

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Feb 04 2011 04:11 p.m.  
Tracie K. Lindeman

FERRILL JOSEPH VOLPICELLI ,  
Appellant,

vs.

SCOTT EDWARDS  
Respondent.

Sup. Ct. Case No. 56747  
Case No. CV09-03442  
Dept. 6

CERTIFIED COPIES

VOLUME 2 OF 3

RECORD ON APPEAL

CV09-03442\_DOCS\_VOL2

FERRILL J. VOLPICELLI #79565

Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

SCOTT EDWARDS

David C. Creekman, Esq.  
Washoe County District Attorney's Office  
P.O. Box 30083  
Reno, NV 89520-3083

APPELLANT

RESPONDENT

CV09-03442  
DC-9900012964-006  
FERRILL J VOLPICELLI VS SCOT 2 Pages  
District Court 11/25/2009 09:53 AM  
Washoe County  
NVC

PIEP

FERRILL J VOLPICELLI # 79525

Lovelock Correctional Center  
1200 Prison Road  
Lovelock Nevada 89419

PERNIFF In Pro Se

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HOWARD W. CONYERS

BY [Signature]  
DEPUTY

DISTRICT COURT

~~WASHOE~~  
~~CLARK COUNTY, NEVADA~~

\*\*\*\*\*

FERRILL J VOLPICELLI, )

Plaintiff, )

-vs-

SCOT EDWARDS, ESA, )

Defendant. )

Case No. CV09 03442

Dept. No. 6

APPLICATION TO PROCEED IN FORMA PAUPERIS

COMES NOW PERNIFF, FERRILL J VOLPICELLI, in pro se,  
and moves this Court for an order granting him leave to proceed in the above-  
entitled action without paying the costs and/or security of proceeding herein.

This motion is made and based upon NRS 12.015 and the attached affidavit  
and certificate of inmate's institutional account.

Dated this 5<sup>th</sup> day of November, 2009.

Respectfully submitted,

FERRILL VOLPICELLI # 79525

Lovelock Correctional Center  
1200 Prison Road  
Lovelock Nevada 89419

PERNIFF In Pro Se

1 SECOND JUDICIAL DISTRICT COURT  
2 COUNTY OF WASHOE, STATE OF NEVADA

3 AFFIRMATION  
4 Pursuant to NRS 239B.030

5 The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

6 Contract

7 \_\_\_\_\_  
8 (Title of Document)

9 filed in case number: \_\_\_\_\_

10  Document does not contain the social security number of any person

11 -OR-

12  Document contains the social security number of a person as required by:

13  A specific state or federal law, to wit:

14 \_\_\_\_\_  
15 (State specific state or federal law)

16 -or-

17  For the administration of a public program

18 -or-

19  For an application for a federal or state grant

20 -or-

21  Confidential Family Court Information Sheet  
22 (NRS 125.130, NRS 125.230 and NRS 125B.055)

23  
24 Date: 11/18/09

25   
(Signature)

26 FERRIS BARCELLO  
(Print Name)

27 Pro Se  
(Attorney for)

CV09-03442  
 DC-9900012964-007  
 FERRILL J VOLPICELLI VS SCOT 4 Pages  
 District Court 11/25/2009 09:53 AM  
 Washoe County 1030  
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~~AFFID~~  
FERRILL J VOLPICELLI # 75325

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HOWARD W. CONYERS  
 BY [Signature]  
 DEPUTY

Lovelock Correctional Center  
 1200 Prison Road  
 Lovelock Nevada 89419

PERSHING In Pro Se

DISTRICT COURT  
~~WASHOE~~  
 CLARK COUNTY, NEVADA

\* \* \* \* \*

FERRILL J VOLPICELLI, )  
PERSHING, )  
 -vs- )  
SCOT EDWARDS, ESQ, )  
D. B. EDWARDS, )

Case No. CV09 03442  
 Dept. No. 6

**AFFIDAVIT IN SUPPORT OF  
 APPLICATION TO PROCEED IN FORMA PAUPERIS**

STATE OF NEVADA )  
 ) ss:  
COUNTY OF PERSHING )

COMES NOW FERRILL J VOLPICELLI, who being first duly sworn and on my own oath, do hereby depose and state the following under the penalty of perjury in support of my foregoing motion:

(1) Because of my poverty I am unable to pay the costs of the proceedings in the foregoing judicial action or to give security therefor; I am entitled to relief. This application is made in good faith.

(2) I  do  do not request an attorney to be appointed to me.

(3) I further swear that the responses which I make to the questions and instructions below are true and correct to the best of my knowledge:

(a) I  am  am not presently employed. I currently earn salary or wages per month in the following amount and the name and address of my employer

1 is as follows, OR if I am not presently employed, the date of my last  
2 employment and the amount of salary or wages I earned per month were as  
3 follows: 2001 1200/m

4  
5 (b) I have NOT received any money from any of the following sources  
6 within the past 12 months: business, profession, form of self-employment, rent  
7 payments, interest or dividends, pensions, annuities, life insurance payments,  
8 gifts or inheritances. Money, if any, placed on my prison accounts from  
9 outside sources such as family or friends, is in the amount as indicated on the  
10 attached Certificate of Inmate's Institutional Account, which likewise  
11 reflects the amount of money on my prison account.

12 (c) I do NOT own any real estate, stocks, bonds, notes, automobiles, or  
13 other valuable property, and nor do I have money in a checking account.

14 (d) I do do NOT have persons dependent upon me for support. The  
15 persons I support, if any, are as follows, with my relationship to those  
16 persons and the amount of my contribution towards their support being as  
17 follows: 9000 IN BACK CHRG Support received in Prison

18 (4) I do swear under the penalty of perjury that the above facts are true  
19 and correct to the best of my personal knowledge, and are rendered without  
20 notary pursuant to the provisions of NRS 208.165, as I am incarcerated.

21 Dated this 5<sup>th</sup> day of November, 2009.

22  
23 [Signature] #7234  
24 Lovelock Correctional Center  
25 1200 Prison Road  
26 Lovelock Nevada 89419  
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LCC

Case No. \_\_\_\_\_

Dept. No. \_\_\_\_\_

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

FERRILL J. VOLPICELLI # 79565  
PLAINTIFF

vs.

SCOTT EDWARDS, ESQ.  
DEFENDANT

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CERTIFICATE OF  
INMATE'S INSTITUTIONAL ACCOUNT

I, the undersigned, hereby certify that F. Volpicelli, # 79565,  
above-named, has a balance of \$ 210.71 on account to  
his credit in the prisoners' personal property fund for his use at Lovelock  
Correctional Center, in the County of Pershing, State of Nevada, where he is  
presently confined.

I further certify that said F. Volpicelli owes departmental charges  
in the amount of \$ 0 and that the solitary security to his credit is  
a savings account established pursuant to NRS 209.247(5) with a balance of  
\$ 200.00 which is inaccessible to him.

DATED THIS 15th day of October, 2009.

[Signature]  
Accounting Technician  
-Inmate Services Division  
Nevada Department of Corrections

Submitted by: [Signature], # 79525, on 10/12/09

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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Affirmation / DFP Application

(Title of Document)

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filed in case number: \_\_\_\_\_

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 4/18/09

[Signature]  
(Signature)

FERRIS W. JONES  
(Print Name)

Pro Se  
(Attorney for)

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7 IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE

9 FERRILL T. VOLPICELLI,

Case No. CV09-03442

10 Plaintiff,

Department No.: 6

11 vs.

12 SCOTT EDWARDS, ESQ.,

13 Defendant.  
14 \_\_\_\_\_/

15 **ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS**

16 Having read the Plaintiff, FERRILL T. VOLPICELLI's Motion to Proceed in Forma  
17 Pauperis," this Court finds that pursuant to *NRS 12.015*, the Plaintiff's affidavit is sufficient to  
18 grant *forma pauperis* status at this time.<sup>1</sup>

19 In addition, pursuant to Nevada Supreme Court's Order ADKT No. 411 filed January 4,  
20 2008, a person will be deemed 'indigent' who is unable, without substantial hardship to himself  
21 or his dependents, to obtain competent qualified legal counsel on his or her own.<sup>2</sup> Under this  
22 standard, a presumption of substantial hardship attaches to those persons currently serving a  
23

24  
25 <sup>1</sup> *NRS 12.015(1)* Any person who desires to prosecute or defend a civil action may file an  
26 affidavit with the court setting forth with particular facts concerning his income, property and  
other resources which establish that he is unable to prosecute or defend the action because he is  
unable to pay the costs of so doing.

27 <sup>2</sup> While the context of ADKT No. 411 is that of appointment of counsel for indigent  
28 defendants, the same rationale applies to actions involving indigent persons under *NRS 12.015* .



1 sentence in a correctional institution or housed in a mental health facility. Mr. Volpicelli is  
2 serving a sentence in a correctional institution.

3 Based on the foregoing and good cause appearing,

4 IT IS HEREBY ORDERED, pursuant to *NRS 12.015*, FERRILL T. VOLPICELLI's  
5 Motion to Proceed in Forma Pauperis is GRANTED.

6 IT IS HEREBY FURTHER ORDERED that the Court allow said FERRILL T.  
7 VOLPICELLI, to prosecute such action without costs and file or issue any necessary writ,  
8 process, pleading or paper without charge, with the exception of jury fees.

9 IT IS HEREBY FURTHER ORDERED that the Sheriff or any other appropriate officer  
10 within the state make personal service of any writ, process, pleading or paper without charge for  
11 FERRILL T. VOLPICELLI.

12 DATED this 10 day of December, 2009.

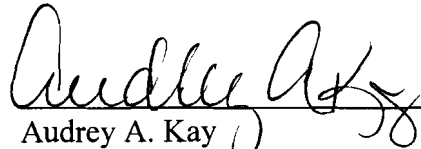
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15 CHIEF DISTRICT JUDGE

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of JUDGE CONNIE STEINHEIMER; that on the 11<sup>th</sup> day of December, 2009, I certify that I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Ferrill T. Volpicelli, #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

  
\_\_\_\_\_  
Audrey A. Kay  
Judicial Assistant

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**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CV09-03442  
**Judge:** BRENT ADAMS  
**Official File Stamp:** 12-11-2009:11:13:07  
**Clerk Accepted:** 12-11-2009:11:14:01  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** FERRILL J VOLPICELLI VS SCOTT EDWARDS,  
ESQ. (D6)  
**Document(s) Submitted:** Ord Grant in Forma Pauperis  
**Filed By:** Audrey Kay

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

PROPER PERSON  
SCOTT EDWARDS, ESQ

CV09-03442  
DC-9900013433-038  
FERRILL J. VOLPICELLI VS SCOT 17 Pages  
District Court 12/16/2009 11 41 AM  
Washoe County 1425  
NDJELGADP

1 Case No. CV09 03442  
2 Dept. No. 6

FILED

2009 DEC 15 AM 11:41

HOWARD W. CONYERS  
BY [Signature]  
DEPUTY

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 FERRILL J. VOLPICELLI )  
10 PLAINTIFF )  
11 -vs- )  
12 SCOTT EDWARDS, ESQ. )  
13 DEFENDANT )

COMPLAINT

15 NOW COMES FERRILL J. VOLPICELLI, HEREINAFTER REFERRED  
16 TO AS "PLAINTIFF" FOR CASE OF ACTIONS AGAINST DEFENDANT  
17 SCOTT EDWARDS, ESQ., HEREINAFTER REFERRED TO AS  
18 "DEFENDANT" STATES AS FOLLOWS:

20 JURISDICTION

- 22 1) PLAINTIFF, FERRILL J. VOLPICELLI ("PLAINTIFF") IS AN  
23 INMATE WITHIN THE NEVADA DEPARTMENT OF CORRECTIONS  
24 RESIDING AT LOWELOCK CORRECTIONAL CENTER, LOWELOCK  
25 NEVADA, AT ALL TIMES PRESENT HEREIN.
- 26 2) DEFENDANT ("DEFENDANT"), SCOTT EDWARDS, ESQ. IS AN  
27 ATTORNEY WHO DID BUSINESS WITHIN RENO, NEVADA AT  
28 ALL TIMES HEREIN, WHEREIN ALL CASES OF ACTION BELONG

RECEIVED

NOV 25 2009

HOWARD W. CONYERS, CLERK  
By Y. Lloyd

1 AROSE.

2 3) DEFENDANT IS SUED IN HIS OFFICIAL CAPACITY IN  
3 RELATION TO THE FIRST CAUSE OF ACTION (MALPRACTICE)  
4 BELOW, AND IS SUED IN HIS INDIVIDUAL CAPACITY TO THE  
5 SECOND CAUSE OF ACTION (VARIOUS TORTS) BELOW. TO  
6 THE EXTENT THAT ANY ACTS ALLEGED WITHIN THE FIRST  
7 CAUSE OF ACTION FELL OUTSIDE DEFENDANT'S DUTIES AS A  
8 COURT-APPOINTED ATTORNEY, HE IS SUED IN RELATION  
9 THERETO IN HIS INDIVIDUAL CAPACITY.

### 10 STATEMENT OF RELEVANT FACTS

11  
12 1) ALL MATTERS HEREIN RELATE TO PLAINTIFF'S CURRENT  
13 INCARCERATION AS A RESULT OF JUDGMENTS OF CONVICTION  
14 IN WASHOE COUNTY CRIMINAL CASES CR98-2160 ("2160"),  
15 CR02-0147 ("0147") AND CR03-1263 ("1263"), FOR  
16 WHICH HE FILED THREE (3) POST-CONVICTION PETITIONS  
17 FOR WRIT OF HABEAS CORPUS ("PETITION" OR "PETITIONS")  
18 IN RELATION THERETO IN OR ABOUT LATE 2004 ~~THROUGH~~ ~~EARLY~~  
19 2005.

20 2) DEFENDANT WAS APPOINTED BY THE COURT TO REPRESENT  
21 PLAINTIFF IN HIS PETITIONS IN AND FOR THE 2160 AND 0147  
22 CASES IN OR AROUND APRIL 2005.

