

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUN 09 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT

BY S. Young  
DEPUTY CLERK

No. 56747

FERRILL JOSEPH VOLPICELLI, Appellant, vs. SCOTT EDWARDS, Respondent.
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~~PROPER PERSON  
RECEIVED/ENTERED~~

~~MAY 17 2011~~

~~TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT~~

APPELLANT'S MOTION FOR CONFESSION  
OF ERROR

This is a proper person appeal from an order of the district court dismissing an action for malpractice. Second Judicial District Court, Washoe County; Brent Adams, Judge.

After reviewing the documents on file in this appeal, this court directed the clerk of the district court to, within 30 days, transmit to the clerk of this court a certified copy of the trial court record.

Additionally, based upon this court's review of the civil proper person appeal statement and the documents transmitted to this court as part of this appeal, the court concluded that a response is warranted.

Accordingly, this court ordered respondent shall have 60 days 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. See Order Directing

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BY

11-14602

Transmission Of Record And Directing Response, entered herein on 01/18/2011. Respondent was therefore directed to file and serve a response by 03/19/2011.

Respondent, a member of the Nevada bar and officer of this court, has failed to comply with this court's order to file and serve a response in this appeal.

### Confession of error

In considering a situation similar to the one at hand, this court held that:

NRAP 31(c) empowers this court to deny a respondent the right to oral argument if respondent fails to file a timely brief, or the court may treat respondent's failure as "a confession of error" and make "appropriate disposition of the appeal" at that point. In *State Emp. Sec. Dept. v. Weber*, 100 Nev. 121, 124, 676 P.2d 1318, 1320 (1984), we warned that "in the future, when this court perceives a lack of regard for its rules or decisions, we may well impose sanctions such as striking a brief, dismissing an appeal, or finding a confession of error. Additionally, the attorneys involved may be referred to the bar for discipline."  
\* \* \*

Respondent's failure to comply with the briefing schedule set by order of this court would be, in and of itself, sufficient grounds for this court to find a confession of error.

Id. County Comm'rs v. Las Vegas Discount Golf, 110 Nev. 567, 875 P2d 1045, 1047 (1994), citing to Summa Corp. v. Brooks Rent-A-Car, 95 Nev. 779, 602 P2d 192 (1979) (treating failure to file an answering brief as a confession of error); Melvin L. Lukins & Sons v. Kast, 91 Nev. 116, 532 P2d 602 (1975) (reversing judgment without considering the merits because respondent failed to file an answering brief); accord Kitchen Factors, Inc. v. Brown, 91 Nev. 308, 535 P2d 677 (1975).

In the instant case, respondent is a member of the Nevada state bar and, obviously, so is his counsel. Under these facts, it can only be concluded that respondent's failure to file a response was intentional non-compliance rather than due to a lack of knowledge of court procedures. This court, when it "perceives a lack of regard for its rules or decisions," has imposed sanctions such as striking a brief, dismissing an appeal, or finding a confession of error.

Accordingly, this court should treat respondent's failure to comply with filing a response in this appeal as direct by order of this court as a confession of error. Moreover, this case should be remanded to the district court and the district court ordered to vacate its findings of fact, conclusions of law and order; while construing the merits of this action in appellant's favor. See Lukins, supra.

DATED this 13<sup>th</sup> day of May, 2011.

Respectfully submitted

By:

FERRILL J. VOIPICELLI

NDOC ID # 79565

Lovelock, Nevada 89419

1200 Prison Road

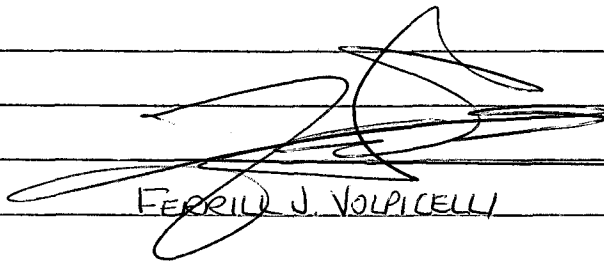
Lovelock, Nevada 89419

IN PROPER PERSON

CERTIFICATE OF MAILING

Pursuant to N.R.C.P. Rule 5(b), I hereby certify that I am the appellant named herein and that on this 13<sup>th</sup> day of May, 2011, I mailed a true and correct copy of the foregoing document to the following:

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



FERRUCCIO J. VOLPICELLI