

**STATE OF NEVADA
PERSONNEL COMMISSION**

Carson City at the Legislative Building, Room 4100, 401 South Carson Street, and in Las Vegas at
the Grant Sawyer Building, Room 4412, 555 East Washington Avenue via videoconferencing

**MEETING MINUTES (Subject to Commission Approval)
Friday, March 16, 2012**

**COMMISSIONERS PRESENT
IN CARSON CITY:**

Ms. Katherine Fox, Chairperson
Mr. David Read, Commissioner
Mr. Mitch Brust, Commissioner (via telephone)

**STAFF PRESENT IN
CARSON CITY:**

Ms. Lee-Ann Easton, Division Administrator, DHRM
Ms. Carrie Parker, Deputy Attorney General
Mr. Peter Long, Deputy Administrator, DHRM
Ms. Shelley Blotter, Deputy Administrator, DHRM

**COMMISSIONERS PRESENT
IN LAS VEGAS:**

Mr. David Sanchez, Commissioner
Mr. Gary Mauger, Commissioner

**STAFF PRESENT
IN LAS VEGAS:**

None

I. OPEN MEETING

Chairperson Katherine Fox opened the meeting at 9:03 A.M.

II. ADOPTION OF AGENDA Action Item

MOTION: Move to approve the adoption of the agenda
BY: Commissioner Read
SECOND: Commissioner Sanchez
VOTE: The vote was unanimous in favor of the motion

III. ADOPTION OF THE MINUTES OF PREVIOUS MEETING Action Item

MOTION: Move to approve the minutes of the 12/09/11 meeting
BY: Commissioner Read
SECOND: Commissioner Sanchez
VOTE: The vote was unanimous in favor of the motion

IV. PUBLIC COMMENT NOTICE: Read into record by Chairperson Katherine Fox:

Note: No vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020) Comments will be limited to three minutes per person and persons making comment will be asked to begin by stating their name for the record and to spell their last name. The Committee Chair may elect to allow additional public comment on a specific agenda item when the item is being considered.

Chairperson Fox: Clarified that they would hear public comments before the Commission would make a decision or vote on the Hearing Officer candidates in response to a question from Ty Robben from the North. There were no further comments.

V. APPROVAL OF PROHIBITIONS AND PENALTIES - Action Item

A. Department of Employment, Training & Rehabilitation

Denise Woo-Seymour, Personnel Analyst, Division of Human Resource Management: Noted that in accordance with NAC284.742 an agency shall develop policies that describe activities considered inconsistent, incompatible or in conflict with employees' duties and penalties and stated that the policies were subject to the approval of the Personnel Commission. Advised that under Item A, the Division of Human Resource Management was recommending approval of the revised prohibitions and penalties submitted by the Department of Employment, Training and Rehabilitation (DETR). She stated that these items submitted for approval had been reviewed by the division and were consistent with those previously approved by the Commission including those approved at the meeting on December 9, 2011.

Karen Balleni, Personnel Officer, asked the Commissioners if there were any questions regarding prohibitions and penalties for the DETR.

Commissioner Mauger: Asked about the items submitted for approval and the implication that they were generally consistent with those previously approved. He asked how they were inconsistent.

Denise Woo-Seymour, Personnel Analyst, Division of Human Resource Management: Asked for clarification and said was he asking for a definition of 'generally consistent' or what specifically had occurred in the revision.

Commissioner Mauger: Responded that he wanted to know what was not consistent with what had already been approved.

Denise Woo-Seymour, Personnel Analyst, Division of Human Resource Management: Responded that the revisions were consistent and that their use of the term "generally consistent" indicated that given the range of discipline issues for the violation, that they would not be out of line with other agencies.

Chairperson Fox: Noted that in the meeting in December the revisions concerned the use of alcoholic beverages and under the misconduct for incompatibility. She thought that

Commissioner Mauger was trying to establish that issues discussed in the December meeting were the issues coming up for revision.

PUBLIC COMMENT:

Priscilla Maloney, AFSCME Local 4041: Noted that some of the DETR employees had expressed concerns about Subsection I.13 and those concerns were addressed. She advised that the concerns centered on the wording used and by the nature of outside activities prohibition by DETR. These activities were income-generating. The language had been adjusted to satisfy everyone. She noted there were some comments about the meanings of terms used in C-3 such as indifference or laziness. Employees had said that that area seemed to be covered in Subsection 2. She said that if there was a disciplinary action and that was challenged that might be an issue and she wanted to draw this to the attention of the committee as those two terms could be considered subjective.

MOTION: Move to approve Item 5A.
BY: Commissioner David Read
SECOND: Commissioner David Sanchez
VOTE: The vote was unanimous in favor of the motion.

B. Public Employees Benefits Program

Denise Woo-Seymour, Personnel Analyst, Division of Human Resource Management: Advised that Item B, the Division of Human Resource Management recommended approval of new prohibitions and penalties from the Public Employees Benefits Program (PEBP) prepared response to revised NAC 34.742. Noted that PEBP was open to incorporating suggestions and recommendations but was determined to maintain zero tolerance regarding sexual harassment, hostile work environment and discrimination by the issue of a narrower disciplinary range than other agencies. She stated that recommendations from Commission members approved at the previous Personnel Commission meeting were incorporated into the prohibitions and penalties. She added that Executive Officer Jim Wells and Operations Officer, Kateri Cavin would respond to questions.

Chairperson Fox: Noted there were no questions.

MOTION: Move to approve Item 5B Prohibitions and Penalties for PEBP.
BY: Commissioner David Read
SECOND: Commissioner David Sanchez
VOTE: The vote was unanimous in favor of the motion.

VI. CLASSES REQUESTED FOR PRE-EMPLOYMENT DRUG TESTING:

Carrie Hughes, Personnel Analyst, Department of Administration, Division of Human Resource Management: NRS 284.4066 revised for the pre-employment testing for controlled substances in applications for positions affecting public safety. The law requires the appointment authority to identify the specific positions that affect public safety subject to the approval of the Personnel Commission. She noted that the Department of Public Safety had requested approval on the pre-employment testing for positions listed. The Division of

Human Resource Management recommended that all of the requested positions with the exception of Class Code 7.143 Accountant Technician 1, Position Number 4733-30. She noted that Norma Santoya from Department of Public Safety would respond to questions.

Chairperson Fox: Asked if that position would not be subject to the pre-employment drug testing, position - Accountant Technician 1.

Carrie Hughes, Personnel Analyst, Department of Administration, Division of Human Resource Management: Responded that the Division was not recommending that it be added to the list.

Norma Santoya, Personnel Officer, Department of Public Safety: Noted that they were requesting that position be added to the list of those that we request be approved for pre-employment drug screening. She added that they already had other accounting assistants and accounting technicians already approved within that unit for pre-employment drug screening. She explained that it was important because Records and Technology houses the Nevada Criminal History Repository which holds all the offender information for Nevada. She explained that these employees would have access to secure areas of the facility and they needed to protect the systems for the State of Nevada as well as the federal criminal justice systems. She added that this was why they wanted to add all of their positions in the Records and Technology Unit as well as the Investigation Division to the list of pre-employment drug screening.

Commissioner Sanchez: Asked Chairperson Fox what the status was as there was an asterisk indicating it should be removed but now a recommendation that it should be added. He asked how they would move forward.

Norma Santoya, Personnel Officer, Department of Public Safety: Indicated that the Department of Public Safety (DPS) would like the position to be added to the list. She acknowledged that there was a recommendation from Human Resource Management that it be removed but that they were requesting that it be added back on.

Chairperson Fox: Referred to Commission Sanchez and said that if she understood the position correctly what the DPS was asking for was for it to be included because of the nature of the position with regard to public safety and the access to information. She then added that the recommendation from the Division of Human Resource Management was that it not be included. She stated that the motion should state that the Accountant Technician 1 was or was not for inclusion.

Shelley Blotter: Noted that if it was adopted it would be consistent with other classes that the Commission had adopted in the past. She acknowledged that if they looked at the strict reading of what is considered a position that affects public safety they would be of the opinion that it did not quite fall into that definition but would be consistent with other classes that they had previously approved.

Chairperson Fox: She asked if there were questions and there was no response.

MOTION: Move that the Commission approve the pre-employment testing job classes as identified in Item VI to include the Accountant Technician 1 position for pre-employment drug testing.
BY: Commissioner David Read
SECOND: Commissioner David Sanchez
VOTE: The vote was unanimous in favor of the motion.

VII. HEARING OFFICER INTERVIEWS AND SELECTION (CLOSED SESSION MAY BE HELD TO CONSIDER CHARACTER, ALLEGED MISCONDUCT, OR PROFESSIONAL COMPETENCE OF APPLICANTS IN ACCORDANCE WITH NRS 241.030.) ACTION ITEM:

Chairperson Fox: Indicated that Adrian Foster, the Division of Human Resources Management would introduce the item.

Adrian Foster, Personnel Analyst, Division of Human Resources Management: Indicated that he would be introducing candidates for the Hearing Officer positions. He stated that the recruitment opened November 8, 2011 and closed January 31, 2012 and applicants were instructed to provide a cover letter and resume. The position was advertised on the Division of Human Resources Management website, Washoe County, Clark County and State of Nevada Bar Association newsletters. He advised they received 47 application packets. A screening committee was formed and met February 17th to review the packets. Criteria used to determine recommendations included: experience with administrative law; personnel disciplinary matters; and the Nevada State system. The committee recommended 6 candidates in the South and 11 in the North for interviews. He noted that the Division was requesting that they select 6 Hearing Officers for each geographic region. Candidates with an asterisk beside their name had indicated a willingness to work in either region. He noted that candidates at the meeting had been asked to provide a three to five minute presentation and to respond to questions. He commented that for the meeting 11 candidates would be available for interview in the North and six in the South. Other applicants were invited to provide additional information and two would appear before the Commission and they were: Nathaniel J. Reed and Leonard J. Root. Other applicants had been scheduled at alternate times.

Chairperson Fox: Noted for the Commissioners that they would be selecting six individuals from the North and six from the South. She instructed the candidates from the North to come forward and provide a summary of their qualifications in three to five minutes and answer any questions. She indicated that after they had heard interviews from both North and South followed by public comment she would then entertain a motion.

A. RECOMMENDED TO THE COMMISSION FOR INTERVIEW

Ms. Jill I. Greiner – Provided information on her background. There were no questions.

Ms. Patricia D. Cafferata - Provided information on her background. Commissioner David Read took the opportunity to thank her for her timeliness in the scheduling and hearing of cases. There were no questions.

Mr. Charles Cockerill – Provided information on his background. There were no questions.

Mr. Martin G. Crowley – Provided information on his background. There were no questions.

Mr. Henry Egghart – Provided information on his background.

Chairperson Fox: Noted from Mr. Egghart's resume that he represented clients in employment law. She asked if they were management clients or labor/employee clients. Mr. Egghart responded it was primarily individuals as employers retain the services of large law firms and solo practitioners have individual clients. There were no other questions.

Mr. Bill Kockenmeister – Provided information on his background. There were no questions.

Mr. Paul H. Lamboley – Provided information on his background.

Commissioner Read: Asked the applicant if he would be willing to work in the South considering the fact that there appeared to be fewer attorneys in the southern part of the state. Mr. Lamboley responded that he did want to continue as a Hearing Officer in the South. There were no other questions.

Mr. Lansford W. Levitt – Provided information on his background. There were no questions.

Mr. Louis Ling – Provided information on his background.

Commissioner Read: Thanked Mr. Ling for completing his cases and having the best record of all the Hearing Officers. **Commissioner Gary Mauger:** Noted that the candidate had mentioned the surveys and he asked if Mr. Ling had comments on his own overall rating. Mr. Ling responded that the nature of the work usually meant that either one or both sides had strong feelings and presented strong cases. He added that he provided his opinions by what he felt was careful, considered judgement.

Mr. James C. Van Winkle – Provided information on his background. There were no questions.

Mr. Doug Walther – Provided information on his background.

Commission Sanchez: Commented in relation to the Office of the Deputy Attorney General and that since the Mr. Walther was retired from PERS, he asked if there would be a restriction in terms of the compensation that he would be entitled to as a Hearing Officer under contract. **Chairperson Fox:** Responded that there is a 90-day cooling-off period for someone who retires and who is receiving PERS before they can be employed within the public sector again. She added that if he is selected as a Hearing Officer that he should do his due diligence to ensure there was no PERS violation. **Commissioner Sanchez:** Asked if there was a restriction in terms of compensation. **Chairperson Fox:** Responded it was in the low \$20,000 per year. Mr. Walther added that it was also a contract situation. There were no other questions.

Chairperson Fox: Noted that that concluded the candidates for the North and no further candidates had come forward. She stated they would take a ten-minute break.

Chairperson Fox: Stated that one of the Hearing Officers had asked for clarification from the Commissioners and she noted that she would defer to Ms. Carrie Parker, the Deputy Attorney General. She added that the Commissioners, when rendering their decision about who would be selected as Hearing Officers, should look at the criteria regarding qualifications. She stated that one factor that would not be included in making that decision was the issue of someone retiring from state service.

Ms. Carrie Parker, Deputy Attorney General: Agreed with the statement of Chairperson Fox with regard to the position of Mr. Walther. She added that she would be happy to research it further if the Commission wished it.

B. RECOMMENDED TO THE COMMISSION FOR INTERVIEW

Chairperson Fox: Stated that they would now move to the South to hear from those six candidates plus two additional candidates who wanted to be considered.

Mr. Foster: Noted that there were six candidates for the South with only one additional candidate, and one was not in attendance.

Mr. Jeffrey F. Allen – Provided information on his background.

Commissioner Sanchez: Asked if his position as general counsel with the North Las Vegas Police Officers Association was full time. Mr. Allen responded it was full time but that he had flexible time as he worked for a portfolio of clients. He anticipated no problem with available time that he could dedicate to the Hearing Officer position. There were no other questions.

Mr. Norman Hirata – Provided information on his background. He noted that he had resigned from his law firm as of 12/22/2011, and promised to continue improving.

Commissioner Mauger: Commented that his survey seemed discouraging, and asked whether there was anything more than what he had already indicated that he could do to improve. Mr. Hirata noted that he would spend more time in research and in refining skills in the field. **Commissioner Mauger:** Asked how many cases he had had in the last two years. Mr. Hirata responded he had had 11 hearings and 5 more set for hearing.

Commissioner Read: Commented that timing was important to him and he thought the effort should be better than to 'try'. He asked if there was some reason why his cases took so much time as reflected in the record. He said the State accepted a 180-day goal which he considered too long. Mr. Hirata responded that he did not know of the 180-day requirement and apologized and said he would do better.

