701
Attorneys for Respondent *Thomas Engel*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk Balkenbush & Eisinger, and that on this date I caused the foregoing ORDER DENYING RESPONDENT THOMAS ENGEL'S AMENDED MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW to be served on all parties to this action by:

__xx__ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

__xx__ Eighth Judicial District Court Eflex ECF (Electronic Case Filing)

Fully addressed as follows:

Evan Beavers, Esq.
Robin Chase, Esq.
Nevada Attorney for Injured Workers
2200 South Rancho Drive, Suite 230
Las Vegas, Nevada 89102

Senior Appeals Officer Michelle Morgando
Nevada Department of Administration, Hearings Division
2200 S. Rancho Drive, Suite 220
Las Vegas, NV 89102

Patrick Cates
Director, Nevada Department of Administration
515 E. Musser Street, Third, Floor
Carson City, Nevada 89701-4298

Carson City Office
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

DATED this 20th day of September, 2018.

/s/ Natalie Steinhardt
An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger