IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WITHEROW, Appellant, vs. DORLA M. SALLING AND SUSAN MCCURDY, Respondents.	No. 41832
JOHN WITHEROW, Appellant, vs. THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, Respondent.	No. 42497
JOHN WITHEROW, Appellant, vs. THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, Respondent.	No. 42498
JOHN WITHEROW, Appellant, vs. THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, Respondent.	No. 42499
JOHN WITHEROW, Appellant, vs. THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, Respondent.	No. 42500

FILED

OCT 0 2 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

These are consolidated proper person appeals from district court orders denying in part a petition for a writ of mandamus and dismissing several actions for failure to state a claim. First Judicial

06-20131

District Court, Carson City; William A. Maddox, Judge (Docket No. 41832); First Judicial District Court, Carson City; Michael R. Griffin, Judge (Docket Nos. 42497, 42498, 42499, and 42500).

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Writ of mandamus

Docket No. 41832 involves an appeal from an order denying in part and granting in part a petition for writ of mandamus to compel respondents Dorla M. Salling, Susan McCurdy, and the State of Nevada Board of Parole Commissioners (the Board)[1] to comply with certain provisions of the Administrative Procedure Act and a provision in Nevada's parole statutes. "A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion."[2] We review a decision to deny or grant a petition for writ of mandamus for an abuse of discretion.[3]

The district court found that appellant John Witherow was entitled to a copy of all or a part of the parole regulations contained in the Nevada Administrative Code (NAC) pursuant to NRS 233B.070(7). However, the district court subsequently held that the Board was not

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[1]The proper defendant in this case is the Board, not the members of the Board in their individual capacities.

[2]County of Clark v. Doumani, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998) (internal citation omitted); see NRS 34.160.

[3]Id.

required to provide a copy of the regulations until Witherow proffered the "copying costs."

Witherow contends that the district court abused its discretion when it held that the Board was not required to provide a copy until Witherow proffered the "copying costs." We agree.

"Statutory interpretation is a question of law, and we review the district court's interpretation of [a statute] de novo."[4] This court further stated that, "[w]hen interpreting a statute, we first determine whether its language is ambiguous. If the language is clear and unambiguous, we do not look beyond its plain meaning, and we give effect to its apparent intent from the words used, unless that meaning was clearly not intended."[5]

NRS 233B.070(7) provides:

> Each agency shall furnish a copy of all or part of that part of the Nevada Administrative Code which contains its regulations, to any person who requests a copy, and may charge a reasonable fee for the copy based on the cost of reproduction if it does not have money appropriated or authorized for that purpose.

If the legislature had intended to exclude prisoners from the definition of "person," it could have done so. Therefore, we affirm the district court's finding that Witherow is a "person" for the purpose of this statute.

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[4]Stockmeier v. Psychological Review Panel, 122 Nev. ___, ___, 135 P.3d 807, 810 (2006).

[5]Id.

The Board is an "agency" for the purposes of NRS 233B.070. The statute unambiguously states that an agency must provide a copy of all or part of the NAC, which contains the Board's parole regulations, to any person who so requests. Further, the statute provides that the Board may charge a reasonable fee for copies of the parole regulations if, and only if, it "does not have money appropriated or authorized" for providing such copies.

The district court failed to determine whether the Board had money appropriated for the purpose of providing copies of its parole regulations. Instead, the district court arbitrarily held that the Board was not required to provide a copy of the parole regulations until Witherow proffered "monies for the copies." NRS 233B.070(7) does not necessarily require persons to proffer monies to obtain a copy of the parole regulations. It merely states that the agency may charge a fee for the copy if the agency does not have money appropriated or authorized for providing such copies; the Board never made that claim.

Therefore, we conclude that the district court abused its discretion in holding that Witherow was not entitled to a copy of the parole regulations. We reverse the denial of mandamus as to this issue and remand for a determination as to whether the Board has money set aside or is authorized to provide copies of its parole regulations. If the Board is found to have money appropriated or authorized, then the district court must compel the Board to provide a copy of its parole regulations, and Witherow need not proffer money to obtain a copy. If it is found that the Board does not have money appropriated, then the Board may require Witherow to pay a reasonable fee in exchange for a copy of its regulations.

As to Witherow's other requests for mandamus relief, we conclude that the district court did not abuse its discretion.[6]

Dismissal of Witherow's complaints with prejudice

Docket Nos. 42497, 42498, 42499, and 42500 involve appeals from orders dismissing various causes of action with prejudice, including claims for injunctive, declaratory, and monetary relief. NRCP 12(b) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." When "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56."[7] If the district court considers matters outside of the pleadings, this court will "'review the dismissal order as if it were a summary judgment.'"[8]

In granting the motions to dismiss with prejudice, the district court considered matters outside of the pleadings, particularly with regard to Witherow's other ongoing cases and his history of litigation. Therefore, this court will review the motions to dismiss as if they were motions for summary judgment.

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[6]The Board is not required to furnish a petition form to Witherow; the Board need only "prescribe by regulation the form" to be used. See NRS 233B.100(1). Additionally, nothing in NRS 213.1085(4) requires the Board's executive secretary to answer all correspondence from state prisoners.

[7]NRCP 12(c).

[8]Thompson v. City of North Las Vegas, 108 Nev. 435, 438-39, 833 P.2d 1132, 1134 (1992).

A district court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[9]

We review a motion for summary judgment de novo.[10]

Parole, due process, and § 1983

Witherow's most serious allegations involve the Board's alleged violation of his due process and equal protection rights caused by their allegedly arbitrary and capricious actions in the administration of his parole proceedings.[11]

It is well settled under Nevada law that prisoners do not have a right to parole, and any parole standards set by the Legislature or the Board cannot act as the basis for a suit against the Board or its members.[12] Parole is an "act of grace of the State."[13] While prisoners may have a protectible due process right to apply for parole, they do not have a

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[9]NRCP 56(c).

[10]Miller v. Jones, 114 Nev. 1291, 1296, 970 P.2d 571, 575 (1998).

[11]Witherow raised his right to due process in parole proceedings primarily in the district court case underlying Docket No. 42498.

[12]See NRS 213.10705. The Legislature has expressly provided that no suit can be brought against the Board based on parole standards set by the Legislature or by the Board. Therefore, all claims based on these parole standards must fail.

[13]Id.

protectible due process right in being granted release on parole.[14] Further, this court has held that Nevada's parole statutes "only give[ ] rise to a 'hope' of release on parole, and the Board's discretionary decision to deny parole is not subject to the constraints of due process."[15]

With regard to Witherow's federal due process violations and § 1983 claims, a validly obtained conviction under federal law extinguishes a prisoner's liberty interest in release.[16] For this reason, an inmate does not have a protectible expectation of parole unless that expectation is created by state statute.[17] "'A state is under no constitutional obligation to create a parole system, and even when it does, the mere possibility of parole does not a fortiori result in a protectible expectation of release.'"[18] "Unless state statute mandates that parole 'shall' be granted 'unless' a designated exception applies, a federal due process protected interest does not arise."[19] As discussed above, Nevada's parole statutes do not create a protectible expectation of parole.

Therefore, the district court properly dismissed all of Witherow's state due process claims and all claims that arose out of the

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[14]Severance v. Armstrong, 97 Nev. 95, 96, 624 P.2d 1004, 1005 (1981).

[15]Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 219-20, 678 P.2d 1158, 1160 (1984).

[16]Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 7 (1979).

[17]See id.

[18]Severance v. Armstrong, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980) (quoting Averhart v. Tutsie, 618 F.2d 479, 481 (7th Cir. 1980)).

[19]Kelso v. Armstrong, 616 F. Supp. 367, 369 (D. Nev. 1985).

state parole statutes and parole standards. [20] Additionally, the district court properly dismissed all of Witherow's federal due process and equal protection claims.[21] Consequently, we affirm the district court's dismissal of these claims.

Inspection and copying of parole hearing documents

In Docket No. 42498, Witherow asserts that the Board must allow him to inspect, copy, and correct any documents the Board reviewed or relied upon when it revoked his parole and denied his subsequent parole applications pursuant to NRS 179A.100, NRS 179A.150, and NRS 239.010. Witherow contends that his due process rights have been violated by the Board's failure to allow him to inspect all documents relating to his parole and that he has suffered damages as a result. As discussed above, Witherow has no reasonable expectation of parole, no protectible liberty interest in being released on parole, and no entitlement to due process in any parole proceedings other than such process expressly provided for by statute. Therefore, Witherow's due process claims must fail.

NRS 239.010(1) merely requires that the Board allow persons to inspect and copy public records during normal office hours. Further, NRS 213.1075 provides that "all information obtained in the discharge of official duty by an employee of the Division or the Board is privileged and

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[20]Witherow raises the alleged due process violations primarily in the case underlying Docket No. 42498.

[21]We note that Witherow is not entitled to relief under the equal protection clause because Witherow failed to allege or show that he was a member of a protected class and that he was discriminated against on the basis of race, gender, religion, origin, or any other suspect or quasi-suspect class.

may not be disclosed directly or indirectly to anyone other than the Board, the judge, district attorney or others entitled to receive such information." Therefore, all documents obtained by Board members for their use in parole hearings are confidential.

However, NRS 179A.100(1)[22] provides:

> The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:
>
> (a) Any which reflect records of conviction only; and
>
> (b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

Therefore, a criminal history record is any record pertaining to a conviction or "to an incident for which a person is currently within the system of criminal justice, including parole or probation."[23] The Board may disseminate these types of non-confidential records.

Further, NRS 179A.100(5) provides:

> Records of criminal history must be disseminated by an agency of criminal justice, upon request, to the following persons or governmental entities:
>
> (a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.
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> (b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial,

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[22]Effective through June 30, 2006.

[23]NRS 179A.100(1).

> administrative, licensing, disciplinary or other proceeding to which the information is relevant.

Pursuant to NRS 179A.100(5), the Board must disseminate criminal history records to a person who is the subject of the records.

The language "pertain to an incident for which"[24] indicates that the agency need only disseminate criminal records pertaining to the cause of, reason for, or "for which" the requesting individual is in the criminal justice system, such as a conviction, parole violation, or probation violation. Information pertaining to a parole application does not pertain to the reason for a person's presence within the criminal justice system.[25] A conviction or a parole violation are incidents that cause a person's presence within the criminal justice system. According to its plain language, NRS 179A.100 does not require the Board to disseminate any records pertaining to Witherow's parole applications. Witherow's parole violations, on the other hand, pertain to an incident for which Witherow is currently within the criminal justice system. Thus, we conclude that the Board should be required to provide criminal history records pertaining to Witherow's parole violations but not pertaining to the denials of his parole applications.

Further, NRS 179A.150 provides, in pertinent part:

> 1. The Central Repository and each state, municipal, county or metropolitan police agency shall permit a person, who is or believes he may be the subject of information relating to

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[24]NRS 179A.100(1).

[25]The parole application is merely an attempt to be released from incarceration and is not the reason why the prisoner is in the criminal justice system.

> records of criminal history maintained by that agency, to appear in person during normal business hours of the agency and inspect any recorded information held by that agency pertaining to him. This right of access does not extend to data contained in intelligence, investigative or other related files, and does not include any information other than information contained in a record of criminal history.
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> . . . .
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> 3. Each such agency shall procure for and furnish to any person who requests it and pays a reasonable fee therefor, all of the information contained in the Central Repository which pertains to the person making the request.

(Emphasis added.)

Pursuant to NRS 179A.150(1), Witherow may inspect and copy his criminal history records. Nonetheless, this right of access does not apply to information "contained in intelligence, investigative or other related files."[26] Criminal history records would normally include conviction records, parole violation records, or probation violation records. Consequently, we conclude that Witherow may not inspect or copy any documents other than his conviction records or other "criminal history" records in the Board's possession. Further, Witherow may not "correct" these criminal history records.[27]

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[26]NRS 179A.150(1).

[27]If the Board does possess any of Witherow's criminal history records, then, pursuant to NRS 179A.150(3), the Board must "furnish" a copy of these records to Witherow if he pays a reasonable fee for such records.

