

Case No. CV 23-00669

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain social security numbers.

7:23 OCT 23 PM 2:23

IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
Elizabeth A. Brown
Clerk of Supreme Court

FERRIS J. VOLPKEL
Plaintiff

VS.

NOTICE OF APPEAL

(CIVIL)

THE STATE OF NEVADA
Defendant

Notice is given that Plaintiff, FERRIS J. VOLPKEL, in pro se, hereby
appeals to the Nevada Supreme Court the ORDER DENYING VACATUR
OF JUDGMENT as filed/entered on the 10 day of OCT, 20 23,
(Complete if Applicable) and the 10
as filed/entered on the ___ day of Nov, 20 __, in the above-entitled Court.

Dated this ___ day of October, 20 23

FERRIS J. VOLPKEL # 79505
Plaintiff in Pro Se

Lovelock Correctional Center

1200 Prison Road

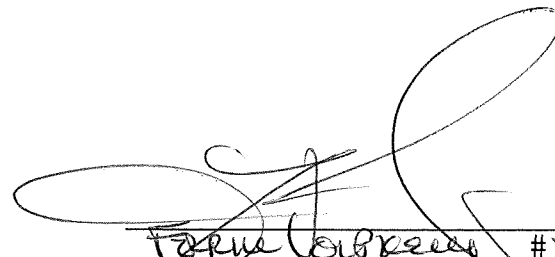
Lovelock, Nevada 89418

Plaintiff, In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Notice of Appeal to the below address(es) on this October day of 2023, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

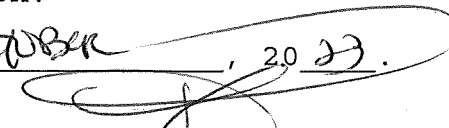
WASHOE COUNTY
DISTRICT ATTORNEY
\$
NEVADA ATTORNEY GENERAL


Forne Capron #72504
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
PCAMARK 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. CV 23-00609 does not contain the social security number of any person.

Dated this October day of 2023.


Forne Capron
PCAMARK In Pro Se

FERRER, VICTORIA
79005-0100
COURT PRISON
COURT, NV 89001

DEPUTY CLERK - ASSIGNED TO
INMATE CORRESPONDENCE



Second Texas District Court

CR020107

COURT

75 COURT ST

RENO, NV 89001

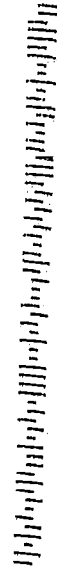
RECEIVED

OCT 23 2023

DELL BUCK

PRIVATE LEGAL
MAIL CONFIDENTIAL

8950181962



Code 1310

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

FERRILL JOSEPH VOLPICELLI,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant.

Case No. CV23-00669

Dept. No. 10

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Ferrill Joseph Volpicelli.
2. This appeal is from an order entered by the Honorable Judge Kathleen A. Sigurdson.
3. Appellant is representing himself in Proper Person on appeal, the Appellant's address is:
Ferrill Volpicelli #79565
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89418
4. Respondent is State of Nevada. Respondent was represented in District Court by:
Christopher Hicks Esq. DA SBN 7747
Jennifer Noble Esq DA SBN 9446
Washoe County District Attorneys Office
PO Box 11130
Reno, Nevada 89520

5. Respondent's attorney is not licensed to practice law in Nevada: na
6. Appellant is not represented by counsel in District Court.
7. Appellant is not represented by counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis in the District Court on June 26th, 2023.
9. Proceeding commenced by the filing of a Independent Civil Action for Vacatur of Void Judgment Based Upon Want of Jurisdiction on June 28th, 2023.
10. This is a civil proceeding and the Appellant is appealing the Order Denying Vacatur of Judgment filed October 10th, 2023.
11. The case has not been the subject of a previous appeals to the Supreme Court.
12. This case does not involve child custody or visitation.
13. It is unknown if the case involves the possibility of a settlement.

Dated this 24th day of October, 2023.

