

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 LAS VEGAS METROPOLITAN
3 POLICE DEPARTMENT; and CANNON
4 COCHRAN MANAGEMENT
 SERVICES, INC.,

5
6 Appellants,

7 vs.

8 WILLIAM FERGUSON,
9
10 Respondent.

Supreme Court Electronically Filed
Jan 26 2022 03:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

11
12 **APPELLANTS' MOTION FOR RECONSIDERATION OF ORDER**
13 **DISMISSING APPEAL**

14 APPELLANTS LAS VEGAS METROPOLITAN POLICE DEPARTMENT and
15 CANNON COCHRAN MANAGEMENT SERVICES, INC., by and through their
16 attorneys of record, DANIEL L. SCHWARTZ, ESQ., and L. MICHAEL FRIEND,
17 ESQ., of LEWIS BRISBOIS BISGAARD & SMITH LLP, respectfully move for
18 reconsideration of this honorable Court's Order Dismissing Appeal filed on January 25,
19 2022.
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1 This motion is based on the Points and Authorities, counsel's affidavit, exhibits
2 attached hereto, and the papers and pleadings on file.

3
4 DATED this 26th day of January, 2022.

5 Respectfully submitted,

6 LEWIS BRISBOIS BISGAARD &
7 SMITH LLP

8
9 By: 

DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 005125
L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 01131
(702) 893-3383
2300 West Sahara Avenue, Suite 900
Las Vegas, NV 89102
Attorneys for Appellants
LAS VEGAS METROPOLITAN
POLICE DEPARTMENT and
CANNON COCHRAN
MANAGEMENT SERVICES, INC.

POINTS AND AUTHORITIES

This honorable court filed an Order Dismissing Appeal on January 25, 2022. The dismissal was based upon Appellants' failure to comply with a Notice of Potential Dismissal For Failure to Pay Supreme Court Filing Fee (hereinafter "Notice") filed on January 10, 2022. The Notice directed Appellants to either remit the filing fee or demonstrate compliance with NRAP 24. Despite good faith efforts to ensure compliance by undersigned counsel for Appellants, he mistakenly relied on incorrect information and failed to properly ensure compliance. (See Affidavit, attached hereto as Exhibit A.)

A party may bring a motion for reconsideration under NRAP 27(3) in relation to this Order. In this case, counsel had signed a Cost Advance Request on January 4, 2022, requesting \$500.00 for "filing for appeal to supreme court." (Exhibit B.) Counsel mistakenly believed the check was for the filing fees to this court, as indicated on the request. (*Id.*) Upon receipt of the Notice on January 10, 2022, counsel confirmed that the check had been received and sent for filing the week before. (*Id.*) Upon receipt of the Order Dismissing Appeal, counsel confirmed that the check had in fact been sent via Fedex and delivered to the Eighth Judicial District Court on January 7, 2022. (Exhibit C.) Upon further investigation, counsel discovered the \$500.00 check was for a bond filed on January 13, 2022, and that there had been internal miscommunications and misunderstandings regarding the check. (*Id.*) Undersigned counsel has submitted filing fees via this process for that last several months without issue in several cases

1 currently pending before this Court (See Case Nos. 83563, 83686, 83707, 83970,
2 84034, and 84035). (*Id.*) Counsel understands his duty to exercise due diligence and to
3 obey court orders. Although he thought he had done just that, in hindsight he
4 understands he did not.

5
6 This court has repeatedly held that cases are to be heard on the merits if possible.
7
8 Passarelli v. J-Mar Dev., 102 Nev. 283, 285, 720 P.2d 1221, 1223 (1986.). In this case,
9 as soon as it was discovered that the check had in fact not been sent, Appellants
10 immediately filed this motion. This delay of just days does not prejudice Respondent.
11
12 In fact, the District Court Judge has not yet ruled on Appellants' Motion for Stay in this
13 matter. (Exhibit D, showing in chambers hearing, but no having no ruling yet issued.)
14 Moreover, the issue in this appeal is regarding statutory interpretation of NRS
15 617.457(11). Specifically, with regard to the parameters of corrective actions which
16 Nevada police officers (and other statutorily defined professions) must take in order not
17 to be excluded from the conclusive presumption that heart disease is industrially related
18 under the Heart & Lung Bill. This issue affects not only the Respondent, but potentially
19 many others under similar circumstances.

20
21
22 In this case, Appellants timely filed their appeal, submitted their bond, and other
23 documents procedurally required to initiate an appeal per NRS 233B, the Nevada
24 Administrative Procedure Act. When the totality of circumstances are considered,
25 counsel hopes the court will see this was an honest mistake made with no intent to
26 delay or avoid paying fees, which Appellants have paid without issue in numerous
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1 pending cases before this court. Counsel respectfully requests that any sanctions for this
2 failure should be imposed against him, and not the Appellants in this matter.

