

1 **BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND**
2 **CONDOMINIUM HOTELS**

3 **STATE OF NEVADA**

FILED

JUL 20 2026

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

5 SHARATH CHANDRA, Administrator, REAL
6 ESTATE DIVISION, DEPARTMENT OF
7 BUSINESS & INDUSTRY, STATE OF NEVADA
8 Petitioner,

v.

9 KELLY EVERS,
10 Respondent.

Case No.: 2025-526

**RESPONDENT'S MOTION FOR
REHEARING OR RECONSIDERATION
(NAC 116.617)**

11 **I. INTRODUCTION**

12 Respondent Kelly Evers, proceeding *In Proper Person*, respectfully submits this Motion
13 for Rehearing or Reconsideration to the Commission for Common-Interest Communities and
14 Condominium Hotels ("Commission"), pursuant to Nevada Administrative Code 116.617
15 ("Motion for Reconsideration"). Respondent Evers requests that the Commission set aside the
16 results of the June 10, 2026, administrative hearing and dismiss the underlying administrative
17 action, or in the alternative, grant a rehearing to address the mandatory jurisdictional bar
18 imposed by Nevada Administrative Code (NAC) section 116.630.

19 This Motion for Reconsideration is based on the fact that this matter, Case No.: 2025-
20 526, and the civil action pending before the United States District Court, District of Nevada case
21 initiated against Respondent Evers by Daniel Petersen are parallel and concurrent proceedings
22 that arise from the same operative facts, statements, parties, and meeting proceedings
23 resulting in a mandatory jurisdictional bar. Moreover, subject matter jurisdiction cannot be
24 waived by a party and may be raised at any stage of the proceedings.

26 **II. STATEMENT OF FACTS**

27 1. A civil action for slander was filed on February 4, 2026, by homeowner Daniel
28 Petersen ("Petersen") against former Board member and President Kelly Mills Evers ("Evers") in

1 the United States District Court, District of Nevada, Case No.: 3:26-cv-00094-ART-CSD ("USDC
2 Case"). (Respondent Evers NRED (CIC) Hearing Exhibit 44: Civil Complaint.) The Civil
3 Complaint alleges that on April 18, 2025, at a board meeting open to homeowners of the Coeur
4 du Lac Condominium Homeowners Associations ("CDL"), Evers defamed Petersen by conveying
5 "the false and defamatory" statement that Petersen "committed insurance fraud" by knowingly
6 making applications for insurance on behalf of CDL based on omitted material facts. (See,
7 Respondent Evers NRED Hearing (CIC) Exhibit 44, at para.35 and **EXHIBIT A.**)

8 2. Petersen also filed an Intervention Affidavit with Nevada Real estate Division
9 (Division) about the statements made by Respondent Evers concerning insurance fraud at the
10 April 18, 2025, CDL board meeting. Thereafter, on February 6, 2026, a Complaint for
11 Disciplinary Action and Notice of Hearing was filed against Respondent Evers, before the
12 Commission ("NRED CIC Complaint"). The NRED (CIC) Complaint stated that Respondent Evers
13 "while serving as President of Coeur Du Lac Condominium Homeowners Association 'knowingly
14 made false, inflammatory and defamatory statements targeting' Petersen" at CDL's "April 18,
15 2025, board meeting, claiming that Petersen...had committed insurance fraud." (See, NRED CIC
16 Complaint, p.2, para.1. and **EXHIBIT B.**)

17 3. On February 7, 2026, Respondent Evers, while acting *in pro per*, made a Request
18 for Determination of Procedural Bar Under NAC 116.630 to the State of Nevada Real Estate
19 Division. In her request, she provided the Division with a copy of the Civil Complaint, and
20 explained that:

21 "[T]he allegations forming the basis of the Division's concerns and those forming the
22 basis of the federal civil action arise from the same operative facts, statements, parties,
23 and meeting proceedings. Accordingly, they constitute the same claim for purposes of
24 NAC 116.630. Because a civil action based on the same claims has now been initiated, I
respectfully request a formal determination that the Division is prohibited from
proceeding further in NRED Case No. 2025-526 pursuant to NAC 1126.630, and written
confirmation that the matter will not be reopened or advanced to the Commission."