23 3) PLAINTIFF THEREAFTER CONTACTED DEFENDANT IN WRITING  
24 IN MAY AND JUNE OF 2005, AND DEFENDANT VISITED  
25 PLAINTIFF AT THE LOWELUCK CORRECTIONAL CENTER IN  
26 OR ABOUT AUGUST 2005 TO DISCUSS THE GROUNDS WHICH  
27 HAD BEEN PRESENTED BY PLAINTIFF IN THE PETITIONS  
28

1 AND DEFENDANT'S NECESSITY TO SUPPLEMENT THOSE  
2 GROUNDS AND PRESENT ARGUMENTS FOR THE AGGREGATE  
3 OF GROUNDS THEREIN. NOT ONLY DID PLAINTIFF INFORM  
4 DEFENDANT OF WHICH GROUNDS HE WANTED TO BE  
5 PRESENTED, BUT HE ADDITIONALLY INSTRUCTED DEFENDANT  
6 TO APPEAL ANY ADVERSE DECISIONS TO THE PETITORS.

7 7) OVER THE NEXT 18 MONTHS PLAINTIFF INQUIRED OF  
8 DEFENDANT, BY TELEPHONE AND WRITTEN LETTERS, AS TO  
9 THE STATUS OF HIS REPRESENTATION IN THE PETITIONS.

10 DEFENDANT FAILED TO RESPOND TO EACH AND EVERY INQUIRY.

11 8) AS A RESULT OF DEFENDANT'S FAILURES TO COMMUNICATE  
12 WITH PLAINTIFF, PLAINTIFF FILED A COMPLAINT AGAINST  
13 DEFENDANT WITH THE NEVADA BAR IN OR ABOUT JANUARY  
14 2007, ALLEGING THAT DEFENDANT HAD BREACHED HIS  
15 DUTIES OF DILIGENCE AND COMMUNICATION IN VIOLATION  
16 OF SCR 153 AND SCR 154, RESPECTIVELY.

17 9) SOON AFTER THE FILING OF THE BAR COMPLAINT BY  
18 PLAINTIFF, DEFENDANT INSTRUCTED PLAINTIFF IN A LETTER  
19 DATED MARCH 14, 2007, TO "IMMEDIATELY PROVIDE ME  
20 WITH ANY FACTUAL PROOF, LEGAL AUTHORITY, OR ARGUMENT  
21 THAT WOULD PERSUADE THE COURT THAT DISMISSAL WOULD  
22 NOT BE APPROPRIATE." DEFENDANT THIS PLACED THE  
23 RESPONSIBILITY OF LITIGATING THE PETITIONS UPON THE  
24 SHOULDERS OF PLAINTIFF, HIS CLIENT, AND BY DOING SO  
25 ABANDONED ANY MEANINGFUL OR ADEQUATE REPRESENTATION  
26 OF PLAINTIFF'S PETITIONS AGAINST DISMISSAL.

27 10) PLAINTIFF PROMPTLY INFORMED DEFENDANT THAT THE  
28 0147 PETITION CONTAINED OVER EIGHT (8) GROUNDS

1 SUPPORTED BY ALMOST 100 PAGES OF POINTS AND  
2 AUTHORITIES AND ADDITIONAL EXHIBITS. PLAINTIFF  
3 INFORMED DEFENDANT THAT ALL OF THESE GROUNDS AND  
4 POINTS WERE TO BE PRESENTED TO THE COURT  
5 AND ARGUED BY DEFENDANT.

6 1) ON MARCH 14, 2007, DEFENDANT ALSO MAILED A  
7 LETTER TO A FELLOW INMATE OF PLAINTIFFS AT  
8 LOVELL CORRECTIONAL CENTER, MAGDALENO GARCIA  
9 IN WHICH DEFENDANT STATED: "YOU MAY WANT TO  
10 CONSULT WITH YOUR 'FRIEND' VOLPICELLI ABOUT HOW  
11 MUST BE ACHIEVED BY COMPLAINING TO THE STATE BAR."

12 2) SHORTLY THEREAFTER, DEFENDANT GAVE NOTICE TO THE  
13 COURT THAT NO ADDITIONAL GROUNDS OR ARGUMENTS  
14 WOULD BE PRESENTED IN THE 2160 PETITION, AND  
15 SEPARATELY FILED IN THE COURT A MERE ONE-PAGE  
16 SUPPLEMENT TO THE 0147 PETITION WHICH RESULTED  
17 IN A DIRECT ABANDONMENT OF THE MATURITY OF GROUNDS  
18 FOR RELIEF WHICH DEFENDANT AND PLAINTIFF HAD  
19 PREVIOUSLY AGREED EXISTED FOR PRESENTATION TO THE COURT.  
20 NOT ONLY DID DEFENDANT FAIL TO ARGUE ANY OF  
21 PLAINTIFF'S AVAILABLE GROUNDS, BUT DEFENDANT FAILED TO  
22 EVEN PRESENT THE MOST MERITORIOUS ONES WHICH EXISTED.

23 3) DEFENDANT SUBSEQUENTLY BILLED THE COURT IN EXCESS  
24 OF \$6,000 FOR THE CLAIMED SERVICES RENDERED FOR PLAINTIFF.

25 4) SOME SIX (6) MONTHS PASSED WITHOUT PLAINTIFF  
26 HEARING ANYTHING FROM DEFENDANT ABOUT HIS PETITIONS.  
27 AS SUCH, PLAINTIFF INQUIRED OF THE CLERK OF THE  
28 COURT AS TO THE STATUS OF HIS PETITIONS, THE

1 CLERK OF THE COURT IN TURN INFORMED PLAINTIFF  
2 THAT THE COURT HAD ORDERED DISMISSED BOTH OF  
3 THE PETITIONS IN OR ABOUT JUNE OF 2007,

4 (v) IN RESPONSE TO THE CLERK'S NEWS, PLAINTIFF  
5 ATTEMPTED TELEPHONE CONTACT WITH DEFENDANT, TO NO  
6 AVAIL. PLAINTIFF ALSO WROTE LETTERS TO DEFENDANT,  
7 INQUIRING AS TO DEFENDANT'S FAILURE TO HAVE NOTIFIED  
8 PLAINTIFF OF THE COURT'S SAID RULINGS. SAID LETTERS  
9 ALSO ADDRESSED DEFENDANT'S CONDUCT IN NOT HAVING  
10 COMMUNICATED WITH PLAINTIFF OVER THE COURSE OF TIME  
11 AND FOR NOT HAVING FILED NOTICES OF APPEAL FOLLOWING  
12 THE PETITIONS' DISMISSALS, AS PLAINTIFF HAD PREVIOUSLY  
13 INSTRUCTED DEFENDANT TO DO,

14 (w) INSTEAD OF RESPONDING TO ANY OF PLAINTIFF'S  
15 TELEPHONE CALL ATTEMPTS OR LETTERS SET FORTH IN IS ABOVE,  
16 DEFENDANT IMMEDIATELY FILED A MOTION TO WITHDRAW AS  
17 COUNSEL IN BOTH PETITION PROCEEDINGS ON OR ABOUT  
18 NOVEMBER 7, 2007.

19 (x) PLAINTIFF WAS REQUIRED TO FILE PROPER PERSON NOTICES  
20 OF APPEAL FROM THE DENIAL ORDERS OF HIS PETITIONS,  
21 INASMUCH AS DEFENDANT HAD FAILED TO DO SO. THE NEVADA  
22 SUPREME COURT DISMISSED THE APPEALS DUE TO THE LATE  
23 FILING NOTICES OF APPEAL, INASMUCH AS DEFENDANT  
24 HAD FAILED TO TIMELY DO SO.

25 (y) IN JANUARY OF 2008 THE NEVADA SUPREME COURT  
26 GRANTED PLAINTIFF'S PETITION FOR RETEARING IN  
27 RELATION TO CASE 0147, AND REINSTATED THE APPEAL  
28 DUE TO THE TECHNICALITY THAT THE CLERK OF THE COURT



1 HAD FAILED ALSO TO SERVE PLAINTIFF A COPY OF THE  
2 DISTRICT COURT'S ORDER DISMISSING THE PETITION. THE  
3 NEVADA SUPREME COURT, HOWEVER, ORDERED THE  
4 DEFENDANT WAS TO CONTINUE REPRESENTING PLAINTIFF  
5 THROUGHOUT THE APPEAL.

6 19) IN THE MEANTIME, UNBEKNOWNST TO PLAINTIFF,  
7 THE DEFENDANT'S ABOVE SAID LETTER TO INMATE GALLEGOS  
8 HAD CIRCULATED THROUGHOUT THE LEVELOCK CORRECTIONAL  
9 CENTER TO PLAINTIFF'S DETRIMENT, TO-WIT: INMATE  
10 GALLEGOS WAS A KNOWN CHILD MOLESTER, DEFENDANT'S  
11 LABELING PLAINTIFF AS GALLEGOS' "FRIEND" WITHIN THE  
12 LETTER CAUSED THE INMATE POPULATION WHO VIEWED  
13 THE LETTER TO IDENTIFY PLAINTIFF AS A CHILD MOLESTER  
14 BY ASSOCIATION AS GALLEGOS' "FRIEND". AS SUCH,  
15 DEFENDANT'S LETTER WHICH BORE PLAINTIFF'S NAME  
16 AND ASSOCIATION AS GALLEGOS' "FRIEND" DIRECTLY  
17 RESULTED IN PLAINTIFF BEING PLACED IN GRAVE DANGER  
18 FROM A GREAT NUMBER OF PRISONERS WHO DISLOVE CHILD  
19 MOLESTERS AND INTEND TO BRING HARM TO SAME, AND  
20 RESULTED IN VERBAL CONFRONTATIONS AND OTHER INCIDENTS  
21 BETWEEN PLAINTIFF AND OTHER SUCH INMATES, ALL TO THE  
22 PHYSICAL, MENTAL AND EMOTIONAL DETRIMENT AND HARM  
23 OF THE PLAINTIFF.

24 20) PLAINTIFF CONTINUED TO WRITE DEFENDANT LETTERS  
25 INSTRUCTING DEFENDANT TO PRESENT WITHIN HIS BRIEFING  
26 TO THE NEVADA SUPREME COURT ALL GROUNDS FOR  
27 REVIEW AS BASED IN NEVADA STATE LAW AND FEDERAL  
28 CONSTITUTIONAL LAW, SO AS TO OBTAIN A REVIEW OF

1 SUED BY THE NEVADA SUPREME COURT AND THE  
2 FEDERAL COURTS THEREAFTER.

3 21) DEFENDANT ONCE AGAIN IGNORED PLAINTIFF'S INSTRUCTIONS  
4 AND PRESENTED MINIMAL ARGUMENTS TO THE NEVADA SUPREME  
5 COURT DEVOID OF A THOROUGH REVIEW OF ALL GROUNDS  
6 WHICH ACTUALLY HAD BEEN PRESENTED WITHIN THE PETITIONS  
7 IN THE DISTRICT COURT, AS WELL AS DEVOID OF A REVIEW  
8 OF THE ADDITIONAL CLAIMS AND ARGUMENTS WHICH  
9 PLAINTIFF AND DEFENDANT HAD PREVIOUSLY AGREED SHOULD  
10 BE SUPPLEMENTED THEREIN.

11 22) FOLLOWING DISPOSITION OF THE APPEALS FROM THE  
12 NEVADA SUPREME COURT, PLAINTIFF PRESENTED ALL  
13 CONSTITUTIONAL ISSUES WHICH DEFENDANT FAILED TO PRESENT  
14 EITHER IN THE STATE DISTRICT AND SUPREME COURTS WITHIN  
15 A FEDERAL PETITION FOR WRIT OF HABEAS CORPUS. IN  
16 JUNE 2009, HOWEVER, THE FEDERAL DISTRICT COURT  
17 FOUND ITSELF TO LACK JURISDICTION OVER THE PETITION  
18 SINCE DEFENDANT HAD NOT EXHAUSTED THE CLAIMS  
19 THEREIN IN THE STATE COURTS.

## 20 FIRST CAUSE OF ACTION, LEGAL MALPRACTICE

21  
22 23) PLAINTIFF INCORPORATES AS IF FULLY SET FORTH HEREIN  
23 THE CONTENTS OF PARAGRAPHS 4 THROUGH 22.

24 24) THE DEFENDANT COMMITTED LEGAL MALPRACTICE AGAINST  
25 PLAINTIFF VIA THE SPECIFIC ACTS AND FAILURES TO ACT  
26 SET FORTH BELOW, INASMUCH AS PLAINTIFF AND  
27 DEFENDANT WERE IN AN ATTORNEY-CLIENT RELATIONSHIP;  
28

1 DEFENDANT OWED A DUTY TO PLAINTIFF TO USE SKILL,  
2 PRUDENCE AND DILIGENCE AS LAWYERS OF ORDINARY  
3 SKILL AND CAPACITY POSSESS IN EXERCISING AND  
4 PERFORMING TASKS WHICH THEY UNDERTAKE;  
5 DEFENDANT BREACHED THAT DUTY; DEFENDANT'S BREACH  
6 WAS THE PROXIMATE CAUSE OF PLAINTIFF'S DAMAGES,  
7 AND PLAINTIFF SUFFERED ACTUAL LOSS AND DAMAGES AS  
8 A RESULT OF DEFENDANT'S ACTS OR OMISSIONS, AS  
9 OCCURRING VIA THE FOLLOWING:

- 10 d. DEFENDANT FAILED TO ADEQUATELY COMMUNICATE WITH  
11 PLAINTIFF CONCERNING THE STATUS, ISSUES, PROCEEDINGS  
12 AND SUBSTANTIVE ISSUES OF THIS PETITIONS;
- 13 e. DEFENDANT FAILED TO COMMUNICATE WITH PLAINTIFF  
14 AT ALL DURING CRUCIAL STAGES OF THE PETITION PROCEEDINGS;
- 15 f. DEFENDANT PLACED THE BURDEN OF RESEARCHING, DEVELOPING  
16 CLAIMS AND ARGUMENTS, AND THE PRESENTATION OF SUCH  
17 IN THE DISTRICT COURT PROCEEDINGS AND PROCEEDINGS, UPON  
18 PLAINTIFF, DESPITE THE FACT THAT DEFENDANT'S DUTIES  
19 AS PLAINTIFF'S ATTORNEY REQUIRED OF DEFENDANT TO DO SO;
- 20 g. DEFENDANT FAILED TO RESEARCH, DEVELOP CLAIMS AND  
21 ARGUMENTS, OR PRESENT ANY SUCH CLAIMS OR ARGUMENTS  
22 INTO THE PETITION PROCEEDINGS VIA SUPPLEMENTAL PLEADINGS;
- 23 h. DEFENDANT FAILED TO RESEARCH, PREPARE OR PRESENT  
24 ANY ARGUMENTS IN SUPPORT OR IN REACTION TO THE  
25 CLAIMS WHICH PLAINTIFF HAD ALREADY PRESENTED IN  
26 PROPER PERSON WITHIN THIS PETITIONS;
- 27 i. DEFENDANT FAILED TO COMPLY WITH PLAINTIFF'S  
28 INSTRUCTIONS TO FILE NOTICES OF APPEAL FROM ANY