Alicia L. Lerud
Clerk of the Court
By: /s/ Y.Viloria
Y.Viloria
Deputy Clerk

1 CODE NO. 3335

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9 In re the Matter of the Petition of

Case No. CV23-00669

10 FERRILL J. VOLPICELLI

Dept. No. 15

11 _____/
12 **ORDER GRANTING APPLICATION TO WAIVE FEES AND COSTS**

13 Before this Court is the *Application to Waive Fees and Costs* filed by Petitioner
14 FERRILL J. VOLPICELLI ("Petitioner").
15

16 NRS 12.015 provides, in pertinent part:

17 1. Any person who desires to prosecute or defend a civil action without
18 paying the costs for prosecuting or defending the action may:

19 (a) File, on a form provided by the court, an application to proceed as an
20 indigent litigant, which must include a declaration that complies with the
21 provisions of NRS 53.045; or

22 (b) If the person is a client of a program for legal aid, submit to the court a
23 statement of representation or otherwise indicate to the court that the person
24 is a client of a program for legal aid.

25 2. The court shall allow a person to commence or defend the action without
26 costs and file or issue any necessary writ, process, pleading or paper without
27 charge if:

28 (a) Based on its review of an application filed pursuant to paragraph (a) of
subsection 1, the court determines that the application should be granted and
the person may proceed as an indigent litigant because the person:

(1) Is receiving benefits provided by a federal or state program of
public assistance;

(2) Has a household net income which is equal to or less than 150
percent of the federally designated level signifying poverty as provided in the
most recent federal poverty guidelines published in the Federal Register by
the United States Department of Health and Human Services;

1 (3) Has expenses for the necessities of life that exceed his or her
2 income; or

3 (4) Has otherwise shown compelling reasons that he or she cannot
4 pay the costs of prosecuting or defending the action.

5 (b) The person has submitted a statement of representation or otherwise
6 indicated to the court that the person is a client of a program for legal aid
7 pursuant to paragraph (b) of subsection 1.

8 The sheriff or another appropriate public officer within this State shall make
9 personal service of any necessary writ, process, pleading or paper without
10 charge for an applicant whose application has been granted or a person who
11 has submitted a statement of legal representation or otherwise indicated to the
12 court that the person is a client of a program for legal aid.¹

13 3. If the person is required to have proceedings reported or recorded, or if
14 the court determines that the reporting, recording or transcription of
15 proceedings would be helpful to the adjudication or appellate review of the
16 case, the court shall order that the reporting, recording or transcription be
17 performed at the expense of the county in which the action is pending but at a
18 reduced rate as set by the county.

19 4. If the person prevails in the action, the court shall enter its order requiring
20 the losing party to pay into court within 5 days the costs which would have
21 been incurred by the prevailing party, and those costs must then be paid as
22 provided by law.

23 NRS 12.015. Here, the Court finds and determines Petitioner has sufficiently demonstrated
24 the requisite qualifications under NRS 12.015(2)(a)(1)-(4) to proceed as an indigent litigant.

25 Petitioner is incarcerated in the Nevada Department of Corrections, and has no annual
26 income.

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¹ NRS 12.015 does not require the court clerk to provide an in forma pauperis litigant with photocopies in connection with the litigant preparing and prosecuting his or her case. Lepley v. First Judicial Dist. Court of State ex rel. Cnty. of Carson City, 131 Nev. 1312 (2015).

1 Accordingly, and good cause appearing therefor,

2 **IT IS HEREBY ORDERED:**

3 1. The *Application to Waive Fees and Costs* is GRANTED;

4 2. Petitioner may proceed without payment of fees or security thereof, excluding
5 fees and costs for jury fees or a peremptory challenge;

6 3. The Clerk of Court shall file and process all pleadings necessary in the
7 prosecution of this action without fees; and

8 4. The Sheriff shall make personal service of any necessary pleadings or papers
9 for Petitioner in this action without charge.
10

11 DATED this 26th day of June, 2023.

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14 CHIEF DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 26th day of June, 2023, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

CHRISTOPHER HICKS, ESQ.