25 She went on to cite the relevant portion of NAC 116.630. (**EXHIBIT C, at p.2.**)

26 4. On February 10, 2026, Compliance Investigator Robert Towle of the Division
27 responded to Respondent Evers' *In Proper Person* Request for Determination of Procedural Bar
28 Under NAC 116.630 and denied her request. He stated that "although there may be factual

1 overlap, nothing in this stops our proceeding. The Peterson's (sic) seek civil damages, while we
2 are considering whether violations of law have occurred." No notice was provided to
3 Respondent Evers that he lacked the authority and jurisdiction to make this determination, nor
4 did he advise her of the proper procedures she would need to take to have her Request for
5 Determination of Procedural Bar Under NAC 116.630 heard before the Commission or how to
6 appeal the decision. **(EXHIBIT D.)**

7 5. The NRED (CIC) matter was heard on June 10, 2026, and Prosecutor Phillip Su
8 acted on behalf of the Division. After hearing testimony, the Commission voted 4-1 that
9 "Respondent Evers violated NRS 116.3103." The jurisdictional issue was not raised at the
10 hearing because the initial staff-level interaction left the procedural path for appealing the
11 Towle email unclear. Consequently, the Commission proceeded to adjudicate the matter without
12 first resolving the threshold issue of its own subject matter jurisdiction.

13 6. On July 8, 2026, the Findings of Fact, Conclusions of Law and Order (Order)
14 against Evers was submitted by Prosecutor Phil Su of the Division and filed. However, the Order
15 did not reflect the findings made by the Commission under Conclusions of Law. Instead of
16 stating that Evers violated NRS 116.3103, Prosecutor Phil Su wrote the Order to read - contrary
17 to the Commissioner's decision - that:

18 Responded Evers willfully and knowingly violated NRS 116.3103 by failing to exercise
19 ordinary and reasonable care when she acted outside the scope of her authority granted
20 in the governing documents when she disclosed confidential details relating to another
unit owner during the April 18th 2025, board meeting.

21 **(EXHIBIT E.)**

22 7. On July 11, 2026, Respondent Evers wrote Commission Coordinator, Maria Gallo,
23 stating that the Order prepared by Prosecutor Phil Su was incorrect and provided time citations
24 to YouTube video of the hearing the Commission's decision. Evers asked that her request be
25 sent to the Commissioners. Ms. Gallo refused to forward the request to the Commissioners and
26 stated that Prosecutor Phil Su would draft an amended order. No such Amended Order has been
27 received as of the date of this Motion. **(EXHIBIT F.)**

1 **III. ARGUMENT**

2 **A. The Commission Lacked Subject Matter Jurisdiction Pursuant to NAC**
3 **116.630**

4 NAC 116.630 establishes a mandatory jurisdictional bar, expressly prohibiting the
5 Division and the Commission from hearing matters that are subject to pending civil actions. It
6 states that:

7 A party may not request a hearing before the Commission or a hearing panel, or file a
8 motion for rehearing before the Commission or for reconsideration of the final decision
9 of the Commission, *if a civil action based upon the same claim has already been initiated*
10 *in any court in this State* or has already been submitted to mediation or arbitration
11 pursuant to the provisions of NRS 38.300 to 38.360, inclusive. Emphasis added.

12 The allegations in both the USDC Case and the NRED Complaint center on statements
13 made by Evers at a homeowners association board meeting on April 18, 2026, in response to a
14 Petition to Remove Evers from the board filed by Petersen. Evers comments addressed a false
15 insurance quote Petersen supplied to the board of the homeowners association for approval that
16 failed to disclose to the insurer the material fact that the property had aluminum wiring in the
17 subpanels. (See, "Defamatory Statement" in USDC Complaint, para. 33-34, and Factual
18 Allegations in NRED Complaint, p.2:6-11.) The allegations forming the basis of the Division's
19 Complaint and those forming the basis of the USDC Case arise from the same operative facts,
20 statements, parties, and meeting proceedings.