- 1 ORDER DENYING THE PETITIONS;
- 2 g) DEFENDANT FAILED TO INFORM PLAINTIFF OF THE FACT
- 3 THAT THE DISTRICT COURT HAD ISSUED ORDERS DENYING
- 4 HIS PETITIONS;
- 5 h) DEFENDANT FAILED TO INFORM PLAINTIFF OF THE FACT
- 6 THAT THE DISTRICT COURT HAD ISSUED ORDERS DENYING
- 7 HIS PETITIONS, CAUSING PLAINTIFF TO HAVE TO FILE NOTICES
- 8 OF APPEAL IN PROPER PERSON;
- 9 i) DEFENDANT CAUSED PLAINTIFF TO HAVE TO PREPARE AND SUBMIT
- 10 HIS OWN PETITION FOR REHEARING IN THE NEVADA SUPREME
- 11 COURT SO AS TO OBTAIN A REINSTITUTION OF THE APPEAL WHICH
- 12 HAD BEEN DENIED AS UNTIMELY DUE DIRECTLY TO COUNSEL'S
- 13 FAILURE TO FILE A NOTICE OF APPEAL;
- 14 j) DEFENDANT FAILED TO PRESENT TO THE NEVADA SUPREME COURT
- 15 ANY ARGUMENTS FOR APPEAL BASED UPON THE MULTITUDE OF
- 16 ISSUES WHICH DEFENDANT LIKEWISE FAILED TO PRESENT TO THE
- 17 DISTRICT COURT;
- 18 k) DEFENDANT FAILED TO PRESENT TO THE NEVADA SUPREME
- 19 COURT ANY ARGUMENTS FOR APPEAL AS BASED UPON THE
- 20 SEVERAL GROUNDS FOR RELIEF WHICH PLAINTIFF HAD
- 21 PRESENTED WITHIN HIS PETITION;
- 22 l) DEFENDANT DISCLOSED PLAINTIFF'S NAME IN A LETTER TO
- 23 ANOTHER INMATE - ABSENT PLAINTIFF'S KNOWLEDGE OR CONSENT.
- 24 m) DEFENDANT DISCLOSED PLAINTIFF'S NAME IN A LETTER TO A
- 25 PRISONER IN A MANNER WHICH PLACED PLAINTIFF IN DANGER
- 26 AND CAUSED PLAINTIFF TO BE IN ALTERCATIONS DIRECTLY
- 27 RESULTING FROM PLAINTIFF'S NAME BEING MENTIONED IN
- 28 SAID LETTER;

1 n) DEFENDANT LABELED PLAINTIFF AS A "FRIEND" OF A  
2 KNOWN CHILD MOLESTER IN A LETTER TO THAT CHILD  
3 MOLESTER - AN ACT WHICH REPUTABLY CAUSED PLAINTIFF  
4 TO BE LABELED OR ASSOCIATED WITH CHILD MOLESTERS;

5 o) DEFENDANT'S LETTER TO INMATE CALLEGO DIVULGED  
6 INFORMATION CONCERNING PLAINTIFF'S CASE, ABSENT  
7 PLAINTIFF'S KNOWLEDGE OR CONSENT; THEREBY BREACHING  
8 ATTORNEY-CLIENT CONFIDENTIALITY.

9 p) AS A DIRECT RESULT OF DEFENDANT'S FAILURE OF HIS  
10 EQUITABLE DUTY TO RESEARCH AND ARGUE EFFECTIVELY FOR  
11 PLAINTIFF, PLAINTIFF WAS DEPRIVED OF MEANINGFUL  
12 PRESENTATIONS TO THE COURTS OF THE CLAIMS WHICH  
13 PLAINTIFF POSED WITHIN THE PETITIONS, AS WELL AS THE  
14 MERITORIOUS CLAIMS WHICH COULD HAVE BEEN PRESENTED  
15 TO THE COURTS VIA A SUPPLEMENTAL PETITIONS)

16 q) AS A DIRECT RESULT OF DEFENDANT'S FAILURE OF  
17 HIS CONTRACTUAL DUTY TO DILIGENTLY AND TIMELY  
18 FILE THE PLAINTIFF'S PLEADINGS, INCLUDING, BUT NOT  
19 LIMITED TO THE SUPPLEMENTAL PETITIONS AND NOTICES  
20 OF APPEAL, PLAINTIFF WAS DEPRIVED OF TIMELY AND  
21 COMPLETE PRESENTATIONS TO THE COURTS OF THE  
22 CLAIMS WHICH PLAINTIFF POSED WITHIN THE PETITIONS,  
23 AS WELL AS THE MERITORIOUS CLAIMS WHICH COULD  
24 HAVE BEEN PRESENTED TO THE COURTS VIA SUPPLEMENTAL  
25 PETITIONS).

26 r) AS A DIRECT RESULT OF DEFENDANT'S FAILURE OF  
27 HIS LEGAL DUTY TO COMMUNICATE AND/OR ADEQUATELY  
28 APPRISE PLAINTIFF OF CASE ISSUES AND STATUS, PLAINTIFF

1 WAS DEPRIVED OF A MEANINGFUL & TIMELY REVIEW  
2 BY THE COURTS OF THE CLAIMS WHICH PLAINTIFF  
3 POSSED WITHIN THE PETITIONS, AS WELL AS THE  
4 MERITORIOUS CLAIMS WHICH COULD HAVE BEEN  
5 PRESENTED TO THE COURTS VIA SUPPLEMENTAL PETITIONS.  
6 5) AS A DIRECT RESULT OF DEFENDANT'S FAILURE OF  
7 HIS FIDUCIARY DUTY TO MAINTAIN ATTORNEY-CLIENT  
8 CONFIDENTIALITY WITH THE CONTROVERSIAL LETTER  
9 SENT TO INMATE GALLEGO, PLAINTIFF WAS DEPRIVED  
10 OF CONFIDENTIALITY AND FIDUCIARY, AS WELL AS  
11 INCURRED DAMAGES TO HIS NAME, PERSONAL PRIVACY  
12 RIGHTS.

### 13 SECOND CAUSE OF ACTION, VARIOUS TORTS

- 15 25) PLAINTIFF INCORPORATES AS IF FULLY SET FORTH  
16 HEREIN THE CONTENTS OF PARAGRAPHS 4 THROUGH 22.
- 17 26) DEFENDANT COMMITTED BREACH OF CONFIDENTIALITY  
18 AGAINST PLAINTIFF, INASMUCH AS DEFENDANT'S CONDUCT  
19 IN SENDING A LETTER TO INMATE GALLEGO, WAS NOT  
20 KNOWN OR AUTHORIZED BY PLAINTIFF AND CONTAINED  
21 SENSITIVE AND CONFIDENTIAL INFORMATION ABOUT  
22 PLAINTIFF'S CASE TO ANOTHER INMATE NOT INVOLVED IN  
23 PLAINTIFF'S CASE.
- 24 27) DEFENDANT COMMITTED DEFAMATION OF PLAINTIFF'S  
25 CHARACTER, INASMUCH AS DEFENDANT'S CONDUCT IN  
26 SENDING A LETTER TO INMATE GALLEGO, THEREIN  
27 IDENTIFYING PLAINTIFF BY NAME AND CALLING  
28

1 PLAINTIFF THE "FRIEND" OF INMATE GALLEGOS WAS  
2 OUTRAGEDUS, TO-WIT: AS GALLEGOS IS A CHILD MOLESTER  
3 IN A PRISON IN WHICH MANY PRISONERS DESIRE TO HARM  
4 CHILD MOLESTERS AND THOSE WHO ASSOCIATE THEREWITH, AND  
5 AS DEFENDANT AS GALLEGOS' ATTORNEY KNEW OF GALLEGOS  
6 STATUS AS A CHILD MOLESTER, DEFENDANT'S INCLUSION  
7 OF SAID CONFIDENTIAL INFORMATION CONCERNING PLAINTIFF  
8 IN THE LETTER WAS AN ACT PERFORMED EITHER INTENTIONALLY  
9 OR WITH RECKLESS DISREGARD FOR PLAINTIFF'S NAME, AND  
10 REPUTATION.

11 28) DEFENDANT COMMITTED FRAUD AND INTENTIONAL  
12 MISREPRESENTATION AGAINST PLAINTIFF, INASMUCH AS  
13 DEFENDANT'S CONDUCT IN SENDING A LETTER TO INMATE  
14 GALLEGOS, THEREIN CLAIMING TO SAID INMATE THAT PLAINTIFF  
15 'VOLUNTEER' WASTED HIS TIME IN PURSUING DEFENDANT'S  
16 CONDUCT TO THE STATE BAR, WAS MEANT TO DECEIVE  
17 INMATE GALLEGOS AND MISREPRESENT TO GALLEGOS  
18 THAT PLAINTIFF'S COMPLAINT ACCOMPLISHED LITTLE.  
19 YET, THE STATE BAR'S FILE ON PLAINTIFF'S COMPLAINT  
20 DEMONSTRATES OTHERWISE.

21 29) DEFENDANT COMMITTED INVASION OF PRIVATE  
22 INTRUSION UPON NAME OR LIKENESS AGAINST  
23 PLAINTIFF, INASMUCH AS DEFENDANT'S CONDUCT IN  
24 SENDING A LETTER TO INMATE GALLEGOS, ABSENT  
25 PLAINTIFF'S KNOWLEDGE OR CONSENT, THEREIN  
26 UNIDENTIFYING PLAINTIFF BY NAME AND CALLING  
27 PLAINTIFF THE "FRIEND" OF INMATE GALLEGOS WAS

1 OUTRAGEOUS, TO WIT: AS DEFENDANT AS GALLEGOS'S  
2 ATTORNEY KNEW OF GALLEGOS'S STATUS AS A CHICO  
3 MOLESTER, AND SAID LETTER TO INMATE GALLEGOS  
4 WAS AN ACT PERFORMED EITHER INTENTIONALLY OR  
5 WITH RECKLESS DISREGARD FOR PLAINTIFF'S PRIVACY, &  
6 CONFIDENTIAL/PRIVILEGED INFORMATION.

7 29) DEFENDANT COMMITTED INVASION OF PRIVACY - FALSE  
8 LIGHT AGAINST PLAINTIFF, INASMUCH AS DEFENDANT'S  
9 CONDUCT IN SENDING A LETTER TO INMATE GALLEGOS,  
10 THEREIN IDENTIFYING PLAINTIFF BY NAME AND CALLING  
11 PLAINTIFF THE "FRIEND" OF INMATE GALLEGOS WAS  
12 OUTRAGEOUS, TO WIT: AS GALLEGOS IS A KNOWN  
13 CHICO MOLESTER TO BOTH THE DEFENDANT, AS WELL  
14 AS THE OTHER INMATES AT LEVELOCK CORRECTIONAL  
15 CENTER, AND DEFENDANT'S INCLUSION OF PLAINTIFF'S  
16 NAME AUTOMATICALLY ASSOCIATED PLAINTIFF WITH  
17 INMATE GALLEGOS AND THE CRIME(S).

18 31) DEFENDANT COMMITTED INVASION OF PRIVACY - RIGHT  
19 OF PUBLICITY AGAINST PLAINTIFF, INASMUCH AS  
20 DEFENDANT'S CONDUCT IN SENDING A LETTER TO INMATE  
21 GALLEGOS, THEREIN IDENTIFYING PLAINTIFF BY NAME  
22 AND CALLING PLAINTIFF THE "FRIEND" OF INMATE GALLEGOS  
23 WAS OUTRAGEOUS, TO WIT: AS GALLEGOS IS A CHICO  
24 MOLESTER IN A PRISON IN WHICH MANY PRISONERS  
25 DESIRE TO HARM CHICO MOLESTERS AND THOSE WHO  
26 ASSOCIATE THEREWITH, DEFENDANT'S INCLUSION OF  
27 SAID INFORMATION CONCERNING PLAINTIFF IN THE  
28 LETTER WAS AN ACT THAT CAUSED PHYSICAL AND



1 EMOTIONAL HARM, ENDANGERMENT, AS WELL AS DISTRESS  
2 TO PLAINTIFF.

3 32) DEFENDANT COMMITTED INTENTIONAL INFLECTION  
4 OF EMOTIONAL DISTRESS AGAINST PLAINTIFF, INASMUCH  
5 AS DEFENDANT'S CONDUCT IN SENDING A LETTER TO  
6 INMATE CALLEGO, THEREIN IDENTIFYING PLAINTIFF  
7 BY NAME, WHEN DEFENDANT KNEW OR SHOULD  
8 HAVE KNOWN AS CALLEGO'S ATTORNEY THAT  
9 CALLEGO WAS A CHIEF MANAGER IN PRISON WITH  
10 PLAINTIFF, AND ON THE SAME YARD, THAT SAID ACT  
11 WAS PERFORMED EITHER INTENTIONALLY OR WITH  
12 RECKLESS DISREGARD FOR PLAINTIFF'S REPUTATION AND  
13 BEING. AS PLAINTIFF SUFFERED EXTREME AND  
14 SEVERE EMOTIONAL DISTRESS FROM DEFENDANT'S  
15 ACTIONS IN SENDING THE LETTER AND IN THE EVENT  
16 WHICH FOLLOVED AS CAUSED DIRECTLY FROM SAID  
17 LETTER, IN WHICH PLAINTIFF WAS ACCUSED BY OTHER  
18 PRISONERS, WAS INVOLVED IN VERBAL ALTERCATIONS ABOUT  
19 THE ALLEGATIONS WITHIN THE LETTER, AND LIVED IN  
20 PERPETUAL FEAR FOR SAFETY, LIMB AND LIFE AS A  
21 RESULT THEREOF, TO AND INCLUDING, THE SUFFERING OF  
22 NIGHTMARES, EMOTIONAL DISTRESS, ANXIETY, LOSS OF  
23 NORMAL FUNCTIONING, DEPRESSION AND RELIANCE UPON  
24 PSYCHOTROPIC MEDICATION.