And, 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:

FERRILL JOSEPH VOLPICELLI #79565
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV23-00669****Case Description: FERRILL VOLPICELLI VS. STATE OF NEVADA ETAL (D10)****Case Number: CV23-00669 Case Type: OTHER CIVIL MATTERS - Initially Filed On: 4/18/2023****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - KATHLEEN SIGURDSON - D10	Active
JUDG - DAVID A. HARDY - D15	Party ended on: 9/6/2023 1:47:03PM
PLTF - FERRILL JOSEPH VOLPICELLI - @67988	Active
DEFT - WARDEN TIM GARRETT - @1401189	Active
DEFT - STATE OF NEVADA - STATE	Active
DEFT - NEVADA DEPARTMENT OF CORRECTIONS - @1242771	Active
AG - Aaron D. Ford, Esq. - 7704	Active
DA - Jennifer P. Noble, Esq. - 9446	Active
DA - Christopher J. Hicks, Esq. - 7747	Active

Disposed Hearings

- Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/20/2023 at 12:40:00
Extra Event Text: APPLICATION FOR WAIVER OF FEES AND COSTS
Event Disposition: S200 - 6/26/2023
- Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 8/31/2023 at 15:59:00
Extra Event Text: DEFENDANT CIVIL ACTION OF VACATUR OF VOID JUDGEMENT ... 60(B)(4)
Event Disposition: S200 - 10/10/2023

Actions

- | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|--------------------|-----------|---|
| 1 | 4/18/2023 | - 3866 - Request/Waive Fees/Costs
<i>No additional text exists for this entry.</i> |
| 2 | 6/20/2023 | - 3860 - Request for Submission
Additional Text: DOCUMENT TITLE: APPLICATION FOR WAIVER OF FEES AND COSTS
PARTY SUBMITTING: FERRILL JOPSEPH VOLPICELLI
DATE SUBMITTED: JUNE 20, 2023
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE: |
| 3 | 6/26/2023 | - 3035 - Ord Grant in Forma Pauperis
Additional Text: Order Granting Application to Waive Fees and Costs - Transaction 9741947 - Approved By: NOREVIEW : 06-26-2023:15:18:58 |
| 4 | 6/26/2023 | - S200 - Request for Submission Complet
Additional Text: Order Granting Application to Waive Fees and Costs filed 26 JUN 2023 |
| 5 | 6/26/2023 | - NEF - Proof of Electronic Service
Additional Text: Transaction 9741959 - Approved By: NOREVIEW : 06-26-2023:15:20:12 |
| 6 | 6/28/2023 | - 1215 - Application Appoint Counsel
Additional Text: MOTION FOR APPOINTMENT OF COUNSEL |

Report Does Not Contain Sealed Cases or Confidential Information

- 7 6/28/2023 - 1425 - Complaint - Civil
Additional Text: INDEPENDENT CIVIL ACTION FOR VACTUR OF VOID JUDGMENT BASED UPON WANT OF JURISDICTION { SIC }
- 8 6/28/2023 - 4090 - ** Summons Issued
No additional text exists for this entry.
- 9 6/28/2023 - 4090 - ** Summons Issued
No additional text exists for this entry.
- 10 6/28/2023 - 4090 - ** Summons Issued
No additional text exists for this entry.
- 11 8/17/2023 - 1520 - Declaration
Additional Text: DECLARATION OF NON SERVICE - WASHOE COUNTY DISTRICT ATTORNEY
- 12 8/17/2023 - 1520 - Declaration
Additional Text: DECLARATION OF SERVICE - NEVADA ATTORNEY GENERAL OFFICE AUGUST 4, 2023
- 13 8/22/2023 - 4090 - ** Summons Issued
Additional Text: X4
- 14 8/31/2023 - 3860 - Request for Submission
Additional Text: DOCUMENT TITLE: DEFENDANT CIVIL ACTION OF VACATUR OF VOID JUDGEMENT ... 60(B)(4)
PARTY SUBMITTING: FERRILL J. VOLPICELLI
DATE SUBMITTED: 08/31/2023
SUBMITTED BY: SC
DATE RECEIVED JUDGE OFFICE:
- 15 9/6/2023 - 3161 - Ord of Recusal
Additional Text: REASSIGNMENT ORDER - Transaction 9870948 - Approved By: NOREVIEW : 09-06-2023:13:26:31
- 16 9/6/2023 - NEF - Proof of Electronic Service
Additional Text: Transaction 9870962 - Approved By: NOREVIEW : 09-06-2023:13:28:39
- 17 9/6/2023 - 1312 - Case Assignment Notification
Additional Text: CASE REASSIGNED TO D10 FROM D15 PER REASSIGNMENT ORDER FILED 9/6/23 - Transaction 9871094 - Approved By: NOREVIEW : 09-06-2023:13:54:06
- 18 9/6/2023 - NEF - Proof of Electronic Service
Additional Text: Transaction 9871097 - Approved By: NOREVIEW : 09-06-2023:13:54:55
- 19 9/12/2023 - 1520 - Declaration
Additional Text: DECLARATION OF SERVICE, WCDA'S OFFICE 09/11/2023 - Transaction 9880650 - Approved By: NOREVIEW : 09-12-2023:08:15:36
- 20 9/12/2023 - NEF - Proof of Electronic Service
Additional Text: Transaction 9880651 - Approved By: NOREVIEW : 09-12-2023:08:16:05
- 21 9/18/2023 - 2490 - Motion ...
Additional Text: MOTION TO ORDER DEFENDANTS TO ANSWER COMPLAINT { SIC }
- 22 9/18/2023 - 3860 - Request for Submission
Additional Text: DOCUMENT TITLE: MOTION TO ORDER DEFENDANTS TO ANSWER COMPLAINT { SIC }
PARTY SUBMITTING: FERRILL JOESPH VOLPICELLI
DATE SUBMITTED: SEPTEMBER 18, 2023
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:

- 23 10/10/2023 - FIE - **Document Filed in Error
Additional Text: ORDER DENYING VACATUR OF JUDGEMENT - Transaction 9931894 - Approved By: NOREVIEW : 10-10-2023:08:54:20
- 24 10/10/2023 - NEF - Proof of Electronic Service
Additional Text: Transaction 9931897 - Approved By: NOREVIEW : 10-10-2023:08:55:00
- 25 10/10/2023 - S200 - Request for Submission Complet
Additional Text: ORDER DENYING MOTION FOR VACATUR OF JUDGMENT 10/10/23
RFS 8/31/23
- 26 10/10/2023 - 2842 - Ord Denying Motion
Additional Text: ORDER DENYING VACATUR OF JUDGEMENT - Transaction 9931933 - Approved By: NOREVIEW : 10-10-2023:09:03:18
- 27 10/10/2023 - NEF - Proof of Electronic Service
Additional Text: Transaction 9931937 - Approved By: NOREVIEW : 10-10-2023:09:04:10
- 28 10/12/2023 - 2490 - Motion ...
Additional Text: MOTION FOR LEAVE TO AMEND INDEPENDENT CIVIL ACTION FOR VACUTRE OF VOID JUDGMENT RENDERED IN EXCESS OF JUDICIAL AUTHORITY NRCP 3, NRCP 60 (A) (1) NRCP 60 (B)(4)
- 29 10/12/2023 - 2490 - Motion ...
Additional Text: MOTION TO TAKE JUDICIAL NOTICE
- 30 10/12/2023 - 3860 - Request for Submission
Additional Text: DOCUMENT TITLE: MOTION FOR LEAVE TO AMEND INDEPENDENT CIVIL ACTION FOR VACUTRE OF VOID JUDGMENT RENDERED IN EXCESS OF JUDICIAL AUTHORITY NRCP 3, NRCP 60 (A) (1) NRCP 60 (B)(4)
PARTY SUBMITTING: FERRILL JOSEPH VOLPICELLI
DATE SUBMITTED: OCTOBER 12, 2023
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:
- 31 10/12/2023 - 3860 - Request for Submission
Additional Text: DOCUMENT TITLE: AMENDED INDEPENDENT CIVIL ACTION
PARTY SUBMITTING: FERRILL JOSEPH VOLPICELLI
DATE SUBMITTED: OCTOBER 12, 2023
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:
- 32 10/12/2023 - 3860 - Request for Submission
Additional Text: DOCUMENT TITLE: MOTION TO TAKE JUDICIAL NOTICE
PARTY SUBMITTING: FERRILL JOSEPH VOLPICELLI
DATE SUBMITTED: OCTOBER 12, 2023
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:
- 33 10/12/2023 - 1120 - Amended ...
Additional Text: AMENDED INDEPENDENT CIVIL ACTION FOR VACUTRE OF VOID JUDGMENT RENDERED IN EXCESS OF JUDICIAL AUTHORITY NRCP 3, NRCP 60 (A) (1) NRCP 60 (B)(4)
- 34 10/23/2023 - 2515 - Notice of Appeal Supreme Court
Additional Text: ODER 10/10/2023
- 35 10/23/2023 - 3860 - Request for Submission
Additional Text: REQUEST FOR SUBMISSION FOR NOTICE OF APPEAL (NO S1 BUILT)
- 36 10/24/2023 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 9957794 - Approved By: NOREVIEW : 10-24-2023:08:42:37