Therefore, we partially reverse the district court's dismissal and hold that Witherow is entitled to review his criminal history records, but we affirm the dismissal in that Witherow cannot inspect, copy, or correct any other documents reviewed by the Board, including letters from victims, letters or reports from correctional facilities, or any other documents to the extent that such documents are not actual criminal history records as specifically set forth in NRS 179A.100 and NRS 179A.150. Consequently, we remand this matter to the district court for a determination as to whether the Board possesses any of Witherow's criminal history records.

Failure of the Board to mail a notice of its intent to act upon its own regulations

In the case underlying Docket No. 42499, Witherow challenged regulations adopted by the Board on October 12, 2001, under NRS Chapter 233B, otherwise known as the Administrative Procedure Act. Pursuant to NRS Chapter 233B, "[n]o regulation adopted after July 1, 1965, is valid unless adopted in substantial compliance with this chapter but no objection to any regulation on the ground of noncompliance with the procedural requirements of NRS 233B.060 to 233B.0617, inclusive, may be made more than 2 years after its effective date."[28] Witherow challenged regulations adopted by the Board on October 12, 2001, and he filed his complaint on September 2, 2003, less than two years

[28]NRS 233B.0617.

after the challenged regulation was adopted.[29] Therefore, Witherow filed his complaint within the two-year statute of limitations.

Pursuant to NRS 233B.050(1)(b), the Board must make its rules and regulations "available for public inspection." Additionally, notice of intent to act upon a regulation must "[b]e mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the agency for that purpose."[30] Witherow alleged that the Board failed to place Witherow on a mailing list for proposed changes to its regulations, even though Witherow had mailed at least one written request to be placed on the mailing list.

Even if Witherow's allegations are accepted as true, Witherow fails to allege any other defect in the Board's adoption of proposed amendments to its regulations.[31] In NRS 233B.0617, the use of the language "adopted in substantial compliance" instead of "total compliance" indicates the Legislature's intent that an agency's adopted regulation should only be rendered invalid if the agency fails to substantially comply with NRS Chapter 233B. Witherow does not allege that the Board failed

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[29]As for as Witherow's claim challenging all meetings prior to October of 2001, such claim was outside of the statute of limitations and was properly dismissed.

[30]NRS 233B.0603(1)(e).

[31]Witherow also alleges a cause of action for declaratory relief under NRS 233B.110, which only allows a person to bring suit for declaratory relief when the regulation in question "interferes with or impairs . . . the legal rights or privileges of the plaintiff." Witherow has no legal right or expectation for parole, nor is parole a privilege. It is merely an act of grace by the state. The parole regulations adopted by the Board do not interfere with or impair any of his rights because he has no right to parole. Thus, Witherow's claim for relief under NRS 233B.110 is without merit.

to comply with other provisions of NRS Chapter 233B or, for that matter, other subsections of NRS 233B.0603. The Board's failure to place one person on its mailing list for notice of its proposed changes to its regulations does not negate the Board's otherwise substantial compliance with NRS Chapter 233B. Consequently, we conclude that the regulation adopted at the July 23, 2003, hearing is not invalid.

Therefore, we conclude that the district court properly dismissed Witherow's claims for declaratory, injunctive, and monetary relief as to Witherow's NRS Chapter 233B claims because those claims either fell outside of the statute of limitations or were meritless.[32]

Notice of the Board's public meetings under the open meeting law

In the case underlying Docket No. 42500, Witherow alleges that the Board violated the open meeting law by failing to provide him with notice of its public meetings, and he requests that every meeting held by the Board in violation of the open meeting law be declared void pursuant to NRS 241.036.[33]

As a preliminary matter, we conclude that the Board is subject to the open meeting law pursuant to this court's decision in Stockmeier v. State, Dep't of Corrections.[34]

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[32]However, we note that in the district court case underlying Docket No. 41832, the district court already granted a petition for a writ of mandamus requiring the Board to provide Witherow with notice of the Board's intent to act upon its own regulations pursuant to NRS 233B.0603(1)(e).

[33]NRS 241.036 provides that "[t]he action of any public body taken in violation of any provision of this chapter is void."