Commissioner Sanchez: Stated that considering he was semi-retired and he was now aware of the 180-day requirement would he be able to devote more time and meet deadlines. Mr. Hirata responded he would.

Commissioner Mauger: Commented that he was frustrated as Mr. Hirata would have known the criteria on accepting the appointment two years earlier. Mr. Hirata responded he did not know the requirement.

Mr. Daniel S. Hussey – Provided information on his background. There were no questions.

Mr. Gary A. Pulliam – Provided information on his background. Noted one new item was not included on his resume and said he was now an adjunct instructor for the CSN doing a legal ethics class. He added that if any cases arose involving the CNS then he would have to recuse himself.

Commissioner Sanchez: Noted that he thought he might have to recuse himself dealing with any matter from the Nevada System of Higher Education. Mr. Pulliam responded that he would refer to the Deputy Attorney General for guidance on that question but added that his class actually would end in May.

Carrie Parker, Deputy Attorney General: Indicated that she did not have a copy of the rule of professional conduct with her but thought that it would be up to the Attorney to decide whether there was a conflict and the person concerned would have to make that judgement as to whether or not to recuse him or herself.

Mr. Richard R. Reed – Provided information on his background.

Commissioner Read: Commented that he thought it was to his credit that Mr. Reed was not excessively understanding with regard to setting dates for hearings considering there was a 180-day requirement to settle a case and a goal of 30 days post-hearing to provide a decision. Mr. Reed thanked him for his comments.

Mr. Mark Evans, Supervisory Personnel Analyst: Confirmed that the 180-day timeframe for the completion of the case was in the Hearing Officer's Rules Procedure and the 30 days for the written decision of the hearing was in the regulations.

Ms. Ann E. Winner – Provided information on her background.

Commissioner Sanchez: Asked the candidate if she had a law practice. Ms. Winner responded that she was a sole practitioner but did not practice law. She added the City of Las Vegas had contracting requirements that required one to incorporate and that was the reason she had a law practice.

Chairperson Fox: Asked Mr. Foster if there was an additional candidate from the South. Mr. Foster advised that Mr. Nathaniel Reed was also not in attendance.

Chairperson Fox: Opened the meeting for public comment. She stated that public comment would be limited to three minutes per person. Persons coming forward were asked to give their name and spell their last name and stated that the first public comments would be for the North.

Mr. Glenn Marr: Requested that the Commission not renew the contract for Mr. Kockenmeister and provided the Commissioners with a prepared handout explaining his

position and complaint against him. He stated that Mr. Kockenmeister in his opinion did not possess the impartial judgment necessary to sit in judgment of others.

Mr. Ty Robben: Stated that people had been coming to the Personnel Commission meetings since 2008 including a prior Attorney General, indicating that Mr. Kockenmeister was not complying with the rules and the law. He referenced two alleged bribes, commented on some of the contentious issues and asked them not to renew his contract.

Mr. William Pierce: He stated he spoke on behalf of Mr. Kockenmeister, and was involved in investigation into Mr. Marr's case. He indicated that Mr. Marr was victimized in the case, and was an exceptional employee to the state.

No further public comment from the North and none for the South.

Chairperson Fox: Asked for a discussion about the Hearing Officer candidates before a motion would be entertained. She said based upon the criteria that was made available to the Commission to consider in terms of selecting a Hearing Officer, she asked that the Commissioners share their thoughts about who they would recommend to continue in the position or be appointed as a Hearing Officer. She stated that with the interviews conducted and reviewing the Hearing Officers' statistics that were put together by the Division of Human Resource Management, they should consider the areas of experience in administrative law, personnel disciplinary matters, and the surveys. She stated for the North she recommended for consideration by the Commissioners: Cafferata, Cockerill, Crowley, Kockenmeister, and Walther. She recommended for the South: Allen, Pulliam, Reed and Winner. She added to the list Lamboley and Ling.

Commissioner Read: He chose for the North: Cafferata, Cockerill, Crowley, Kockenmeister, Lamboley and Levitt. He chose for the South: Hussey, Pulliam, Reed and Winner. He also recommended that candidates who would serve in either, that he preferred Egghart and Greiner.

Commissioner Brust: He chose for the North: Cockerill, Crowley, Greiner, Kockenmeister and Levitt. He chose for the South: Allen, Hussey, Pulliam, Reed, Winner and Lamboley. (Audio was poor)

Commissioners Mauger and Sanchez: They chose for the South: Allen, Hussey, Pulliam, Reed, Winner and Lamboley (for the South). They recommended for the North: Cafferata, Cockerill, Crowley, Greiner, Lamboley and Walther.

MOTION: Moved to re-appoint Patricia D. Cafferata as a Hearing Officer for the North
BY: Commissioner Read
SECOND: Commissioner Sanchez
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to re-appoint Charles P. Cockerill as a Hearing Officer for the North
BY: Commissioner Read

SECOND: Comissioner Sanchez
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to re-appoint Martin G. Crowley as Hearing Officer for the North
BY: Commissioner Read
SECOND: Commissioner Sanchez
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to re-appoint of Lansford W. Levitt as Hearing Officer for the North
BY: Commissioner Read
SECOND: Commissioner Brust
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to re-appoint of Mr. Paul H. Lamboley as Hearing Officer for the South
BY: Commissioner Sanchez
SECOND: Commissioner Mauger
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to re-appoint Mr. Jeffrey F. Allen as Hearing Officer for the South
BY: Commissioner Sanchez
SECOND: Commissioner Mauger
VOTE: The vote was taken, 4 yeas and 1 nay on Jeffrey Allen, the motion passes

MOTION: Moved to re-appoint Mr. Daniel S. Hussey as Hearing Officer for the South
BY: Commissioner Sanchez
SECOND: Commissioner Mauger
VOTE: The vote was taken, 4 yeas and 1 nay on Daniel Hussey, the motion passes

MOTION: Moved to re-appoint Mr. Gary A. Pulliam as Hearing Officer for the South
BY: Commissioner Sanchez
SECOND: Commissioner Mauger
VOTE: The vote was unanimous in favor of the motion.
MOTION: Moved to re-appoint Mr. Richard R. Reed as a Hearing Officer for the South
BY: Commissioner Sanchez

SECOND: Commissioner Mauger
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to re-appoint Ms. Ann E. Winner as a Hearing Officer for the South
BY: Commissioner Sanchez
SECOND: Commissioner Mauger
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to appoint Ms. Jill I. Greiner as Hearing Officer in the North
BY: Commissioner Brust
SECOND: Commissioner Read
VOTE: The vote was unanimous in favor of the motion.

MOTION: Moved to re-appoint Mr. B. Kockenmeister as a Hearing Officer in the North
BY: Chairperson Fox
SECOND: Commissioner Read
VOTE: The vote was taken with 3 yeas and 2 nays, the motion passes

Shelley Blotter: Advised that for those selected as Hearing Officers staff would be in contact to finalize the logistics of the contracts which have to be approved by the Board of Examiners to go into effect July 1, 2012.

Chairperson Fox: Thanked all the candidates for taking the time to appear before the Commissioners.

VIII. APPROVAL OF PROPOSED REGULATION CHANGES TO NEVADA ADMINISTRATIVE CODE, CHAPTER 284

A. LCB File No. R008-12 – DIFFERENTIAL RATE OF PAY FOR QUALIFYING SHIFT

Mr. Mark Evans, Supervisory Personnel Analyst, Division of Human Resource Management: Noted he would be discussing LCB File No. R008-12. This would amend the Nevada Administrative Code (NAC 284.210) regarding differential rate of pay for qualifying shifts. This amendment addresses adding in an expiration date to the changes made to the shift differential regulation at the last Personnel Commission meeting. He noted that the amendment would provide for the changes to expire on July 7, 2013 and the regulation would then revert to its previous language. He stated that AFSCME Local 4041 requested the amendment and it was found to be acceptable to the directors of the agencies who originally requested the changes. The expiration date corresponds with a pay period and the Division of Human Resource Management recommends the change.

Priscilla Maloney, AFSCME Local 4041: She thanked the Personnel Commission for the opportunity to bring the amendment forward. She noted that they did not realize that the regulation change would not sunset by default at the conclusion of the budget cycle.

MOTION: Moved for approval of the proposed regulation changes to Nevada Administrative Code Chapter 284 – LCB File No. R008-12.

BY: Chairperson Fox

SECOND: Commissioner Sanchez

VOTE: The motion passes

IX. APPROVAL OF OCCUPATIONAL GROUP STUDY REVISED CLASS SPECIFICATIONS

Mary Day, Classifications Supervisor, Division of Human Resource Management: Noted she would present class specifications for approval or abolishment.

- A. Agriculture & Conservation Occupational Group
 - 1. Subgroup: Conservation
 - a. 1.712 – Wildlife Specialist

She noted that minor revisions were made to the Wildlife Staff Specialist. She advised they removed an obsolete reference to the reporting relationship and added two special requirements that were previously not noted on the class specification.

- B. Domestic Services Occupational Group
 - 1. Subgroup: Food Services
 - a. 3.100 Food Service Administrator

She noted it was a single position class unique to the Department of Corrections and as it was no longer used they were recommending that it be abolished.

- C. Regulatory & Public Safety Occupational Group
 - 1. Subgroup: Safety Inspections
 - a. 11.560 – Manufactured Housing Code Compliance Officer
 - b. 11.561 – Manufactured Housing Inspector
 - 2. Subgroup: Emergency Management
 - a. 11.605 – Radiological/Hazardous Materials Officer
 - b. 11.609 – Radiological Maintenance Officer
 - c. 11.611 – Training and Operations Manager
 - d. 11.612 – Training and Operations Officer

She noted that the two next classes under C. were unique to the Manufactured Housing Division and were the Manufactured Housing Code Compliance Officer and Manufactured Housing Inspector. She advised that both class specifications were reviewed with management and it was decided no changes were necessary at this time. They recommended that the classes be approved as written.