21 The administrative proceeding is a prohibited dual-track of the same transaction already
22 before the USDC. Under Nevada law, the standard for determining whether claims are the
23 same—is analyzed under the "transaction or occurrence" test of Nevada Rule of Civil Procedure
24 13—is whether "the pertinent facts of the different claims are so logically related that issues of
25 judicial economy and fairness mandate that all issues be tried in one suit." *Cutts v. Richland*
26 *Holdings, Inc.*, 953 F.3d 554, 558 (9th Cir. 2019). The Nevada Supreme Court has historically
27 indicated that the term "transaction" should be interpreted broadly. *Id.* (citing *MacDonald v.*
28 *Krause*, 362 P.2d 724, 729 (Nev. 1961)).

1 NRED will argue that the administrative "issues" before the Commission are distinct from
2 the civil "claims" pending in the USDC. This semantic distinction fails under the logical
3 relationship test. An administrative "issue" or "point of law or fact" under NAC 116.617 is
4 merely a regulatory label applied to a subset of the exact same "pertinent facts" that form the
5 basis of the USDC civil action. *See Cutts*, 953 F.3d at 558. NRED cannot artificially sever the
6 regulatory violations from the civil claims when both require the adjudication of the same
7 factual truths.

8 Petersen has used the NRED administrative process to pursue issues that substantially
9 overlap with the pending federal action, creating the real risk that the administrative
10 proceeding will be used to obtain evidence, findings, or leverage outside the discovery and
11 procedural safeguards governing the USDC case. Permitting such use undermines the fairness
12 and integrity of both proceedings. Judicial economy and fairness mandate that these logically
13 related facts be tried in a single suit. *Cutts*, 953 F.3d at 558.

14 Because a parallel proceeding had been initiated—as explicitly identified in Respondent
15 Evers' February 7, 2026, request—the Commission and the Division were stripped of their
16 statutory authority to proceed. By proceeding in the face of a clear regulatory prohibition, the
17 Commission acted outside its delegated authority, rendering the outcome of the June 10, 2026,
18 hearing void or voidable as a matter of law.

19
20 **B. Subject Matter Jurisdiction Cannot Be Waived and Procedural Fairness
Excuses Any Delay**

21 It is a bedrock principle of law that subject matter jurisdiction cannot be waived by a
22 party and may be raised at any stage of the proceedings. *See Landreth v. Malik*, 127 Nev. 175,
23 179, 251 P.3d 163, 166 (2011) (holding that subject matter jurisdiction is a requirement that
24 cannot be waived and may be raised at any time); *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d
25 221, 224 (1990) (establishing that a lack of subject matter jurisdiction can be raised at any
26 time, even after a final decision). The NAC 116.630 bar is fundamentally jurisdictional, as it
27 dictates the boundaries of the Commission's authority to hear a dispute. Because subject
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1 matter jurisdiction goes to the very power of the tribunal to act, administrative bodies possess
2 the inherent authority to correct their own jurisdictional errors through post-hearing
3 mechanisms like reconsideration or rehearing.

4 Furthermore, procedural fairness dictates that Respondent's failure to raise the issue at
5 the June 10 hearing must be excused. While Respondent was represented by counsel at the
6 hearing, Respondent was proceeding *In Proper Person* during the critical initial stages of the
7 administrative process. The Division's investigator failed to provide notice of the proper
8 procedural path for jurisdictional determinations, specifically the right to appeal the February 10
9 administrative determination to the Commission. An administrative dismissal or denial by the
10 Division is generally subject to review by the Commission. The Division's earlier failure to
11 provide procedural guidance to the then – *In Proper Person* Respondent Evers – regarding the
12 right to appeal the Towle email created a procedural defect that persisted through the hearing,
13 depriving Respondent Evers of a meaningful opportunity to be heard on a dispositive
14 jurisdictional issue.
15

16 **C. The Division's February 10 Administrative Denial Constituted an Error of**
17 **Law that Tainted the Adjudicatory Process**