25 33) THAT AS A DIRECT AND PROXIMATE CAUSE OF THE  
26 ABOVE ACTS AND FAILURES TO ACT OF THE DEFENDANT,  
27 PLAINTIFF HAS SUFFERED EMOTIONAL DISTRESS, WAS  
28 GREATLY HUMILIATED, SHAMED, AND EMBARRASSED,

1 ENDURED GREAT PHYSICAL PAIN AND MENTAL SUFFERING,  
2 AND WAS AND STILL IS NERVOUS AND DISTRAUGHT, ALL  
3 TO PLAINTIFF'S DAMAGES IN EXCESS OF \$10,000.

4 34) THAT THE ACTIONS OR INACTIONS IN THIS MATTER  
5 HAVE BEEN FRAUDULENT, MALICIOUS AND OPPRESSIVE  
6 WITH A CONSCIOUS DISREGARD OF PLAINTIFF'S RIGHTS  
7 AND WELL BEING, AND THEREFORE PLAINTIFF IS ENTITLED  
8 TO PUNITIVE DAMAGES IN AN AMOUNT IN EXCESS OF  
9 \$10,000.

10 35) BY REASON OF THE PREMISES AND AS A DIRECT AND  
11 PROXIMATE RESULT THEREOF, PLAINTIFF WAS INJURED  
12 IN AND ABOUT HIS BODY AND WAS CAUSED TO SUFFER  
13 GREAT PAIN OF BODY AND MIND, TO PLAINTIFF'S  
14 GENERAL DAMAGES IN AN AMOUNT IN EXCESS OF  
15 \$10,000.

16 36) PLAINTIFF'S DAMAGES ARE PRESENTLY UNASCERTAINABLE;  
17 IN THIS REGARD PLAINTIFF PRAYS LEAVE OF THE  
18 COURT TO INSERT ALL DAMAGES HEREIN WHEN THE  
19 SAME HAVE BEEN FULLY ASCERTAINED.

20 37) THAT AS A DIRECT AND PROXIMATE RESULT OF  
21 THE ABOVE ACTIONS AND FAILURES TO ACT OF THE  
22 DEFENDANT, PLAINTIFF WILL BE CAUSED TO SUFFER  
23 IN THE FUTURE, LOSSES, INJURIES AND ADDITIONAL  
24 DAMAGES OF EMOTIONAL AND PHYSICAL NATURE  
25 ALL TO PLAINTIFF'S GENERAL DAMAGES IN AN  
26 AMOUNT IN EXCESS OF \$10,000.

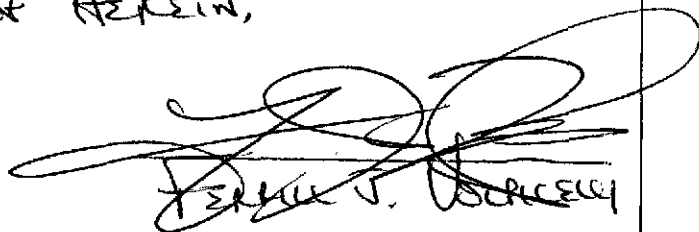
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## RELIEF SOUGHT

WHEREFORE, PLAINTIFF, EXPRESSLY RESERVING THE RIGHT HEREIN TO INCLUDE ALL ITEMS OF DAMAGE, DEMANDS JUDGMENT AGAINST THE DEFENDANT, AS FOLLOWS:

- a) GENERAL DAMAGES IN EXCESS OF \$10,000;
- b) SPECIAL DAMAGES IN EXCESS OF \$10,000;
- c) PUNITIVE DAMAGES IN EXCESS OF \$10,000;
- d) PLAINTIFF'S COSTS OF LITIGATING THIS ACTION;
- e) DECLARATORY RELIEF DECLARING THAT DEFENDANT HAS VIOLATED THE DUTIES, CODES, RULES OF ETHICS AND CANONS OF THE PROFESSION, AS WELL AS THE PLAINTIFF'S RIGHTS AND INTERESTS (HEREIN);
- f) FOR A JURY TRIAL ON ALL TRIABLE ISSUES (HEREIN);
- g) FOR LEAVE TO AMEND THIS COMPLAINT SHOULD SAME BECOME NECESSARY;
- h) ANY OTHER AND FURTHER RELIEF AS THE COURT AND/OR THE TRIER OF THE CASE DEEMS JUST, FAIR AND EQUITABLE HEREIN, AND/OR AS IS DEEMED PROPER TOWARDS RECTIFYING AND CORRECTING THE MATTERS COMPLAINED OF HEREIN,

DATED this  
5 DAY OF  
NOVEMBER  
2009

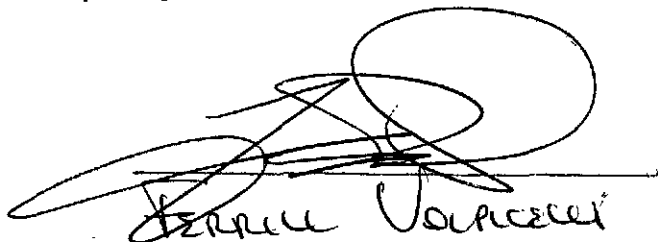


PLAINTIFF - IN PRO SE

1 VERIFICATION UNDER PENALTY OF PERJURY

2  
3 UNDER PENALTY OF PERJURY, THE UNDERSIGNED  
4 DECLARES THAT HE IS THE PLAINTIFF IN THE FOREGOING  
5 COMPLAINT AND KNOWS THE CONTENTS THEREOF; THAT  
6 THE PLEADING IS TRUE AND OF HIS OWN KNOWLEDGE,  
7 EXCEPT AS TO SUCH MATTERS STATED ON INFORMATION  
8 AND BELIEF, AND AS TO SUCH MATTERS HE BELIEVES  
9 THEM TO BE TRUE. I FURTHER VERIFY THAT THE  
10 FOREGOING PLEADING IS TRUE AND CORRECT, AND IS  
11 MADE UNDER PENALTY OF PERJURY WITHOUT BENEFIT  
12 OF A NOTARY PURSUANT TO NRS 208.165, AS I  
13 AM AN INCARCERATED PERSON.

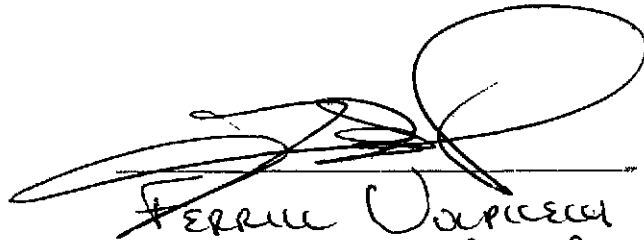
14 DATED THIS 5 DAY  
15 OF NOVEMBER, 2009

  
16 FERRUCCIO VOLPICECCI  
17 PLAINTIFF IN PRO PER

18  
19 AFFIRMATION PURSUANT TO NRS 239B.030

20  
21 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING  
22 COMPLAINT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER  
23 OF ANY PERSON.

24  
25 DATED THIS 5 DAY  
26 OF NOVEMBER, 2009

  
27 FERRUCCIO VOLPICECCI  
28 PLAINTIFF IN PRO PER

CV09-03467  
DC-9900015664-015  
FERRILL VOLPICELLI VS LORIN 3 Pages  
District Court 03/18/2010 08:44 AM  
Washoe County 2610  
VI RGN  
30C

1 Case No. 09-03442  
2 Dept. No. 6

FILED

2010 MAR 18 AM 8:44

HOWARD W. CONYERS

BY [Signature]  
DEPUTY

3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 FERRILL VOLPICELLI, )  
10 PLAINTIFF, )  
11 -vs- )  
12 SCOTT W. EDWARDS, ESQ. )  
13 DEFENDANT. )

NOTICE OF FAULT  
AND  
OPPORTUNITY TO CURE

14  
15 To: Defendant SCOTT W. EDWARDS, ESQ.  
16 DATE: MARCH 10, 2010  
17

18 DEAR MR. EDWARDS,  
19 ON FEBRUARY 9<sup>th</sup>, 2010 AT 11:27 AM, SERVICE OF SUMMONS  
20 WAS EFFECTED UPON YOU IN THE ABOVE-ENTITLED CASE,  
21 TO DATE, I HAVE NOT RECEIVED YOUR ANSWER TO THE  
22 COMPLAINT IN THIS MATTER WITHIN THE ALLOTTED TIME TO  
23 RESPOND. HENCE, YOU HAVE FAILED TO PERFORM AFTER  
24 RECEIVING CIVIL FILE NUMBER 10001400, FILED ON OR  
25 ABOUT DECEMBER 16, 2009 WITHIN THE ABOVE COURT.  
26 AS THE PLAINTIFF, I AM FORMALLY NOTIFYING YOU THAT YOU  
27 ARE NOW AT FAULT AND DISHONOR SHOWS YOU FAIL TO  
28

1 CURE BY PROVIDING YOUR ANSWER TO THE COMPLAINT ON  
2 FILE HEREIN.

3 NRCF AND THE LOCAL RULES ARE SPECIFIC ON RESPONDING  
4 TO THIS MATTER WITHIN TWENTY (20) DAYS. HOWEVER, IF AN  
5 ANSWERING YOU AN ADDITIONAL (10) TEN DAYS FROM  
6 RECEIPT OF THIS NOTICE TO CURE YOUR FAULT AND PERFORM  
7 ACCORDING TO THE APPLICABLE RULES OF CIVIL PROCEDURE.  
8 SHOULD YOU FAIL TO CURE YOUR FAULT, THIS NOTICE  
9 WILL ESTABLISH THE FACT IN THE RECORD OF YOUR  
10 GENERAL ACQUIESCENCE TO THE ABOVE MATTER  
11 ESTABLISHED UPON RESPONDENT'S SILENCE, NRCF AND  
12 OTHERWISE  
13

14  
15 Thank you for your prompt attention to this matter.  
16  
17  
18  
19  
20  
21  
22

WITHOUT PREJUDICE



FERRIS J. VOIPICELLI  
78065 @ LLC  
1200 PRISON RD  
LAWRENCE, NV 89049

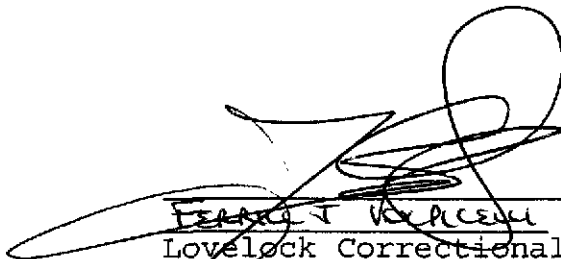
PLAINTIFF IN PRO SE

cc: file

Ferris J. Voipicelli  
Pro Se Litigant

CERTIFICATE OF SERVICE BY MAIL

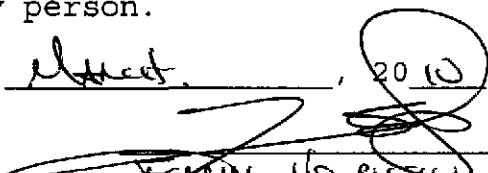
I do certify that I mailed a true and correct copy of the foregoing NOTICE OF FAULT & OPPORTUNITY TO CURE to the below address(es) on this 12<sup>th</sup> day of March, 2010, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCF 5(b):

  
FERRIS J. VAHREN # 79865  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
F. Vahren In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

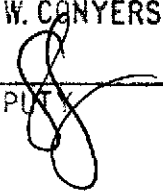
The undersigned does hereby affirm that the preceding NOTICE OF FAULT & OPPORTUNITY TO CURE filed in District Court Case No. 09-03442 does not contain the social security number of any person.

Dated this 12<sup>th</sup> day of March, 2010.

  
FERRIS J. VAHREN  
F. Vahren In Pro Se

CV09-03442 DC-9900015698-083  
FERRILL J VOLPICELLI VS SCOT 4 Pages  
District Court 03/19/2010 04:06 PM 3373  
Washoe County  
NVC

2315  
DAVID C. CREEKMAN  
Deputy District Attorney  
Nevada State Bar Number 4580  
P. O. Box 30083  
Reno, NV 89520-3083  
(775) 337-5700  
ATTORNEY FOR WASHOE COUNTY

FILED  
2010 MAR 19 PM 4:06  
HOWARD W. CONYERS  
BY   
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

FERRILL J. VOLPICELLI,

Plaintiff,

vs.

Case No. CV09-03442

SCOTT EDWARDS, ESQ.,

Dept. No. 6

Defendant.

SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION

COMES NOW, Scott Edwards, Esq., by and through Richard A. Gammick, Washoe County District Attorney, and David C. Creekman, Chief Deputy District Attorney, and provide this Court with this suggestion that the Court lacks subject matter jurisdiction in this case, pursuant to NRCPC 12(h)(3).

Under NRCPC 12(h)(3), "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

In this case, the actions about which the Plaintiff complains include legal malpractice and "various torts," including defamation, fraud, misrepresentation, invasion of



1 privacy and infliction of emotional distress. These allegations  
2 are all subject to the periods of limitations set forth in NRS  
3 chapter 11. As for the legal malpractice claim, NRS 11.207(1)  
4 provides that an action against an attorney to recover damages  
5 for malpractice "must be commenced within 4 years after the  
6 plaintiff sustains damage or within 2 years after the plaintiff  
7 discovers ... the material facts which constitute the cause of  
8 action, whichever occurs earlier." Stalk v. Mushkin, \_\_\_ Nev.  
9 \_\_\_, 199 P.3d 838 (2009). As for the other tort claims, NRS  
10 11.190, in part, establishes that a two-year statute of  
11 limitations applies to "[a]n action for libel, slander, assault,  
12 battery, false imprisonment or seduction" and to "injuries to a  
13 person ... caused by the wrongful act or neglect of another."

14 Each of the allegations contained within the Plaintiff's  
15 complaint is subject to a two-year limitations period. Yet a  
16 plain reading of the Plaintiff's complaint establishes that the  
17 encounters about which he complains occurred sometime between  
18 the Defendant's appointment, in about April 2005, as counsel for  
19 the Plaintiff in underlying post-criminal conviction matters,  
20 "Complaint, page 2, line 22, and a letter about which the  
21 Plaintiff complains and which he states was written by the  
22 Defendant, "Complaint," page 3, line 18, and mailed on March 14,  
23 2007. "Complaint," page 4, line 11. It was this letter which  
24 according to the Plaintiff, caused him to complain of what he  
25 construes as the Defendant's tortious conduct.