37 10/24/2023 - 1310E - Case Appeal Statement

Additional Text: CASE APPEAL STATEMENT - Transaction 9957794 - Approved By: NOREVIEW : 10-24-2023:08:42:37

38 10/24/2023 - NEF - Proof of Electronic Service

Additional Text: Transaction 9957799 - Approved By: NOREVIEW : 10-24-2023:08:43:23

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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 JOSEPH VOPICELLI,

10 Plaintiff,

11 vs.

12 THE STATE OF NEVADA.,

13 Defendant.
14

Case No.: CV23-00669

Dept. No.: 10

15 **ORDER DENYING VACATUR OF JUDGEMENT**

16 Pending before the Court is Plaintiff Ferrill Joseph Vopicelli's ("Plaintiff" "Mr.
17 Vopicelli") *Independent Civil Action for Vacatur of Void Judgement Based Upon Want of*
18 *Jurisdiction*. ("Motion") filed on June 28, 2023.
19

20 **I. FINDINGS OF FACT**

21 In the Motion, Plaintiff requests the Court vacate the judgment against him in case
22 CRO3-1263, designating him a habitual criminal. Plaintiff asserts the judgment is void due
23 to prosecutorial misconduct; Plaintiff alleges the prosecutor presented propensity evidence
24 of a burglary occurring in 1988. Plaintiff refers to the indictment where the conviction of the
25 burglary was used. In addition, Plaintiff asserts his counsel erroneously preserved the
26 District Court's matter jurisdiction to adjudicate him as a habitual criminal.

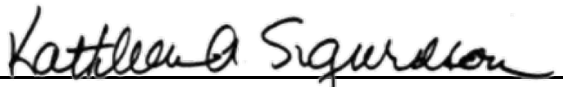
27 **II. CONCLUSIONS OF LAW**

28 As an initial matter, this Court notes the Motion is improperly pleaded pursuant to

1 W.D.C.R. 10(1)(a), which provides “documents for filing must be Lined with numbers in the
2 left margin or on legal pleading paper;” Regardless, the Court will address the Motion on
3 the merits. The Court finds the allegations of prosecutorial misconduct are not supported by
4 the record. The Court also finds Petitioner’s claim of a lack of jurisdiction is not supported
5 by proper legal authority or the facts of this case.

6 IT IS SO ORDERED. Plaintiff’s *Independent Civil Action for Vacatur of Void*
7 *Judgement Based Upon Want of Jurisdiction.*

8 DATED this 10th day of October 2023.
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12 HON. KATHLEEN A. SIGURDSON
13 DISTRICT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 CASE NO.: CV23-00669

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT OF
4 THE STATE OF NEVADA, COUNTY OF WASHOE; that on the 5th day of October 2023, I
5 electronically filed the foregoing **ORDER DENYING VACATUR OF JUDGEMENT** with the
6 Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document
8 by the method(s) noted below:
9

10 **Electronically filed with the Clerk of the Court by using the ECF system which will**
11 **send a notice of electronic filing to the following:**
12

13 **Deposited in the Washoe County mailing system for postage and mailing with the**
14 **United States Postal Service in Reno, Nevada:**
15

16 **FERRILL VOLPICELLI, #79565**
17 **Lovelock Correctional Center**
18 **1200 Prison Road**
19 **Lovelock, NV 89419**
20
21

22 /s/ Michael Decker
23 JUDICIAL ASSISTANT
24
25
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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 JOSEPH VOLPICELLI,

Plaintiff,

vs.

Case No. CV23-00669

Dept. No. 10

THE STATE OF NEVADA,

Defendant.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 24th day of October, 2023, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 24th day of October, 2023.

Alicia L. Lerud
Clerk of the Court
By /s/Y.Viloria
Y.Viloria
Deputy Clerk