She noted that the last four classes were located only in the Emergency Management Division and advised that all four classes were obsolete. They recommended that the classes be abolished.

MOTION: Moved that changes be approved for class specifications to the Wildlife Specialist, Food Service Administrator, Manufactured Housing Code Compliance Officer, Manufactured Housing Inspector, Radiological/Hazardous Materials Officer, Radiological Maintenance Officer, Training and Operations Manager and Training and Operations Officer as presented.

BY: Commissioner Brust

SECOND: Commissioner Sanchez

VOTE: The motion passes

X. REPORT OF UNCONTESTED CLASSIFICATION CHANGES

Posting #04-12, #05-12, #06-12, #07-12 and #08-12.

Chairperson Fox: Noted that this action required no action from the Board and was put into the report of uncontested classification changes. The information was provided to the Commissioners.

XI. PUBLIC COMMENT

Chairperson Fox: Asked for public comment and said no vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020) Comments will be limited to three minutes per person and persons making comment will be asked to begin by stating their name for the record and to spell their last name. The Committee Chair may elect to allow additional public comment on a specific agenda item when the item is being considered.

No public comment.

XII. ANNOUNCEMENT OF DATES FOR UPCOMING MEETINGS

Chairperson Fox: Identified May 18, 2012 as the next regular scheduled meeting of the Commission. She suggested September 14, 2012 as a meeting date. All Commissioners agreed that September 14, 2012 was acceptable.

XIII. ADJOURNMENT

MOTION: Move to adjourn at 11:56 A.M.

BY: Commissioner Read

SECOND: Commissioner Brust

VOTED: The motion passes.

Law Office of Bill Kockenmeister
PO BOX 19023
Reno, Nevada 89511**
775-815-5511
Facsimile: 775-851-8180
Email: bill@kockenmeister.com

** New Address

June 12, 2008

Joe Vanacore
AFSCME

VIA Email: bill@kockenmeister.com

Dear Mr. Vanacore:

You have asked me the proper procedure when a hearing has been completed and an order issued and the employee believes that the agency has withheld evidence. It is my opinion that the proper procedure is to file a Petition for Reconsideration or Rehearing and indicate the evidence that the employee believes was withheld by the agency.

If you have any further questions, please feel free to contact me.

Sincerely,



Bill Kockenmeister
Administrative Hearing Officer

Glenn Marr

From: "Joe" <jvanacore@charter.net>
To: "Glenn Marr" <gmarr1212@charter.net>
Sent: Friday, October 10, 2008 7:35 AM
Subject: RE: petition

I believe Kockenmeister meant to file the petition with him, because I asked Kockenmeister that same question, right in front of you, and Jeff. Bill's exact words were, it doesn't matter that you have an appeal at the Supreme Court level, this is a different matter. In this case we are asking to have the case reconsidered due to the withholding of evidence. The petition for reconsideration is with him, that is what he is talking about. I have spoken to him about it several times, and he insisted that we file with him, and it was up to him, based on the evidence we gave him, whether or not he would reconsider the decision, or to hear the case again in its entirety.

I hope that helps. Take care, and if you need any other questions answered, let me know. I would never have let you get another attorney for this process, if there was no process, nor would I waste my time in a matter that I know isn't going anywhere. That was the reason I went straight to the decision maker, and asked what he would do, and what we could do,

[REDACTED]

[REDACTED]

[REDACTED]

Sincerely,
Joe Vanacore

jvanacore@charter.net

From: Glenn Marr [mailto:gmarr1212@charter.net]
Sent: Wednesday, October 08, 2008 6:55 PM
To: Jeff Blanck; Joe Vanacore
Subject: petition

Joe,

I called your office and Amy informed me that you will be out til the 20th. Maybe you can read this before you get back. Read the attachment please.

In Kockenmeister's letter (Jun 12) he state's. "It is my opinion that the proper procedure is to file a Petition for Reconsideration or Rehearing and indicate the evidence that the employee believes was withheld by the agency".