26 The Complaint in this case was signed and dated by the

1 Plaintiff November 5, 2009. The Complaint in this case was  
2 filed with the Court on December 15, 2009. No matter how you  
3 look at it, both these dates are beyond the two-year period of  
4 limitations applicable to the Plaintiff's causes of action, as  
5 these dates were set forth by the Plaintiff himself in his  
6 complaint. For this reason, the Defendant respectfully suggests  
7 that the Plaintiff missed the applicable statutes of limitation,  
8 that the Court lacks subject matter jurisdiction and that this  
9 case should be dismissed.

10 AFFIRMATION PURSUANT TO NRS 239B.030

11 The undersigned does hereby affirm that the preceding  
12 document does not contain the social security number of any  
13 person.

14 Dated this 19<sup>th</sup> day of March, 2010.

15 RICHARD A. GAMMICK  
16 District Attorney

17 By David C. Creekman  
18 DAVID C. CREEKMAN  
19 Chief Deputy District Attorney  
20 P. O. Box 30083  
21 Reno, NV 89520-3083  
22 (775) 337-5700

23  
24  
25  
26  
ATTORNEYS FOR DEFENDANT

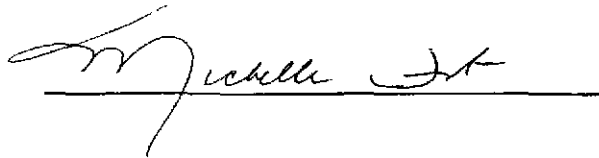
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CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing MOTION TO DISMISS in an envelope addressed to the following:

Ferrill J. Volpicelli #79565  
Lovelock Correction Center  
1200 Prison Rd.  
Lovelock, NV 89419

Dated this 19 day of March, 2010.



A handwritten signature in cursive script, appearing to read "Ferrill J. Volpicelli", is written above a horizontal line.

CV09-03442  
DC-9900015024-042  
FERRILL J. VOLPICELLI VS SCOTT 1 Page  
District Court 04/01/2010 10:46 AM  
Washoe County 2075  
V.I.A.V.R.  
hnc

1 Case No. CV 09 03442  
2 Dept. No. 6

FILED

10 APR -1 AM 10:46

HOWARD W. CONYERS  
BY [Signature]  
DEPUTY

3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 FERRILL J. VOLPICELLI, )  
10 PLAINTIFF, )  
11 -vs- )  
12 SCOTT EDWARDS, ESQ., )  
13 DEFENDANT. )

MOTION FOR  
ENLARGEMENT OF TIME  
(FIRST REQUEST)

14  
15 PLAINTIFF, FERRILL J. VOLPICELLI, IN PRO SE, HEREBY  
16 RESPECTFULLY MOVES THIS COURT FOR AN ORDER GRANTING  
17 A THIRTY (30) DAY ENLARGEMENT OF TIME, TO AND  
18 INCLUDING MAY 5, 2010, IN WHICH TO FILE AND SERVE  
19 THIS OPPOSITION TO DEFENDANT'S SUGGESTION OF LACK  
20 OF SUBJECT MATTER JURISDICTION, FILED ON MARCH  
21 19, 2010. THIS MOTION IS BASED UPON THE PROVISIONS  
22 OF RULE 6(b) OF THE NRCR AND THE ATTACHED AFFIDAVIT, AS  
23 WELL AS ALL OTHER DOCUMENTS ON FILE (HEREIN).

24  
25 DATED this 20th DAY  
26 OF MARCH, 2010

[Signature]  
FERRILL J. VOLPICELLI  
78065 LEE ROAD  
LOVELOCK, NV 89409  
PLAINTIFF IN PRO SE

FILED

1 Case No. CV 09 03442  
2 Dept. No. 6

10 APR -1 AM 10:46

HOWARD W. CONYERS  
BY [Signature]  
DEPUTY

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 FERRILL J. VOLPICELLI, )  
10 Plaintiff, )  
11 -vs- )  
12 SCOT EDWARDS, ESQ., )  
13 Defendant. )

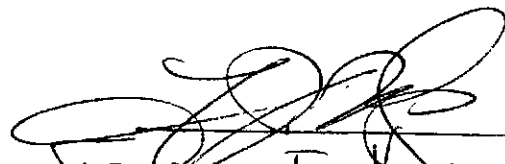
Affidavit  
of  
Plaintiff

15 I, Ferrill J. Volpicelli, Being First Day Sworn  
16 According to Law, hereby state that the assertions  
17 of this Affidavit are true:  
18 1) That your affiant is the Plaintiff in the matter  
19 and is acting in pro se and in forma pauperis.  
20 2) That your affiant received the Defendant's Suggestion  
21 of Lack of Subject Matter Jurisdiction, filed on  
22 March 19, 2010, from the MAIL (LIBRARY STAFF  
23 on March 24, 2010.  
24 3) That pursuant to the applicable NRCP, Plaintiff's  
25 deposition is currently due on or about April 5,  
26 2010.  
27 That your affiant believes he will need an  
28

CV09-03442 DC-9900016024-043  
FERRILL J VOLPICELLI VS SCOT 3 Pages  
District Court 04/01/2010 10:46 AM  
Washoe County 1075  
VI,AVF

1 ENCOURAGEMENT OF THIRTY (30) DAYS, THROUGH AND  
2 INCLUDING MAY 5, 2010, WITHIN WHICH TIME TO  
3 PREPARE, FILE AND SERVE THE OPPOSITION TO DEFENDANT'S  
4 SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION,  
5 5) THAT DUE TO THE NUANCES WITH PETITIONER'S  
6 CUSTODY WHICH ADVERSELY AFFECTS HIS ACCESS  
7 TO THE INSTITUTIONAL LAW LIBRARY, SAID ENCOURAGEMENT  
8 OF TIME IS JUSTIFIED, MADE IN GOOD FAITH  
9 AND NOT FOR THE PURPOSE OF UNDOING DELAYING  
10 THE ULTIMATE RESOLUTION OF THIS MATTER.  
11

12  
13 DATED ~~thirteenth~~ Day  
14 of March, 2010

15  
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28  
  
FERRILL J. VOLPICELLI  
79025 LEE (2ND FLOOR)  
LOVEWELL, NJ 07044  
PETITIONER IN PRO SE

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR ENGAGEMENT OF TIME to the below address(es) on this 25<sup>th</sup> day of MARCH, 2000, by placing same into the hands of prison staff for posting in the U.S. Mail:

DAVID CREEKMAN - DISTRICT ATTORNEY  
POB 38883

RENO, Nevada 89 520-3883

Attorney For DEFENDANT

( ) check for additional address(es) below

FEDERAL CORRECTIONS #79865  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Plaintiff In Pro Se

ADDRESS(ES) Continued from Above (If Applicable):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Nevada 89 \_\_\_\_\_

Attorney For \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Nevada 89 \_\_\_\_\_

Attorney For \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Nevada 89 \_\_\_\_\_

Attorney For \_\_\_\_\_

DC-990016310-272  
DC-990016310-272  
CV09-03442  
FERRILL J VOLPICELLI VS SCOT 9 Pages  
04/12/2010 09:13 AM  
FERRILL J VOLPICELLI VS SCOT 9 Pages  
2650  
District Court  
Washoe County  
DOJ

1 CODE: 2650  
2 FERRILL J VOLPICELLI #79565

3 Lovelock Correctional Center  
4 1200 Prison Road  
5 Lovelock, Nevada 89419

6 Plaintiff In Pro Se

FILED

10 APR 12 AM 9:13

HOWARD W. COYERS  
BY [Signature]  
DEPUTY

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE

9 \* \* \* \* \*

10 FERRILL J. VOLPICELLI)

Case No. CV09-03442

11 Plaintiff, )

Dept. No. 6

12 -vs-

13 SCOTT EDWARDS, Esq)

14 Defendant. )

15 OPPOSITION TO DEFENDANT'S  
16 SUGGESTION OF LACK OF  
17 SUBJECT MATTER  
18 JURISDICTION

19 COMES NOW, FERRILL J. VOLPICELLI, IN PRO SE, AND  
20 HEREBY SUBMITS HIS OPPOSITION TO DEFENDANT'S  
21 SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION,  
22 FILED ON MARCHED 19, 2010.

23 THIS OPPOSITION IS BASED UPON ALL DOCUMENTS,  
24 PAPERS AND PLEADINGS ON FILE HEREIN, AS WELL AS  
25 THE ACCOMPANYING AFFIDAVITS FROM PLAINTIFF AND  
26 FOLLOWING POINTS AND AUTHORITIES.  
27  
28



## FACTS OF CASE

1  
2 THE COMPLAINT AT BAR WAS SIGNED AND  
3 DATED BY PLAINTIFF ON NOVEMBER 5, 2009, AS  
4 WELL AS FILED IN THIS COURT ON DECEMBER  
5 15, 2009.

6 THE COMPLAINT AND SUMMONS WERE TIMELY  
7 SERVED UPON THE DEFENDANT ON FEBRUARY 9,  
8 2010, BY THE WASHOE COUNTY SHERIFF'S OFFICE,  
9 AS SUCH, AND ACCORDING TO LAW, DEFENDANT  
10 HAD TWENTY (20) DAYS FROM SERVICE TO  
11 RESPOND TO PLAINTIFF'S COMPLAINT.

12 DEFENDANT FAILED TO RESPOND TO THE COMPLAINT  
13 WITHIN THE STANDARD TWENTY (20) DAY REQUIRE.  
14 ON MARCH 18, 2010, PLAINTIFF FILED A  
15 NOTICE OF FAILURE AND OPPORTUNITY TO CURE  
16 WITH THE COURT AND ADVISING DEFENDANT THAT A  
17 FINDING OF DEFAULT JUDGMENT WOULD ENSUE.  
18 ON OR ABOUT MARCH 19, 2010, DEFENDANT, BY  
19 AND THROUGH THE DISTRICT ATTORNEY'S OFFICE OF  
20 WASHOE COUNTY, FILED A RELATED PLEADING IN  
21 THIS ACTION AND SERVED SAME UPON PLAINTIFF IN  
22 THE FORM OF TO WIT: SUGGESTION OF LACK OF  
23 SUBJECT MATTER JURISDICTION, PURSUANT TO  
24 NRCR 12(h)(3).  
25  
26  
27 /  
28 /

## POINTS AND AUTHORITIES

1  
2 PLAINTIFF OPPOSES THE DEFENDANT'S PLEADING TO  
3 HAVE THIS COURT DISMISS THE INSTANT COMPLAINT.  
4 IN THE EVENT THAT THE COURT DECIDES TO  
5 CONSIDER DEFENDANT'S PLEADING, SUBSEQUENT TO  
6 THE TWENTY (20) DAYS ALLOWED BY STATUTE, THE  
7 PLAINTIFF RESISTES WITH THE FACT THAT DEFENDANT'S  
8 PLEADING IS BASELESS IN FACT AND LAW.

9  
10 DEFENDANT ASSERTS THAT PLAINTIFF'S CAUSES OF  
11 ACTION LACK JURISDICTION FOR THIS COURT TO  
12 ENTERTAIN UNDER NRCP 12(h)(3), WHEREIN WHENEVER  
13 IT APPEARS BY SUGGESTION OF THE PARTIES OR  
14 OTHERS THAT THE COURT LACKS JURISDICTION OF  
15 THE SUBJECT MATTER, THE COURT SHALL DISMISS  
16 THE ACTION." (DEFENDANT'S PLEADING p. 1 ¶ 21-23.)

17 DEFENDANT BASES THE PERCEIVED LACK OF  
18 JURISDICTION ON THE ERRONEOUS NOTION THAT  
19 PLAINTIFF FAILED TO FILE THIS COMPLAINT WITHIN  
20 THE STATUTE OF LIMITATIONS PURSUANT TO NRS  
21 11:207(1).

22  
23 DEFENDANT CITES NRS 11:207(1), WITHIN CASE  
24 STACE V. MUSHKIN, 199 P3d 838 (2000), YET  
25 LEAVES OUT A CRITICAL PORTION OF SAID STATUTE,  
26 TO WIT: AN ACTION AGAINST AN ATTORNEY...  
27 MUST BE COMMENCED WITHIN FOUR (4) YEARS  
28

1 AFTER THE PLAINTIFF SUSTAINS DAMAGE, OR  
2 WITHIN TWO (2) YEARS AFTER THE PLAINTIFF  
3 DISCOVERS, OR THROUGH THE USE OF REASONABLE  
4 DILIGENCE SHOULD HAVE DISCOVERED THE MATERIAL  
5 FACTS WHICH CONSTITUTE THE CAUSE OF ACTION,  
6 WHICHEVER OCCURS EARLIER, NRS 11.257(1).  
7 DEFENDANT FURTHER ASSERTS THAT THE PLAINTIFFS'  
8 CAUSES OF ACTION FOR MALPRACTICE AND "VARIOUS  
9 TORTS" WERE NOT TIMELY FILED WITHIN THE TWO  
10 (2) YEARS PURSUANT TO SAID STATUTE.  
11 PLAINTIFF WILL DEMONSTRATE THAT DEFENDANTS'  
12 ASSERTIONS ARE BELIED BY THE COURT RECORD, AS  
13 WELL AS THE ACCOMPANYING AFFIDAVITS.  
14 AS FOR THE PLAINTIFFS' DAMAGES SUSTAINED BY  
15 THE DEFENDANTS' ACTIONS & OMISSIONS CONCERNING  
16 MALPRACTICE ISSUES, THE COMMENCEMENT OF THE  
17 DEFENDANTS' SERVICES IN 2005, AS COURT-APPOINTED  
18 COUNSEL, IS IRRELEVANT. FURTHER, THAT THE  
19 PLAINTIFFS' DISSATISFACTION WITH THE DEFENDANTS'  
20 REPRESENTATION, AS WELL AS THE COMPLAINT TO  
21 THE BAR, WERE NOT, IN THEMSELVES, COGNIZABLE  
22 FOR PURPOSES OF A CAUSE OF ACTION FOR  
23 DAMAGES. REASON BEING, THE PLAINTIFF HAD  
24 YET TO INCUR DAMAGES. THE DAMAGES INCLUDED  
25 THE PREJUDICE SUSTAINED BY THE FACT THAT  
26  
27  
28