18 The February 10, 2026, email from Towle to Respondent Evers was an intermediate
19 administrative act, not a final decision under NRS 233B.130, which requires a written order
20 containing findings of fact and conclusions of law. This threshold error by the Division—failing to
21 properly apply the NAC 116.630 bar—tainted the entire adjudicatory process. Because the
22 Division improperly retained the matter instead of dismissing it, the Commission was led to
23 proceed without confirming its own jurisdiction. The Commission must now correct this error of
24 law. By granting this Motion for Reconsideration, the Commission can properly evaluate the
25 jurisdictional bar, cure the procedural defect, and prevent the issuance of a jurisdictionally
26 defective final written order.
27
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1 **D. Grounds for Rehearing Based on Newly Available Material Evidence**
2 **Under NAC 116.617(9)(a)**

3 Pursuant to NAC 116.617(9)(a), a party may petition for a rehearing based on "newly
4 discovered or available evidence of a material nature..." The existence of the parallel civil action
5 constitutes newly available material evidence within the meaning of this regulation. Although
6 the underlying facts of the parallel proceeding existed prior to the hearing, the evidence of this
7 jurisdictional bar is "newly available" in the context of a Commission hearing because the
8 procedural necessity of presenting this specific jurisdictional challenge to the Commission to
9 preserve it was obscured by the Division.

10 When Respondent Evers initially raised the jurisdictional bar on February 7, 2026,
11 Respondent Evers was proceeding *In Proper Person*. The Division summarily denied the request
12 via the February 10 Towle email without providing any notice of the proper procedural remedies
13 or the requirement to appeal this determination to the Commission. This failure to provide
14 procedural guidance to a *In Proper Person* party satisfies the "reasonable diligence" standard
15 under NAC 116.617. Respondent Evers could not with reasonable diligence have discovered and
16 produced this evidence at the original hearing, as Respondent Evers could not have known that
17 the Division's informal email required a formal appeal to the Commission to preserve the
18 jurisdictional challenge.

19 A reasonable self-represented litigant could readily conclude that the Nevada Real Estate
20 Division and the Nevada Real Estate Commission function as a single governmental entity. The
21 Commission conducts its meetings at NRED's offices, receives its filings through NRED, relies on
22 an NRED employee to serve as Commission Coordinator, and adjudicates matters investigated
23 and presented by NRED personnel. When an NRED Compliance Investigator formally denied
24 Evers' jurisdictional motion, nothing in the agency's communications indicated that the ruling
25 was merely preliminary or that Evers was required to renew the motion before the Commission
26 to preserve the issue. To a layperson, the denial appeared to be the official position of the
27 agency itself. Any procedural distinction between the investigator's authority and the
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1 Commission's authority was neither apparent nor explained, making the internal allocation of
2 decision-making authority opaque.

3 Therefore, the evidence of the parallel proceeding qualifies as newly available material
4 evidence, warranting reconsideration or a rehearing under NAC 116.617(9)(a).

5 **E. Respondent's Motion for Rehearing or Reconsideration Under NAC**
6 **116.617 is Timely.**

7 NAC 116.617 authorizes and addresses post hearing motions for rehearing and/or
8 reconsideration for consideration by the Commission and related deadlines. It states at NAC
9 116.617(2) that:

10 A motion for rehearing or reconsideration must be filed with the Commission, and a copy
11 of the motion provided to all parties, not later than 15 days after the date on which the
12 final decision of the Commission is served.

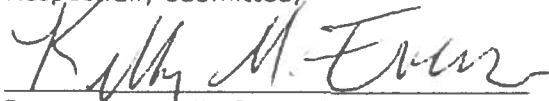
13 This Motion is being filed and served on or before July 21, 2026, within the 15-day
14 deadline, based on the filing date of the factually incorrect Order on July 8, 2026. Therefore,
15 the Motion is timely filed.

16 **IV. CONCLUSION**

17 For the foregoing reasons, Respondent Evers respectfully requests that the Commission
18 vacate the decision of the June 10, 2026, hearing and dismiss the Complaint with prejudice
19 pursuant to the jurisdictional bar of NAC 116.630. In the alternative, Respondent Evers
20 requests a rehearing to fully address the Commission's lack of subject matter jurisdiction.

21 DATED: July 20, 2026

22 Respectfully submitted,

23 
24 Respondent Kelly Evers, In Proper Person