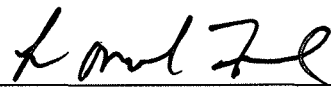
3
4 **CONCLUSION**

5 Appellants regret this inadvertent oversight at issue and respectfully request the
6 opportunity to have this appeal reinstated.

7
8 DATED this 26th day of January, 2022.

9 Respectfully submitted,

10 LEWIS BRISBOIS BISGAARD &
11 SMITH LLP

12
13 By: 
14 DANIEL L. SCHWARTZ, ESQ.
15 Nevada Bar No. 005125
16 L. MICHAEL FRIEND, ESQ.
17 Nevada Bar No. 01131
18 (702) 893-3383
19 2300 West Sahara Avenue, Suite 900
20 Las Vegas, NV 89102
21 Attorneys for Appellants
22 LAS VEGAS METROPOLITAN
23 POLICE DEPARTMENT and
24 CANNON COCHRAN
25 MANAGEMENT SERVICES, INC.
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CERTIFICATE OF MAILING

I hereby certify that on this ____ day of January, 2022, a true and correct copy of this **RESPONDENTS' MOTION FOR RECONSIDERATION OF ORDER DISMISSING APPEAL** completed upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system and via US Mail.

An employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP

EXHIBIT A

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1 **AFFIDAVIT in SUPPORT OF MOTION FOR RECONSIDERATION OF**
2 **ORDER DISMISSING APPEAL**

3 STATE OF NEVADA)
4) ss:
5 COUNTY OF CLARK)

6 I, L. MICHAEL FRIEND, ESQ., do hereby swear under penalty of perjury that
7 the assertions in this affidavit are true, that:

8 1. Affiant is an attorney authorized and duly licensed to practice law in
9 the State of Nevada and is one of the attorneys of record for Appellants.

10 2. This affidavit is made in support of Appellants' Motion for
11 Reconsideration of Order Dismissing Appeal.

12 3. Affiant has personal knowledge of all matters set forth herein, except
13 those matters stated on information and belief, and is competent to testify thereto.

14 4. On January 4, 2022, Affiant signed a Cost Advance Request requesting
15 \$500.00 for "filing for appeal to supreme court." (Exhibit B.)

16 5. Affiant believed the requested check was for the filing fees to this
17 court, as indicated on the request.

18 6. Upon receipt of the Notice filed by this Court on January 10, 2022,
19 Affiant confirmed with his assistant, who advised that the check had been received
20 and sent for filing the week before.

21 7. Upon receipt of the Order Dismissing Appeal, Affiant confirmed that
22 the check had in fact been sent via Fedex and delivered to the Eighth Judicial
23 District Court on January 7, 2022. (Exhibit C.)

24 8. Upon further investigation, Affiant discovered the \$500.00 check was
25 in fact for a bond filed on January 13, 2022.

26 9. Affiant did not realize upon signing the Notice of Filing Bond on
27 January 13, 2022, that the check referenced was in fact that check requested on
28 January 4, 2022.

1 10. Affiant has submitted filing fees via this process for that last several
2 months without issue in several cases currently pending before this Court (See Case
3 Nos. 83563, 83686, 83707, 83970, 84034, and 84035).

4 11. Affiant in no way intended to delay or avoid paying fees timely, or to
5 disobey an order of this court.

6 Further Affiant sayeth naught.

7 DATED this 22 day of January, 2022.

8
9 
L. MICHAEL FRIEND, ESQ.

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11
12 SUBSCRIBED AND SWORN to
13 before me this 22nd day of January,
14 2022.

15 
16 NOTARY PUBLIC in and for said
17 County and State

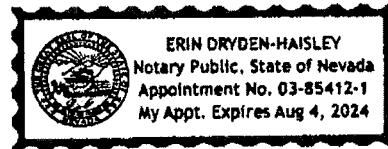


EXHIBIT B

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Lewis Brisbois Bisgaard & Smith LLP

Cost Advance Request

LV-11262

1. Check — Date Needed: 1/10/22
2. Type of Expense:

<input checked="" type="checkbox"/>	Filing Fee	5	<input type="checkbox"/>	Court Reporter Fee	CR
<input type="checkbox"/>	Witness Fee	7	<input type="checkbox"/>	Mediation / Arbitration Fee**	AM
<input type="checkbox"/>	Prof. Consulting / Service Fee	S	<input type="checkbox"/>	COD Transcription (Invoice Needed)**	G
<input type="checkbox"/>	Expert Witness Fee**	J	<input type="checkbox"/>	Reproduction / Copies	R
<input type="checkbox"/>	Jury Fees	JF	<input type="checkbox"/>	Reproduction / Medical Records	RR
<input type="checkbox"/>	Deposition	H	<input type="checkbox"/>	International Vendor & Wires	

Any client-related requests over \$500.00 require LBBS Cost Advance Committee approval and should be sent to "LBBS Cost Advances" (LBBSCostAdvances@lewisbrisbois.com)

All educational expenses/seminars require Karl Loureiro's approval.