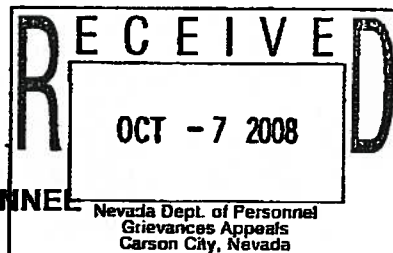
Do you know what "proper procedure" Kockenmeister is referring to? According to

2/26/2012

1 STATE OF NEVADA DEPARTMENT OF PERSONNEL
2 BEFORE THE HEARING OFFICER
3

4 In the Matter of
5 GLENN MARR,
6 Employee.

Case No.: CC-14-05-BK



8 DEPARTMENT OF PERSONNEL

9 MOTION TO STRIKE

10 COMES NOW, Respondent, State of Nevada, Department of Conservation and Natural
11 Resources, by and through its counsel of record, Catherine Cortez Masto, Attorney General
12 for the State of Nevada, and Bryan L. Stockton, Deputy Attorney General, and Moves the
13 Hearing Officer for the Nevada Department of Personnel to Strike the *Request for*
14 *Reconsideration for a New Hearing Due to Withheld Evidence* (hereinafter, Request) filed by
15 Glen Marr on or about September 29, 2008.
16

17 POINTS AND AUTHORITES

18 The Nevada Department of Personnel Hearing Officer affirmed the decision of the
19 Nevada Division of Forestry (NDF) to terminate Glenn Marr's (Marr) employment with the
20 State of Nevada on November 2, 2005, for conduct that was incompatible with Marr's
21 continued employment. Marr then appealed to the Ninth Judicial District Court, in and for the
22 County of Douglas, which affirmed the termination. Marr has now appealed to the Nevada
23 Supreme Court in Nevada Supreme Court Case No. 50844.

24 The Nevada Supreme Court "has consistently explained that 'a timely notice of appeal
25 divests the district court of jurisdiction to act and vests jurisdiction in this court.'" *Mack-Manley*
26 *v. Manley*, 122 Nev. 849, ___, 138 P.3d 525, 529 (2006). Thus the Hearing Officer retains no
27 jurisdiction to entertain the Request and it must be stricken from the record.
28

///

1 The State Engineer also notes that Jeffery Dickerson, Esq., has been Marr's counsel
2 throughout this proceeding and is still participating in the appeal at the Nevada Supreme
3 Court. Nevada's Supreme Court Rules require the State of Nevada to continue to recognize
4 Mr. Dickerson as the attorney of record until Mr. Blanck is properly substituted as counsel.

5 Notice of change of attorney. When an attorney is changed, as
6 provided in Rule 47, written notice of the change and of the
7 substitution of a new attorney, or of the appearance of the party in
8 person, shall be given to the adverse party; until then he shall be
bound to recognize the former attorney.

9 Nevada Supreme Court Rule 48.

10 Until this Motion is ruled upon, the State of Nevada will not respond to the allegations
11 made in the Request.

12 **CONCLUSION**

13 It is so well-settled that a trial court may not entertain jurisdiction over a matter that is
14 being heard on appeal, the hearing must strike this frivolous Request for Reconsideration for a
15 New Hearing Due to Withheld Evidence.

16
17 DATED this 7th day of October, 2008.

18 CATHERINE CORTEZ MASTO
19 Attorney General

20 By: 

21 BRYAN V. STOCKTON
22 Nevada State Bar #4764
23 Deputy Attorney General
24 100 North Carson Street
25 Carson City, Nevada 89701-4717
26 (775) 684-1228
27 Attorneys for Nevada Division of
28 Forestry

1 **BEFORE THE NEVADA STATE PERSONNEL COMMISSION HEARING OFFICER**

2
3 MARR, GLENN) Case No. CC-14-05-BK
4)
5 Petitioner-Employee)
6 vs.) ORDER
7)
8 STATE OF NEVADA, DEPARTMENT OF)
9 CONSERVATION AND NATURAL)
10 RESOURCES)
11 Respondent-Employer.

12 **BACKGROUND**

13 Petitioner-Employee Glenn Marr ("EMPLOYEE") has filed a
14 Petition for Reconsideration of the Findings of Fact,
15 Conclusions of Law and Decision ("Decision") entered in the
16 above proceeding by the undersigned administrative hearing
17 officer on April 30, 2006. The Decision upheld the termination
18 of EMPLOYEE from State service by the State of Nevada,
19 Department of Conservation and Natural Resources ("EMPLOYER").

20 The basis for the request for reconsideration is the
21 allegation that numerous documents and other evidence were
22 withheld from the undersigned administrative hearing officer at
23 the time of the hearing. According to EMPLOYEE, a new hearing
24 is therefore justified.
25

1 EMPLOYER has filed a Motion to Strike the Petition for
2 Reconsideration. EMPLOYER argues that the administrative
3 hearing officer has no jurisdiction to hear this matter while it
4 is on appeal.³ EMPLOYEE argues that the "Supreme Court will have
5 no problem dismissing the action if such rehearing is granted."

6 **DECISION**

7 The undersigned administrative hearing officer is
8 sympathetic to the argument that EMPLOYEE's due process rights
9 were violated if, in fact, relevant evidence was withheld by the
10 EMPLOYER. It is clear, however, that as long as the matter is
11 pending before the Nevada Supreme Court, the hearing officer
12 would not have jurisdiction to reconsider the prior decision.
13 For that reason, the Petition for Reconsideration will be
14 dismissed without prejudice. EMPLOYEE may refile the Petition
15 for Reconsideration after the matter is no longer pending in a
16 court of competent jurisdiction.
17

18 For the foregoing reasons, the Petition for Reconsideration
19 is dismissed without prejudice.

20 Dated: November 1, 2008

21 

22 _____
23 Bill Kockenmeister
24 Administrative Hearing Officer

25 _____
The Decision is currently on appeal before the Nevada Supreme Court.