[34]122 Nev. ____, 135 P.3d 220 (2006).

In Stockmeier, this court concluded that "[t]he very purpose of the open meeting law would be circumvented if public bodies were allowed to avoid the open meeting law by claiming that a proceeding was a judicial proceeding without providing the basic protections of a trial."[35] Further, this court held that, "[a]t a minimum, a quasi-judicial proceeding must afford each party (1) the ability to present and object to evidence, (2) the ability to cross-examine witnesses, (3) a written decision from the public body, and (4) an opportunity to appeal to a higher authority."[36] This court consequently concluded that a psychological review panel's parole certification hearings are not quasi-judicial proceedings, because the review panel does not (1) afford the opportunity to present and object to evidence, (2) afford the ability to cross-examine witnesses, or (3) make findings of fact or conclusions of law.[37]

Accordingly, this court held that the review panel hearings are subject to Nevada's open meeting law.[38] Similar to a psychological certification hearing, a parole hearing is also not a quasi-judicial proceeding, because the parole hearing does not afford each party, at minimum: "(1) the ability to present and object to evidence, (2) the ability to cross-examine witnesses, (3) a written decision [delineating findings of

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[35]Id. at ___, 135 P.3d at 224.

[36]Id.

[37]Id. at ___, 135 P.3d at 223-24.

[38]Id. at ___, 135 P.3d at 228; see also McKay v. Board of Cty. Comm'r, 103 Nev. 490, 492-93, 746 P.2d 124, 125-26 (1987) (unless the Legislature specifically exempts an executive branch agency from the open meeting law, the "rule of publicity" applies).

fact and conclusions of law], and (4) an opportunity to appeal to a higher authority."[39] Therefore, a parole hearing is not a quasi-judicial proceeding, and the Board must comply with the open meeting law when conducting such hearings.

NRS 241.037 unambiguously provides, in relevant part, that:

> 2. Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to have an action taken by the public body declared void, to require compliance with or prevent violations of this chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection.
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> 3. Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken.

Pursuant to this statute, Witherow does not have standing to sue for monetary damages under the open meeting law. However, at the discretion of the district court, he may recover attorney fees, if any, and costs to the extent he prevails on his open meeting law claims. Further, to

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[39]Stockmeier, 122 Nev. at ___, 135 P.3d at 224. As a prisoner has no expectation of release on parole and no due process right to parole, a prisoner cannot appeal a denial of his parole to a higher authority.

the extent any of Witherow's open meeting law claims[40] arise more than "120 days after the action objected to was taken by that public body" or more than "60 days after the action objected to was taken" when the claim was brought to have the "action declared void," then Witherow lacks standing to pursue such claims and dismissal is proper, regardless of the merits.

As to the case underlying Docket No. 42500, Witherow seeks to have the Board's July 23, 2003, meeting declared void because the Board failed to provide him with adequate notice. Witherow filed his complaint on December 2, 2003, more than sixty days after the challenged action was taken. Therefore, the Board's meeting cannot be declared void because Witherow's claim was filed outside of the statute of limitation provided in NRS 241.037(3). The complaint was also filed more than one hundred twenty days after the challenged action; thus, Witherow did not have standing to bring any suit under the open meeting law to challenge the Board's July 23, 2003, meeting.[41]

Therefore, we conclude that the district court properly dismissed Witherow's open meeting law claims in the case underlying Docket No. 42500.[42]

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[40]Whether such claims are declaratory or injunctive in nature.

[41]Witherow lacks standing to bring suit under the open meeting law for any meetings or actions that occurred more than one hundred twenty days before he filed his complaint.

[42]As Witherow's open meeting law claims all fell outside of the statute of limitations, we need not address the merits of those claims.

Vexatious litigant

In Docket No. 42498, Witherow contends that the district court abused its discretion when it determined that Witherow was a vexatious litigant without giving Witherow notice and an opportunity to be heard. We are inclined to agree.