3. Client and File Name: William Ferguson v LVMPD
4. Client and Matter No.: 33307-462
5. Amount: \$500.00
6. Payee / Vendor: Clark County 8th Judicial District Court
7. Mailing Address: 200 Lewis Ave
Las Vegas, NV 89155
8. Payee's Telephone No.:
9. Payee's Tax I.D. No.:
10. Explanation for billing purposes: filing fee for appeal to supreme court

Attorney: Michael Friend Ext:
Secretary: Stephanie Jensen Ext:

Auth. by /s/ L. Michael Friend, Esq. Date 1/4/22
Signature

Return to: Stephanie Jensen
Floor: SAHARA

Remember to have Attorney Sign and Attach all Supporting Backup

EXHIBIT C

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TRACK ANOTHER SHIPMENT

288465457150



ADD NICKNAME

Delivered
Friday, 1/7/2022 at 10:21 am



DELIVERED

Signed for by: A.PARRAZA

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM

Las Vegas, NV US

TO

LAS VEGAS, NV US

MANAGE DELIVERY

Travel History

Shipment Facts

Travel History

TIME ZONE
Local Scan TimeFriday, January 7,
2022

10:21 AM	LAS VEGAS, NV	Delivered
8:38 AM	NORTH LAS VEGAS, NV	On FedEx vehicle for delivery
7:21 AM	NORTH LAS VEGAS, NV	At local FedEx facility

Thursday, January 6,
2022

10:12 PM	LAS VEGAS, NV	At local FedEx facility
7:18 PM	LAS VEGAS, NV	At destination sort facility
6:55 PM	LAS VEGAS, NV	Left FedEx origin facility
4:01 PM	LAS VEGAS, NV	Picked up
4:44 PM		Shipment information sent to FedEx

Collapse History

Shipment Facts

TRACKING NUMBER

288465457150

SERVICE

FedEx Priority Overnight

WEIGHT

0.5 lbs / 0.23 kgs

DELIVERED TO

Receptionist/Front Desk

TOTAL PIECES

1

TOTAL SHIPMENT WEIGHT

0.5 lbs / 0.23 kgs

TERMS

Shipper

SHIPPER REFERENCE

33307-462

PACKAGING

FedEx Envelope

SPECIAL HANDLING SECTIONDeliver Weekday, No Signature
Required**SHIP DATE**

1/6/22 ⓘ

STANDARD TRANSIT

1/7/22 before 10:30 am ⓘ

ACTUAL DELIVERY

1/7/22 at 10:21 am

Vendor No.: 49805 Clerk of Court, 8th Jdc

Check No.: 15399

Invoice Date	Invoice No.	Description	Disb. Code	Voucher No.	Account No./ File No.	Amount
1/04/22	LV-11262	Filing fee for appeal to supreme court.	5	2841853	33307-462	500.00
Total Amount:						500.00

LEWIS BRISBOIS BISGAARD & SMITH LLP

WELLS FARGO BANK, N.A.
San Francisco, CA

CHECK NO. 15399

ATTORNEYS
LAS VEGAS OFFICE
6385 SOUTH RAINBOW BOULEVARD, SUITE 600
LAS VEGAS, NEVADA 89118
(702) 893-3383

11-24/1210

DATE 01/04/2022

\$ *****500.00

PAY: Five Hundred and 00/100

NOT NEGOTIABLE

Draft void 120 days from issued
LEWIS BRISBOIS BISGAARD & SMITH LLPTO THE Clerk of Court, 8th Judicial District
ORDER OF Court

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EXHIBIT D

1 ORDER SHORTENING TIME

2 GOOD CAUSE APPEARING THEREFOR,

3 IT IS HEREBY ORDERED that the time of hearing of the above-entitled matter be, and
4 the same will be heard, on the 13th day of January 2022, at in chambers.
5 ~~A.M./P.M.~~ in Dept. No. XXVIII. Any subsequent hearings scheduled on this Motion for Stay are
6 hereby vacated.

Dated this 11th day of January, 2022

7 DATED this ____ day of ____, 2022.

8 608 B9F 75AE 7D26
9 Ronald J. Israel
District Court Judge

10 RONALD J. ISRAEL,
11 DISTRICT COURT JUDGE
12 A-21-830966-J

JT

13 Respectfully submitted by:

14 LEWIS, BRISBOIS, BISGAARD & SMITH, LLP

15 /s/ L. Michael Friend
16 DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 005125
17 L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 011131
18 2300 West Sahara Ave, Suite 900, Box 28
19 Las Vegas, Nevada 89102
Phone: (702) 893-3383
20 Facsimile: (702) 366-9563
Attorneys for Appellants
21 Las Vegas Metropolitan Police Department and
22 Cannon Cochran Management Services, Inc.