1 DEFENDANT FAILED TO EXHAUST ALL THE GROUNDS  
2 WITHIN PLAINTIFFS' WRIT, THEREBY PRECLUDING  
3 FURTHER CONSIDERATION OF VIABLE CLAIMS FOR  
4 RELIEF BY THE NEVADA SUPREME COURT, AS  
5 WELL AS THE FEDERAL COURTS. THAT DAMAGE  
6 WAS SUSTAINED WITH EITHER THE NEVADA  
7 SUPREME COURT'S AFFIRMATION OF THE UNDERLYING  
8 CASE ON OR ABOUT MARCH 5, 2007, AND/OR  
9 THE TERMINATION OF DEFENDANT'S SERVICES.  
10 AFTERALL, UNTIL THAT POINT, THE NEVADA SUPREME  
11 COURT COULD HAVE RENDERED A DECISION TO REVIEW  
12 ALL THE GROUNDS WITHIN PLAINTIFFS' WRIT - ASSENT  
13 DEFENDANT'S FORMAL REQUEST TO DO SO WITHIN  
14 HIS FAST TRACK STATEMENT FOR APPEAL ON WRIT.  
15 PLAINTIFFS' DAMAGES CONCERNING THE UNEXHAUSTED  
16 GROUNDS WERE RETURNED ON OR ABOUT MARCH 5,  
17 2008 AND SUBSEQUENTLY AFFIRMED BY THE  
18 PLAINTIFFS' § 2254 PLEADINGS IN THE U.S. DISTRICT  
19 COURT, AS WELL AS PLAINTIFFS' SUCCESSIVE  
20 WRIT TO THE SECOND JUDICIAL DISTRICT COURT  
21 IN LATE 2008 AND ON OCTOBER 18, 2009, RESPECTIVELY.  
22 HENCE, EITHER OF THE FOREGOING DATES ARE  
23 CLEARLY WITHIN THE TWO (2) YEAR STATUTE OF  
24 LIMITATIONS.  
25  
26

27 PLAINTIFF ALSO MOVES THE COURT TO EMBRACE  
28 THE RULE FOR CONTINUOUS REPRESENTATION LAW.

1 SUD RICE ACTS TO TOLL THE STATUTE OF LIMITATIONS  
2 UNTIL THE TERMINATION OF THE ATTORNEY'S REPRESENTATION  
3 CONCERNING THE PARTICULAR MATTER WHICH GAVE RISE  
4 TO THE CLAIM. MORRIS V. GREER, 720 P2d 984 (1986).  
5 THE NEVADA SUPREME COURT HAS STATED, "WE  
6 REASONED THAT, PURSUANT TO NRS 11.207(1), THE  
7 STATUTE OF LIMITATIONS WILL NOT COMMENCE TO  
8 RUN UNTIL THE PLAINTIFF SUSTAINS DAMAGES AS A  
9 RESULT OF THE ATTORNEY CONDUCT." ~~THAT~~ WHERE  
10 THERE HAS BEEN NO FINAL ADJUDICATION OF THE  
11 CLIENT'S CASE IN WHICH THE MALPRACTICE  
12 ALLEGEDLY OCCURRED, THE ELEMENT OF INJURY  
13 OR DAMAGE REMAINS SPECULATIVE AND REMOTE,  
14 THEREBY MAKING PENDING THE CAUSE OF ACTION."  
15 SEMENZA V. NEV. MED. 765 P2d 184, 186, (1988).  
16 IN THE PRESENT CASE, TERMINATION OF THE  
17 UNDERLYING PROCEEDING IN THE NEVADA SUPREME  
18 COURT WAS CRITICAL IN THE CONTEXT OF A  
19 CLAIM AGAINST THE DEFENDANT.  
20 HENCE, THE APPLICABILITY OF THE TWO (2) YEAR  
21 LIMITATION PERIOD OF NRS 11.207(1) IS NOT AN ISSUE.  
22 IN SO FAR AS THE "VARIOUS TORTS" & CAUSES OF  
23 ACTIONS RELATIVE TO THE DEFENDANT'S REFERENCE TO  
24 "AN ACTION FOR LIBEL, SLANDER, DEBAUCH, BATTERY  
25 FALSE IMPRISONMENT OR SEDUCTION, AND TO INJURIES  
26 TO A PERSON .... CAUSED BY THE WRONGFUL ACT  
27  
28

1 OR "SECRET OF ANOTHER," ARE CONCERNED, THE  
2 ACCOMPANYING AFFIDAVITS CLEARLY SET FORTH THAT  
3 PLAINTIFF'S AWARENESS OF THE CONTRAVERTED LETTER  
4 AND REPERCUSSIONS THEREFROM, DID NOT EMERGE  
5 UNTIL JANUARY OF 2008.

6 PLAINTIFF, AGAIN, SUMMONS THE COURT'S ATTENTION  
7 TO THAT CRITICAL PORTION OF NRS 11.207(2),  
8 WHEREIN PLAINTIFF'S DISCOVERY IS DEPENDENT UPON  
9 HIS USE OF REASONABLE DILIGENCE AS WELL AS THE  
10 CIRCUMSTANCES WHICH ADVERSELY AFFECT SUCH DISCOVERY  
11 OF MATERIAL FACTS PERTINENT TO THE CAUSE OF ACTION.  
12 NOT ONLY DO THE ACCOMPANYING AFFIDAVITS  
13 PURPORT THAT PLAINTIFF'S DISCOVERY OF THE CONTRAVERTED  
14 LETTER DID NOT SURFACE UNTIL JANUARY OF 2008,  
15 BUT THE REPERCUSSIONS OF SAID LETTER WERE NOT  
16 EXPERIENCED BY THE PLAINTIFF UNTIL THAT TIME.

17 IN ADDITION, THE COURT RECORD AS WELL AS  
18 THE DEFENDANT'S CASE FILE WILL REVEAL THAT THERE  
19 WAS NO MENTION OF ANY MATTERS RELEVANT  
20 TO DEFENDANT'S LETTER TO INMATE CALLEGOS  
21 UNTIL SUBSEQUENT TO JANUARY OF 2008.  
22 MATTER OF FACT, SAID LETTER WAS FIRST MENTIONED  
23 IN PLAINTIFF'S MOTION TO THE NEVADA SUPREME  
24 COURT IN OR ABOUT FEBRUARY OF 2008, WHEREIN  
25 PLAINTIFF MOVED FOR A REMOVAL OF DEFENDANT  
26 AS COURT-APPOINTED COUNSEL.  
27  
28

1 CONCLUSION.

2 Wherefore, for the foregoing arguments,  
3 along with the accompanying affidavits,  
4 all causes of action disputed by the Defendant  
5 clearly fall within the two (2) years of  
6 NRS 11.207(1), thus, it is most compelling  
7 that this court should deny Defendant's  
8 pleading to have this matter dismissed as the  
9 Plaintiff has timely filed this action in  
10 accordance to the applicable rules of NRCR.  
11

12 DATED this 6<sup>th</sup> DAY of APRIL, 2010.  
13  
14

15  
16  
17  
18  
19  
20 


21 FERRILL J. VOLPICELLI  
22 79565 E LCC  
23 1250 PRISON RD  
24 LAVERGNE NV 89419

25 PLAINTIFF IN PRO SE  
26  
27  
28

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Opposition... to the below address(es) on this 6<sup>th</sup> day of April, 2010, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

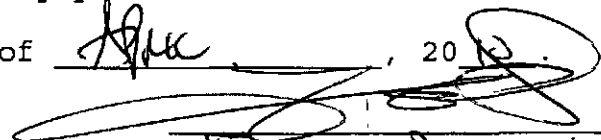
SCOTT EDWARDS  
c/o WASHOE COUNTY  
DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520-3083

  
Ferruccio #72565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
PLAINTIFF In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Opposition... filed in District Court Case No. CV09-3442 does not contain the social security number of any person.

Dated this 6<sup>th</sup> day of April, 2010.

  
Ferruccio  
PLAINTIFF In Pro Se



CV09-03442 DC-9900016318-273  
FERRILL J. VOLPICELLI VS SCOT T. EDWARDS  
District Court 04/12/2010 09:13 AM  
Washoe County 1075  
ASIMPSOY  
DOC

1 Case No. CV0903442  
2 Dept. No. 6

FILED

10 APR 12 AM 9:13

HOWARD W. CONYERS

BY [Signature]  
DEPUTY

3  
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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 FERRILL J. VOLPICELLI  
10 PLAINTIFF )  
11 -vs- )  
12 SCOT EDWARDS, ESQ. )  
13 DEFENDANT )  
14

AFFIDAVIT  
of  
FERRILL J. VOLPICELLI  
(PLAINTIFF)

15 STATE OF NEVADA )  
16 ) ss:  
17 COUNTY OF PERSTEING )  
18

19 I, FERRILL J. VOLPICELLI, BEING FIRST DULY SWORN  
20 ACCORDING TO LAW, HEREBY STATE THAT THE ASSERTIONS  
21 OF THIS AFFIDAVIT ARE TRUE:  
22

23 1) THAT YOUR AFFIRANT IS THE PERCENTIFF IN THIS  
24 MATTER AND IS ACTING IN PRO SE AND IN FORMA  
25 PAUPERIS.

26 2) THAT THIS AFFIDAVIT IS MADE IN SUPPORT OF  
27 THE ACCOMPANYING OPPOSITION TO DEFENDANTS  
28

Ferrill J. Volpicelli  
Pro Se Litigant

- 1 SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION.
- 2 b) THAT THE DEFENDANT WAS APPOINTED COUNSEL
- 3 TO PLAINTIFF'S POST CONVICTION CASES IN OR ABOUT 2005.
- 4 c) THAT FOR UNDOE DELAYS IN LITIGATING THE
- 5 PLAINTIFF'S CASES, PLAINTIFF FILED A FORMAL
- 6 COMPLAINT WITH THE STATE BAR IN OR ABOUT
- 7 JANUARY OF 2007.
- 8
- 9 d) THAT THE COURT RECORD IN CASE C102-0147
- 10 AND 50595, SPECIFICALLY IN PLAINTIFF'S MOTION
- 11 TO REMOVE DEFENDANT AS COUNSEL, FILED IN
- 12 FEBRUARY, 2008, FURTHER DEMONSTRATED PLAINTIFF'S
- 13 CONTINUED DISSATISFACTION WITH DEFENDANT'S
- 14 REPRESENTATION.
- 15 e) THAT THE PLAINTIFF FIRST MET INMATE CALLEGOS
- 16 AT LOVELOCK CORRECTIONAL CENTER'S, THEN, PHYSICAL
- 17 LAW LIBRARY DURING THE SUMMER OF 2006.
- 18 f) THAT THE YARD'S TRANSITION IN LATE 2006 TO A
- 19 MULTI-SEGREGATIONAL HOUSING INSTITUTION, COUPLED
- 20 WITH THE CLOSURE OF THE CENTRAL LAW LIBRARY,
- 21 PRECEDED PLAINTIFF'S CONTACT WITH INMATE CALLEGOS
- 22 UNTIL JANUARY OF 2008.
- 23 g) THAT PLAINTIFF'S TEMPORARY TRANSFER TO CARSON
- 24 CITY FOR AN EVIDENTIARY HEARING IN WASHOE
- 25 COUNTY, AND RETURN IN LATE 2007 COMPELLED
- 26 PLAINTIFF TO THE CONFINEMENT OF THE INTAKE
- 27 UNIT AT LOVELOCK CORRECTIONAL CENTER.
- 28

1) THAT WITHIN THE INTAKE UNIT, INMATES ARE SCRUTINIZED BY OTHER INMATES FOR PURPOSES OF DISCERNING SEX OFFENDERS, GANG AFFILIATES AND SO ON.

2) THAT IN LATE DECEMBER AND EARLY JANUARY OF 2008, PLAINTIFF FIRST EXPERIENCED THE DISSENT CONCERNING THE RUMORS OF THE GALLEGOS LETTER FROM DEFENDANT, AS APLY OUTLINED IN THE COMPLAINT CONCERNING THE "CHILD-MOLESTER-JACKET."

3) THAT THROUGH OTHERS ON THE YARD AT THE LOVELOCK CORRECTIONAL CENTER, PLAINTIFF FIRST LEARNED OF THE CONTROVERSED LETTER IN OR ABOUT THE FIRST WEEK OF JANUARY 2008.

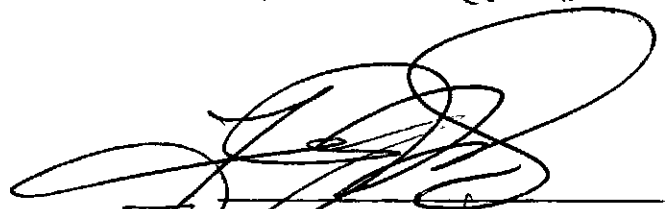
4) THAT EVENTUALLY, PLAINTIFF WAS ABLE TO OBTAIN A COPY OF SAID LETTER FROM GALLEGOS THROUGH OTHERS FOR PURPOSES OF THIS ACTION, SOMETIME IN FEBRUARY OF 2008.

5) THAT A REVIEW OF THE COURT'S RECORDS, AS WELL AS THE DEFENDANT'S CASE FILE WILL SHOW THAT PLAINTIFF MADE NO REFERENCE OR MENTION OF THE LETTER OR TORTIOUS CONDUCT BY DEFENDANT RELATIVE TO SAID LETTER UNTIL SUBSEQUENT TO JANUARY OF 2008. SEE PLAINTIFF'S MOTION, 2008 PLEADING TO NEVADA SUPREME COURT TO REMOVE COUNSEL.

1) THAT PLAINTIFF'S DISCOVERY OF THE DAMAGES  
ON THE MARRIAGE ISSUE FOR NOT EXHAUSTING  
ALL OF THE WIFE'S CLAIMS WAS NOT EVIDENT  
UNTIL THE NEW YORK SUPREME COURT'S AFFIRMATION  
OF DEFENDANT'S APPEAL SUBSEQUENT TO MARCH OF 2010.  
2) THAT THE AFOREMENTIONED DAMAGES AND/OR  
ELEMENTS OF THE COMPLAINT'S CAUSES OF  
ACTION ARE ALL WITHIN THE TWO (2) YEAR  
STATUTE OF LIMITATIONS, PURSUANT TO NYS  
CHAPTER 11.257(1).

THE UNDERSIGNED DECLARES THAT HE IS PROVIDING  
THIS AFFIDAVIT FOR PURPOSES OF CLARIFICATION AS  
TO HIS DISCOVERY OF DAMAGES, AND/OR THE  
ELEMENTS AND FACTS OF THE ACTS AND OMISSIONS  
OF THE DEFENDANT. FURTHERMORE, THAT THE  
ASSERTIONS ARE TRUE AND OF HIS OWN KNOWLEDGE,  
EXCEPT AS TO THOSE MATTERS STATED ON INFORMATION  
AND BELIEF, AND AS TO SUCH MATTERS HE BELIEVES  
THEM TO BE TRUE.