The Nevada Constitution allows courts to issue writs of prohibition "and all other writs proper and necessary to the complete exercise of their jurisdiction."[43] The district court has the power to permanently restrict a vexatious litigant's right to access the courts.[44] Further, "this court examines restrictive orders under an abuse of discretion standard."[45] While we do not deny the district court's power to issue writs that reasonably limit a person's access to the courts, we do note that such power must be exercised within the framework recently developed in Jordan v. State, Dep't of Motor Vehicles.[46]

Pursuant to Jordan, a four-factor analysis guides courts in balancing the various interests implicated by court-access restrictions on vexatious litigants: (1) due process requires notice and an opportunity to be heard before the issuance of a restrictive order; (2) the district court must create an adequate record for appellate review; (3) substantive findings must be made by the district court as to the frivolous or harassing

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[43]Nev. Const. art. 6, § 6.

[44]Jordan v. State, Dep't of Motor Vehicles, 121 Nev. ___, ___, 110 P.3d 30, 41-42 (2005).

[45]Id. at ___, 110 P.3d at 44.

[46]121 Nev. ___, 110 P.3d 30.

nature of litigant's actions; and (4) the restrictive order must be narrowly drawn to address the specific problem encountered.[47]

A party is entitled to notice and an opportunity to be heard before he is found to be a vexatious litigant. In the case underlying Docket No. 42498, the district court, acting sua sponte, restricted Witherow's ability to file cases with the district court. In its ruling, the district court stated:

> [T]his Court orders that Plaintiff is prohibited from filing anything in this Court unless the Plaintiff gets the Court's prior permission. Any pleading to be filed by the Plaintiff must be first delivered to chambers and must attempt to litigate an issue that has not already been ruled upon. If Plaintiff's filing contains any matters that have previously been litigated and decided, the Court will fine the Plaintiff with the fine to be assessed from his personal inmate account.

The district court was understandably disturbed by Witherow's tenacity for litigation. It stated that it "will no longer allow the Plaintiff to redundantly paper this court with frivolous law suits" and that Witherow "has continuously and diversely challenged his parole revocations and denials."

The district court satisfied three of the four requirements. However, the district court's failure to give Witherow adequate notice and an opportunity to be heard was an abuse of discretion. Consequently, we reverse and remand this matter to the district court to give Witherow an opportunity to be heard and to allow him to explain why his right to litigate his grievances should not be limited due to the duplicitous and

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[47]Id. at ___, 110 P.3d at 42-44.

harassing nature of his claims. If the district court is still convinced that Witherow is a vexatious litigant after Witherow has been given an opportunity to be heard, it may enter an appropriate order to that effect.[48]

CONCLUSION

In Docket No. 41832, we reverse the denial of Witherow's petition for a writ of mandamus only as to his request for a copy of the parole regulations contained in the NAC, pursuant to NRS 233B.070(7), and remand for a determination as to whether the Board has money appropriated or authorized to provide copies of its parole regulations. We affirm the remainder of the district court's order, including the district court's grant of mandamus compelling the Board to provide Witherow with notice of the Board's upcoming public meetings in accordance with NRS 241.020 and NRS 233B.0603(1)(e).

In Docket No. 42498, we partially reverse the district court's dismissal of Witherow's claim as to his right to review records of his criminal history. We hold that Witherow is entitled to review and copy any of his criminal history records to the extent the Board possesses such records, but we affirm insofar as Witherow cannot inspect, copy, or correct any other documents reviewed by the Board when it revoked Witherow's parole or denied his parole applications, including letters or reports from victims or correctional facilities, or any other documents to the extent that such documents are not actual records of criminal history as specifically set forth in NRS 179A.100 and NRS 179A.150.

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[48]Further, it is within the district court's power to revoke Witherow's proper person status and to require Witherow to obtain counsel.

We reverse as to the finding that Witherow is a vexatious litigant and remand this matter to the district court to give Witherow an opportunity to be heard and to explain why his right to litigate should not be restricted.

We affirm the dismissal and denial of all of Witherow's remaining claims.[49] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Hon. Michael R. Griffin, District Judge
Hon. William A. Maddox, District Judge
Attorney General George Chanos/Carson City
John Witherow
Carson City Clerk

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[49]We hold that Witherow's remaining allegations and claims for relief are without merit. Further, the proper defendant in these cases is the Board, not the members of the Board in their individual capacities.