Vicki,

I am sorry. I tried to talk them into selecting parts, but Jeff Dickerson wants a copy of ~~the~~ everything in these binders.

Thank you
R



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

RANDAL R. MUNN
Assistant Attorney General

December 19, 2007

Jeff Dickerson, Esq.
9655 Gateway Drive, Suite B
Reno, Nevada 89521

Re: *Glenn Marr v. Peter Anderson, et al.*
Case No. 3:06-cv-00354-LRH-RAM

Dear Mr. Dickerson:

I am sending to you via Reno Carson Messenger Service the following discovery:

1. Notebook No. 1 containing Nevada Division of Forestry Reference Materials Manuals;
2. Notebook No. 2 containing Nevada Division of Forestry Internal Investigation WR-1005-0009 Air Operations documents;
3. Notebook No. 3 Nevada Division of Forestry Reference Materials Flight Maintenance Records – Statements

Please call Bryan Stockton at 684-1228 if you have any questions.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:

A handwritten signature in cursive script that reads "Vicki Beavers".

VICKI BEAVERS
Legal Secretary II
Conservation & Natural Resources
(775) 684-1238

UNDER COLOR OF STATE LAW

Covers not only acts done by an official under a State law, but also acts done by an official under any ordinance of a county or municipality of the State, as well as acts done under any regulation issued by any State or County or Municipal official, and even acts done by an official under color of some State or local custom.

To act "under color of state law" means to act beyond the bounds of lawful authority, but in such a manner that the unlawful acts were done while the official was purporting or pretending to act in the performance of his official duties. In other words, the unlawful acts must consist of an abuse or misuse of power which is possessed by the official only because he is an official. A person may be found guilty even though he was not an official or employee of the State, or of any county, city, or other governmental unit if the essential elements of the offense charged have been established and the person was a willful participant with the state or its agents in the doing of such acts.

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken `under color of state law.'" United States v. Classic, 313 U.S. 299, 326 (1941)

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ." 42 U.S.C. S 1983 (1988)



Civil Rights

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Color of Law Abuses



U.S. law enforcement officers and other officials like judges, prosecutors, and security guards have been given tremendous power by local, state, and federal government agencies—authority they must have to enforce the law and ensure justice in our country. These powers include the authority to detain and arrest suspects, to search and seize property, to bring criminal charges, to make rulings in court, and to use deadly force in certain situations.

Preventing abuse of this authority, however, is equally necessary to the health of our nation's democracy. That's why it's a federal crime for anyone acting under "color of law" willfully to deprive or

conspire to deprive a person of a right protected by the Constitution or U.S. law. "Color of law" simply means that the person is using authority given to him or her by a local, state, or federal government agency.

The FBI is the lead federal agency for investigating color of law abuses, which include acts carried out by government officials operating both within and beyond the limits of their lawful authority. Off-duty conduct may be covered if the perpetrator asserted his or her official status in some way.

During 2009, the FBI investigated 385 color of law cases. Most of these crimes fall into five broad areas:

- Excessive force;
- Sexual assaults;
- False arrest and fabrication of evidence;
- Deprivation of property; and
- Failure to keep from harm.

Excessive force: In making arrests, maintaining order, and defending life, law enforcement officers are allowed to use whatever force is "reasonably" necessary. The breadth and scope of the use of force is vast—from just the physical presence of the officer...to the use of deadly force. Violations of federal law occur when it can be shown that the force used was willfully "unreasonable" or "excessive."

Sexual assaults by officials acting under color of law can happen in jails, during traffic stops, or in other settings where officials might use their position of authority to coerce an individual into sexual compliance. The compliance is generally gained because of a threat of an official action against the person if he or she doesn't comply.

False arrest and fabrication of evidence: The Fourth Amendment of the U.S. Constitution guarantees the right against unreasonable searches or seizures. A law enforcement official using authority provided under the color of law is allowed to stop individuals and, under certain circumstances, to search them and retain their property. It is in the abuse of that discretionary power—such as an unlawful detention or illegal confiscation of property—that a violation of a person's civil rights may occur.

Fabricating evidence against or falsely arresting an individual also violates the color of law statute, taking away the person's rights of due process and unreasonable seizure. In the case of deprivation of property, the color of law statute would be violated by unlawfully obtaining or maintaining a person's property, which oversteps or misapplies the official's authority.

Key Civil Rights Links

Civil Rights Home

Priority Issues

- Hate Crime
- Human Trafficking/Involuntary Servitude
- "Color of Law" Abuses
- Freedom of Access to Clinic Entrances

Report Civil Rights Violations

- File a Report with Your Local FBI Office
- File a Report on Our Internet Tip Line