DATED July 31 Day  
of March, 2010.

  
FERRUCCIO J. VOLPICELLI  
79565 1200 PULSON RD  
LOVELACE, NJ 08419  
PLAINTIFF IN PRO SE

1 MAGDALENO GALLEGOS #78029  
2 Lovelock Correctional Center  
3 1200 Prison Road  
4 Lovelock, NV 89419  
5  
6

7 AFFIDAVIT IN SUPPORT OF MR. VOPICELLI BY  
8 MAGDALENO GALLEGOS  
9

10 COMES NOW, MAGDALENO GALLEGOS, Your  
11 AFFIANT being fully Sworn deposes and Says:

12 1) That Your Affiant is an Inmate at the  
13 Lovelock Correctional Center since 2002, and  
14 that this is a Segregated Institution within  
15 the Nevada Department of Corrections.

16 2) That this Affidavit is made in support  
17 of Inmate Ferill Volpicelli's OPPOSITION to  
18 Defendant's Suggestion of Lack of Subject  
19 matter Jurisdiction.

20 3) That Your Affiant first met with Mr.  
21 Volpicelli at the Lovelock Correctional Center  
22 Law Library in the Summer of 2006 (approx.)  
23 and where he was preparing a Complaint to  
24 the State Bar of Nevada about Mr. Scott  
25 Edwards, who was my Counsel on my  
26 Post Conviction Habeas Corpus, Mr Volpicelli  
27 and I both had him as Counsel.  
28

1 4) That Your Affiant experienced the same problems  
2 that Mr. Volpicelli had and I had written a  
3 letter to Mr. Edwards with my concerns.

4 5) That on March 14th, 2007, I received  
5 a letter in reply from Mr. Edwards, which  
6 referred to inmate Volpicelli's by name and  
7 talked about Mr. Volpicelli's bar complaint.

8 6.) That throughout 2007, I had not seen  
9 or spoken with Mr. Volpicelli. I did not see  
10 him again until January 2008.

11 7) That we were in segregated units and  
12 the Law Library was closed for the purpose  
13 of a satellite Law Library in early 2007, and  
14 we couldn't meet there anymore. This is the  
15 way the library is set up to this day.

16 8) That I heard Volpicelli went to court  
17 in Carson City in 2007 and had left Lovelock  
18 Correctional Center.

19 9) That in January of 2008, inmate Volpicelli  
20 was in a separate unit at Lovelock when he  
21 returned from Nevada State Prison.

22 10.) Mr. Volpicelli sent me a request  
23 through others that he need a copy of  
24 my letter from Mr. Edwards and that was  
25 about January 2008.  
26  
27  
28

Z.

1 11) That UNTIL early January 2008, I Never  
2 Saw or spoke to Mr. Volpicelli about the  
3 letter or any other Legal matter because  
4 we were in separate segregated housing  
5 and because of his transfer to another  
6 Prison.

7 12) Nothing further to say.

8 Dated this 3 day of APRIL, 2010

9  
10 STATE OF NEVADA )

11 ) S.S.

12 County OF PERSHING )

13  
14 This Affidavit was made without the benefit  
15 of a Notary Pursuant to NRS 208.165.

16  
17  
18 BY Margaret Dillman  
19 MAGDALENO GARCIA 98029  
20 Lovelock Correctional Center  
21 Lovelock, NV  
22  
23  
24  
25  
26  
27  
28

3.

CV09-03442  
DC-9900019046-103  
FERRILL J VOLPICELLI VS SCDT 2 Pages  
District Court Washoe County  
08/05/2010 08:43 AM  
3860  
HCHEEK

1 Case No. CV 09-03442

2 Dept. No. 6

FILED

2010 AUG -5 AM 8:43

HOWARD W. CONYERS

BY [Signature]  
DEPUTY

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 FERRILL VOLPICELLI, )

10 PLAINTIFF, )

11 -vs-

12 SCOTT EDWARDS, Esq., )

13 DEFENDANT. )

REQUEST FOR SUBMISSION  
OF MOTION

14  
15 It is requested that the OPPOSITION TO DEFENDANT'S  
16 SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION,  
17 which was filed on the 12 day of APRIL, 2010, in  
18 the above-entitled matter, be submitted to the Court for  
19 decision.

20 Dated this 24 day of AUGUST, 2010

[Signature]

FERRILL VOLPICELLI # 28561  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

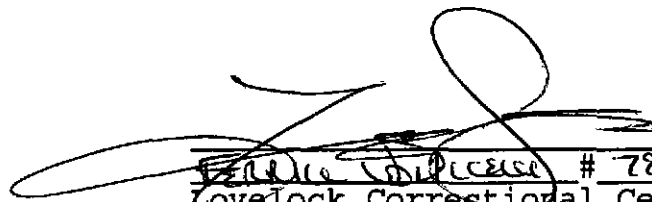
PLAINTIFF In Pro Se



1 CERTIFICATE OF SERVICE BY MAIL

2 I do certify that I mailed a true and correct copy of the  
3 foregoing REQUEST FOR SUBMISSION OF MOTION to the below  
4 address(es) on this 2nd day of August, 2010, by  
5 placing same in the U.S. Mail via prison law library staff,  
6 pursuant to NRCP 5(b):

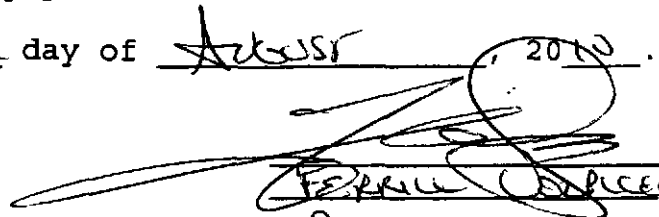
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8 DISTRICT ATTORNEY  
9 ROB 30583  
10 RENDY JR 59520-3083  
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18 FERRILL CONLEY # 78761  
19 Lovelock Correctional Center  
20 1200 Prison Road  
21 Lovelock, Nevada 89419  
22 PLATONOFF In Pro Se

23 AFFIRMATION PURSUANT TO NRS 239B.030

24 The undersigned does hereby affirm that the preceding  
25 REQUEST FOR SUBMISSION OF MOTION does not contain the social  
26 security number of any person.

27 Dated this 2nd day of August, 2010.

28   
FERRILL CONLEY  
PLATONOFF In Pro Se

1 Code 3370  
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7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE  
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12 FERRILL J. VOLPICELLI,

13 Plaintiff,

Case No. CV09-03442  
Dept. No. 6

14 vs.

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16 SCOTT EDWARDS,

17 Defendants.  
18 \_\_\_\_\_ /

19 ORDER

20 The defendant has filed a suggestion of lack of subject matter jurisdiction.

21 The Court finds that the plaintiff has failed to meet the applicable statutes of  
22 limitation, and that the Court therefore lacks subject matter jurisdiction.

23 Accordingly, pursuant to NRCP 12(h)(3), this case is dismissed.  
24

25 DATED: This 9th day of August, 2010.  
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DISTRICT JUDGE

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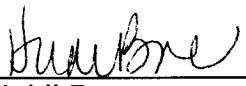
CERTIFICATE OF SERVICE BY MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 9th day of August, 2010, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Scott Edwards, Esq.  
729 Evans Avenue  
Reno, Nevada 89512

David C. Creekman, Esq.  
Deputy District Attorney  
PO Box 30083  
Reno, NV 8952  
(interoffice mail)

Ferrill Volpicelli, #79565  
1200 Prison Road  
Lovelock, NV 89419

  
\_\_\_\_\_  
Heidi Boe  
Administrative Assistant

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV09-03442  
**Judge:** BRENT ADAMS  
**Official File Stamp:** 08-09-2010:11:09:33  
**Clerk Accepted:** 08-09-2010:11:09:56  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** FERRILL J VOLPICELLI VS SCOTT EDWARDS,  
ESQ. (D6)  
**Document(s) Submitted:** Order...  
**Filed By:** Heidi Boe

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

PROPER PERSON  
SCOTT EDWARDS, ESQ

CV89-03442 DC-9900019301-029  
 FERRILL J VOLPICELLI VS SCOT EDWARDS  
 District Court 08/13/2010 03:50 PM  
 Washoe County 2540  
 JY0ST

2540  
 DAVID C. CREEKMAN  
 Chief Deputy District Attorney  
 Nevada State Bar Number 4580  
 P. O. Box 30083  
 Reno, NV 89520-3083  
 (775) 337-5700  
 ATTORNEY FOR DEFENDANT

**FILED**  
 2010 AUG 13 PM 3:50  
 HOWARD W. CONYERS  
 BY *[Signature]*  
 CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
 IN AND FOR THE COUNTY OF WASHOE

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FERRILL J. VOLPICELLI,  
 Plaintiff,  
 vs.  
 SCOTT EDWARDS,  
 Defendant.

Case No. CV09-03442  
 Dept. No. 6

NOTICE OF ENTRY OF ORDER

TO: Plaintiff, Ferrill J. Volpicelli.

Please take notice that an Order for Dismissal was filed on August 9, 2010. A copy of that Order is attached hereto.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding

///  
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 ///

1 document does not contain the social security number of any  
2 person.

3 Dated this 13<sup>th</sup> day of August, 2010.

4 RICHARD A. GAMMICK  
5 District Attorney

6 By David C. Creekman

7 DAVID C. CREEKMAN  
8 Chief Deputy District Attorney  
9 P. O. Box 30083  
10 Reno, NV 89520-3083  
11 (775) 337-5700

12 ATTORNEYS FOR DEFENDANT

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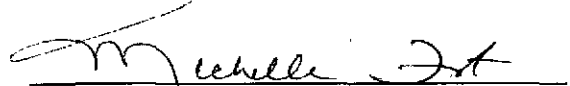
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CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER in an envelope addressed to the following:

Ferrill J. Volpicelli #79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

Dated this 13 day of August, 2010.

  
MICHELLE FOSTER

1 Code 3370  
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7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE  
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12 FERRILL J. VOLPICELLI,

13 Plaintiff,

Case No. CV09-03442  
Dept. No. 6

14 vs.

15 SCOTT EDWARDS,  
16

17 Defendants.  
18

19 ORDER

20 The defendant has filed a suggestion of lack of subject matter jurisdiction.

21 The Court finds that the plaintiff has failed to meet the applicable statutes of  
22 limitation, and that the Court therefore lacks subject matter jurisdiction.

23 Accordingly, pursuant to NRCP 12(h)(3), this case is dismissed.  
24

25 DATED: This 9th day of August, 2010.  
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DISTRICT JUDGE



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CERTIFICATE OF SERVICE BY MAILING

Pursuant to NRCF 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 9th day of August, 2010, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Scott Edwards, Esq.  
729 Evans Avenue  
Reno, Nevada 89512

David C. Creekman, Esq.  
Deputy District Attorney  
PO Box 30083  
Reno, NV 8952  
(interoffice mail)

Ferrill Volpicelli, #79565  
1200 Prison Road  
Lovelock, NV 89419

  
\_\_\_\_\_  
Heidi Boe  
Administrative Assistant

CV09-03442 DC-9900019670-015  
FERRILL J VOLPICELLI VS SCOT 2 Pages  
District Court 09/02/2010 03 49 PM  
Washoe County 2515  
TPRTNCF

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CODE \$2515  
FERRILL VOLPICELLI # 78065  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Plaintiff In Pro Se

**FILED**  
SEP - 2 2010  
HOWARD W. CONYERS, CLERK  
By: [Signature]  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

FERRILL T. VOLPICELLI  
Plaintiff,  
-vs-  
SCOT EDWARDS  
Defendant.

Case No. CV09-03442  
Dept. No. 6

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff, FERRILL T. VOLPICELLI, in  
pro se, hereby appeals to the Nevada Supreme Court the ORDER  
DISMISSING SAID CASE, filed  
August 9, 2010  (check if applicable) and \_\_\_\_\_  
\_\_\_\_\_, filed  
\_\_\_\_\_, 20\_\_\_\_, in the above-entitled Court, the Honorable \_\_\_\_\_

Dated this 16 day of August, 2010.

[Signature]  
FERRILL VOLPICELLI #78065  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

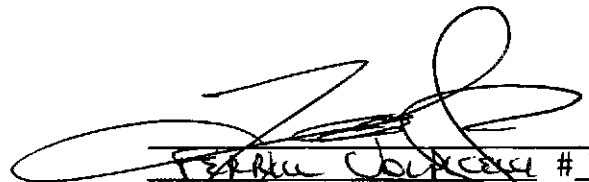
Plaintiff In Pro Se

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 16 day of AUGUST, 2010, by placing same in the U.S. Mail via prison law library staff:

CREEKMAN  
c/o DISTRICT ATTORNEY  
POB 30083  
RENO, NV 89520-3083

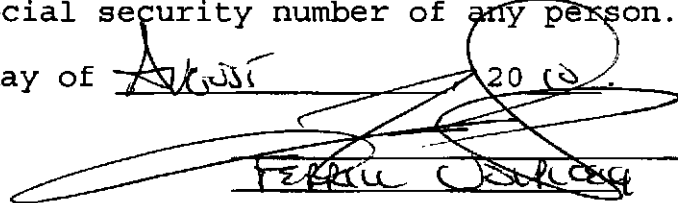
  
Terrell Cook # 79825  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. CV09-03402 does not contain the social security number of any person.

Dated this 16 day of AUGUST, 2010.

  
Terrell Cook

Petitioner In Pro Se

1 **Code 1310**

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

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**FERRILL J. VOLPICELLI,**

9

**Appellant,**

**Case No. CV09-03442**

10

**vs.**

**Dept. No. 6**

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**SCOTT EDWARDS,**

12

**Respondent.**

13

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**CASE APPEAL STATEMENT**

15

1. Ferrill J. Volpicelli is the Appellant.

16

2. This appeal is from the Order Dismissing Case filed on August 8, 2010 by the Honorable Brent Adams.

17

18

3. The parties in District Court consisted of Ferrill J. Volpicelli, Plaintiff, and Scott Edwards, Defendant.

19

20

4. The parties in the Nevada Supreme Court consist of Ferrill J. Volpicelli, Appellant, and Scott Edwards, Respondent.

21

22

5. Counsel on appeal consists of:

23

Ferrill J. Volpicelli, #79565, Appellant in Proper Person  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

24

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David C. Creekman, Esq., Chief Deputy District Attorney for Respondent  
Washoe County District Attorney's Office  
P.O. Box 30083  
Reno, NV 89520-3083

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- 6. Appellant represented himself in Proper Person in District Court.
- 7. Appellant is representing himself in Proper Person on appeal.
- 8. Fee not applicable in this case as Appellant was granted forma pauperis status on December 11, 2009.
- 9. Proceedings commenced by the filing of a Complaint on December 16, 2009.

Dated this 2nd day of September, 2010.

HOWARD W. CONYERS  
Clerk of the Court

By: /s/ Teresa Prince  
Deputy Clerk

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**Code 1350**

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

**FERRILL J. VOLPICELLI,**

**Appellant,**

**Case No. CV09-03442**

**vs.**

**Dept. No. 6**

**SCOTT EDWARDS,**

**Respondent.**

---

**CERTIFICATE OF CLERK**

I hereby certify that the attached documents submitted electronically are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the Nevada Rules of Appellate Procedure, NRAP 3(g).

Dated this 2nd day of September, 2010.

HOWARD W. CONYERS  
CLERK OF THE COURT

By: /s/ Teresa Prince  
Deputy Clerk

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**Code 1365**

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

**FERRILL J. VOLPICELLI,**

**Appellant,**

**Case No. CV09-03442**

**vs.**

**Dept. No. 6**

**SCOTT EDWARDS,**

**Respondent.**

\_\_\_\_\_ /

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that this Notice of Appeal and other required documents (certified copies pursuant to NRAP 3(g)), were electronically filed from the Second Judicial District Court to the Nevada Supreme Court.

Dated this 2nd day of September, 2010.

HOWARD W. CONYERS  
CLERK OF THE COURT

By: /s/ Teresa Prince  
Deputy Clerk

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV09-03442  
**Judge:** BRENT ADAMS  
**Official File Stamp:** 09-02-2010:15:49:29  
**Clerk Accepted:** 09-02-2010:15:49:58  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** FERRILL J VOLPICELLI VS SCOTT EDWARDS,  
ESQ. (D6)  
**Document(s) Submitted:** Case Appeal Statement  
Certificate of Clerk  
Certificate of Transmittal  
**Filed By:** Teresa Prince  
You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

PROPER PERSON  
DAVID CREEKMAN, ESQ.



**FILED**

Electronically  
09-07-2010:09:02:11 AM  
Howard W. Conyers  
Clerk of the Court  
Transaction # 1701592

**From:** [efiling@nvcourts.nv.gov](mailto:efiling@nvcourts.nv.gov)  
**To:** [Prince, Teresa](#)  
**Subject:** Rejection of Electronic Document.  
**Date:** Friday, September 03, 2010 8:54:23 AM

---

Docket Number:  
Case Category: Civil Appeal  
District Court Information: CV0903442, FERRILL J. VOLPICELLI VS. SCOTT  
EDWARDS

Submitted by: Washoe Co Clerk  
Date Submitted: Sep 02 2010 04:08 p.m.  
Date Rejected: Sep 03 2010 08:54 a.m.  
Note from Clerk: The efilng system is not configured to accept civil proper person appeals at this time. You do not need to resubmit the document. We will process the appeal manually using the document you submitted.

Document Category: Notice of Appeal Documents  
Document Title: NOTICE OF APPEAL

**Filing Status: Rejected**

This notice was automatically generated by the [electronic filing system](#). Do not respond to this email. If you have any questions, contact the Nevada Supreme Court Clerk's office at 775-684-1600 or 702-486-9300.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV09-03442  
**Judge:** BRENT ADAMS  
**Official File Stamp:** 09-07-2010:09:02:11  
**Clerk Accepted:** 09-07-2010:09:07:12  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** FERRILL J VOLPICELLI VS SCOTT EDWARDS,  
ESQ. (D6)  
**Document(s) Submitted:** Supreme Ct Accept - eFile Doc  
**Filed By:** Teresa Prince

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

PROPER PERSON  
DAVID CREEKMAN, ESQ.

**FILED**

Electronically

09-13-2010:10:16:02 AM

Howard W. Conyers

Clerk of the Court

Transaction # 1712575

**IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK**

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
SCOTT EDWARDS,  
Respondent.

**Supreme Court No. 56747**  
District Court Case No. CV0903442

6

**RECEIPT FOR DOCUMENTS**

TO: Ferrill Joseph Volpicelli  
Washoe County District Attorney/Civil Division  
Washoe County District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

09/03/10          Filing Fee Waived.

09/03/10          Filed Certified Copy of Notice of Appeal/Proper Person Pilot Program. Filed certified copy of proper person notice of appeal. (Pilot program civil appeals order and documents mailed to proper person appellant.)

DATE: September 3, 2010

Tracie Lindeman, Clerk of Court  
tm

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CV09-03442  
**Judge:** BRENT ADAMS  
**Official File Stamp:** 09-13-2010:10:16:02  
**Clerk Accepted:** 09-13-2010:10:17:03  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** FERRILL J VOLPICELLI VS SCOTT EDWARDS,  
ESQ. (D6)  
**Document(s) Submitted:** Supreme Court Receipt for Doc  
**Filed By:** Lori Matheus

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

PROPER PERSON  
DAVID CREEKMAN, ESQ.

CV09-03442 DC-9900020160-001  
FERRILL J VOLPICELLI VS SCOT 2 Pages  
District Court 09/14/2010 08:33 AM  
Washoe County 1990  
v.l.r.v.r.

1 Case No. CV09-03442  
2 Dept. No. 6

**FILED**

SEP 14 2010

HOWARD W. CONYERS, CLERK  
By: [Signature]  
DEPUTY CLERK

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF Washoe

\*\*\*\*\*

8  
9 FERRILL J VOLPICELLI, )  
10 Plaintiff, )  
11 -vs- )  
12 SCOTT EDWARDS, )  
13 Defendant. )

LETTER TO THE  
CLERK OF THE COURT

14  
15 Dear Clerk of the Court:  
16 To Date, I have not received my filed/stamped copy  
17 of the Notice of Appeal in the above case.  
18 In the event that my copy of filing has been  
19 delayed for want of submission of an application  
20 to proceed in forma pauperis, I have included  
21 same.  
22 Please process the above and send me a case  
23 docket/history confirming the above.  
24 Thank You.

25  
26 Sincerely,

27 [Signature] 79565  
28 FERRILL J VOLPICELLI  
1200 PRISON Rd  
LOVELOCK, NV 89419

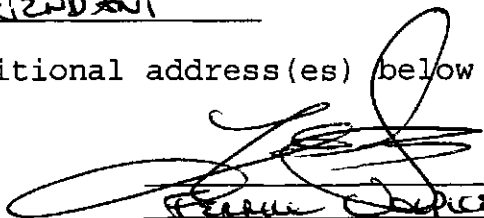
CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing LETTER TO THE CLERK OF THE COURT to the below address(es) on this 1st day of SEPTEMBER, 2010, by placing same into the hands of prison staff for posting in the U.S. Mail:

WASHOE COUNTY  
DISTRICT ATTORNEY  
PO BOX 30583  
RENO, Nevada ~~89200~~ 89520

Attorney For DEFENDANT

( ) check for additional address(es) below

  
Fernand Lopez # 79565  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Plaintiff In Pro Se

ADDRESS(ES) Continued from Above (If Applicable):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Nevada 89

Attorney For \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Nevada 89

Attorney For \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Nevada 89

Attorney For \_\_\_\_\_

CV09-03442  
DC-9900020168-002  
FERRILL J VOLPICELLI VS SCOT 4 Pages  
District Court 09/14/2010 08:34 AM  
Washoe County 1270

1 Case No. CV09-03442  
2 Dept. No. 6

**FILED**

SEP 14 2010

HOWARD W. CONYERS, CLERK  
By: [Signature]  
DEPUTY CLERK

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

8 FERRILL J. VOLPICELLI, )  
9 Plaintiff, )  
10 )  
11 -vs- )  
12 SCOT EDWARDS, )  
13 Defendant. )

APPLICATION TO PROCEED  
IN FORMA PAUPERIS

14  
15 COMES NOW Plaintiff, FERRILL J VOLPICELLI, in  
16 pro se, and moves the Court for an order granting him leave to  
17 proceed in the above-entitled action without paying the costs  
18 and/or security of proceeding herein.

19 This motion is made and based upon NRS 12.015 and the  
20 attached affidavit and certificate of inmate's institutional  
21 account.

22 Dated this 1st day of SEPTEMBER, 2010.

23  
24 [Signature]  
25 FERRILL VOLPICELLI # 79565  
26 Lovelock Correctional Center  
27 1200 Prison Road  
28 Lovelock, Nevada 89419  
Plaintiff In Pro Se

**Affidavit In Support of Application  
To Proceed In Forma Pauperis**

STATE OF NEVADA            )  
                                  ) **SS:**  
COUNTY OF ~~BERKELEY~~ WASHOE )

COMES NOW, FERRUCIO VOLPICELLI, who first being duly sworn and on my own oath, do hereby depose and state the following in support of my foregoing motion:

(1) Because of my poverty I am unable to pay the costs of the proceedings in the foregoing action or to give security therefore; I am entitled to relief. This application is made in good faith.

(2) I swear that the responses below are true and correct and to the best of my knowledge, information and belief:

(a) I    am ~~am not~~ presently employed. I currently earn salary or wages per month in the following amount at Lovelock Correctional Center OR, if I am not presently employed, the date of my last employment and the amount of salary or wages I earned per month were as follows: 2001  
1200/m

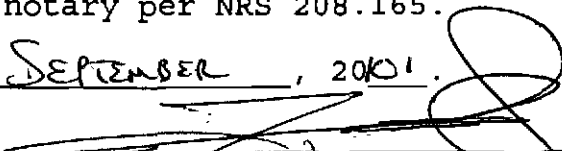
(b) I have NOT received any money from any of the following sources within the past 12 months: business, profession, self-employment, rent payments, pensions, interests or dividends, annuities, insurance payments, gifts or inheritances. Money, if any, placed on my prison account from sources such as family or friends, is in the amount as indicated on the attached Certificate of Inmate's Institutional Account, which reflects the total amount of money on my prison account.

(c) I do NOT own any real estate, stocks, bonds, notes, automobiles or other valuable property, and I do not have any money in a checking account.

(d) I    do ~~do not~~ have persons dependent upon me for support. The persons I support, if any, are as follows, with my relationship to them and the amount of my contribution towards their support being as follows: ACCUSED CHILD SUPPORT  
PART OF IN EXCESS OF \$9000

(3) I swear under penalty of perjury that the above is true and correct and to the best of my personal knowledge, and that the foregoing is rendered without notary per NRS 208.165.

Dated this 1st day of SEPTEMBER, 2001.

  
FERRUCIO VOLPICELLI # 179065  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Petitioner In Pro Se

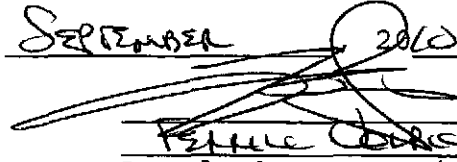


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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS does not contain the social security number of any person.

Dated this 18<sup>th</sup> day of SEPTEMBER 2010.



FELICE CORCORAN # 78965  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Retiree In Pro Se

///  
///  
///  
///  
///  
///

Lee

Case No. CV09-03442

Dept. No. 6

RCVD IN SER 08DEC18

IN THE 2nd JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASCO

FERRIN VOLPACCI 79565

PLAINTIFF

vs.

UNKNOWN

DEFENDANT

CERTIFICATE OF  
INMATE'S INSTITUTIONAL ACCOUNT

I, the undersigned, hereby certify that Ferrin Volpacci, # 79565,  
Plaintiff above-named, has a balance of \$ 235.66 on account to  
his credit in the prisoners' personal property fund for his use at Lovelock  
Correctional Center, in the County of Pershing, State of Nevada, where he is  
presently confined.

I further certify that said Plaintiff owes departmental charges  
in the amount of \$ 0 and that the solitary security to his credit is  
a savings account established pursuant to NRS 209.247(5) with a balance of  
\$ 200.00 which is inaccessible to him.

DATED THIS 18th day of December, 2009.

[Signature]

Accounting Technician  
Inmate Services Division  
Nevada Department of Corrections

Submitted by: [Signature], # 79565, on 12/15/09

**FILED**

Electronically

01-21-2011:02:40:44 PM

Howard W. Conyers

Clerk of the Court

Transaction # 1981332

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
SCOTT EDWARDS,  
Respondent.

No. 56747

CV09-03442  
6

**FILED**

JAN 18 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK


ORDER DIRECTING TRANSMISSION OF RECORD  
AND DIRECTING RESPONSE

We have reviewed the documents on file in this proper person appeal and conclude that our review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in District Court Case No. CV0903442. See NRAP 11(a)(2) (providing that the complete record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court, as well as any previously prepared transcripts of the district court proceedings). The record shall not include any exhibits filed in the district court.

Additionally, based upon our review of the civil proper person appeal statement and the documents transmitted to this court as part of this appeal, we conclude that a response is warranted. Accordingly, respondent shall have 60 days from the date of this order to file and serve a response, including points and authorities, addressing the issues raised in this appeal and the arguments made in appellant's civil proper person appeal statement. Respondent's response shall not exceed ten pages plus the attorney's certificate required by NRAP 28.2. The response need not

include the table of contents and table of cases, statutes, and other authorities required by NRAP 28(b). Respondent's response may cite to either the record on appeal or any appendix filed with the response.

It is so ORDERED.

 \_\_\_\_\_, C.J.

cc: Ferrill Joseph Volpicelli  
Washoe County District Attorney/Civil Division  
Washoe District Court Clerk ✓

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
PROOF OF SERVICE OF ELECTRONIC FILING**

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**A filing has been submitted to the court RE:** CV09-03442  
**Judge:** BRENT ADAMS  
**Official File Stamp:** 01-21-2011:14:40:44  
**Clerk Accepted:** 01-21-2011:14:41:33  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** FERRILL J VOLPICELLI VS SCOTT EDWARDS,  
ESQ. (D6)  
**Document(s) Submitted:** Supreme Ct Order Directing  
**Filed By:** Lori Matheus

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

PROPER PERSON  
DAVID CREEKMAN, ESQ.