

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT JAY PALIOTTA,  
Appellant,

vs.

THE STATE OF NEVADA IN  
RELATION TO THE NEVADA  
DEPARTMENT OF CORRECTIONS;  
AND RENEE BAKER, WARDEN,  
Respondents.

Supreme Court No. 63205

District Court No. CF-1111054

Due Date: June 24, 2013

**FILED**

JUN 20 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Maccagnan*  
DEPUTY CLERK

CIVIL PROPER PERSON APPEAL STATEMENT

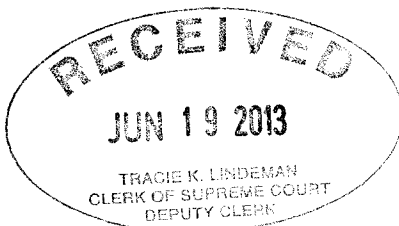
Gilbert Jay Paliotta  
Inmate ID: 46244  
ESP  
P.O. Box 1989  
Ely, NV 89301  
Appellant in Proper Person

Appellant

Catherine Cortez Masto/Attorney  
General  
100 N. Carson St.  
Carson City, NV 89701

The State of Nevada Department  
of Corrections  
Renee Baker, Warden

Respondents



**Judgment or Order You Are Appealing.** List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
8 May 2013	District Judge 'Order'

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: 14 May 2013

**Related Cases.** List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court

**Issues on Appeal.** Does your appeal concern any of the following issues? Check all that apply:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> divorce   | <input type="checkbox"/> child custody/visitation       | <input type="checkbox"/> child support        |
| <input type="checkbox"/> relocation  | <input type="checkbox"/> termination of parental rights | <input type="checkbox"/> attorney fees        |
| <input type="checkbox"/> paternity   | <input type="checkbox"/> marital settlement agreement   | <input type="checkbox"/> division of property |
| <input type="checkbox"/> adoption  | <input type="checkbox"/> prenuptial agreement           | <input type="checkbox"/> spousal support      |
| <input checked="" type="checkbox"/> other—briefly explain: <u>dismissal of purported defendant</u> |   |   |

**Statement of Facts.** Explain the facts of your case. (Your answer must be provided in the space allowed.)

On 16 April 2013, the Court entered an order granting Defendants' Motion to Dismiss Purported Defendant McNeely on the ground that Plaintiff failed to timely effectuate service on Defendant McNeely. On 19 April 2013, Plaintiff filed Objection to District Court Order (16 April 2013), and/or Motion to Reconsider—hereafter "Motion for Reconsideration". In it, Plaintiff notified the Court that on 24 January 2013, Plaintiff filed an Affidavit in Attempt to Have Summons and Complaint Served upon

Defendant (and Motion Identifying the Unserved Defendant Requesting Issuance of Summons for Unserved Defendant." Plaintiff further cited the Court and submitted documented evidence in the form of a "Proof of Service" by the Carson City Sheriff's Department, that a one Sheriff Chris MacMahon, had served Summons/Complaint to D. McNeely, 5500 Snyder Ave, Carson City, Nevada 89701, "to authorized individual March 15, 2012, 11:50 am." That Plaintiff has diligently provided the Sheriff's Office with the proper documents and information so that service may be effectuated, and was in fact effectuated. Plaintiff cited to the Court that Defendants had intentionally been misleading and should have by before 17 December 2012, stated that they did not represent Defendant McNeely. That counsel for the Defendants should release under seal all contact information, including but not limited to D. McNeely's last known address, phone number, email address, to have Discovery requests presented to said Defendant. That Plaintiff should be granted use of the U.S. Marshal's Office to have Summons/Complaint and Discovery Requests served to Defendant McNeely. Lastly, that counsel for the Defendants should be penalized (monetarily) for their conduct.

**Statement of District Court Error.** Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

The Court erred in denying Plaintiff's Motion and granting Defendants, because "EAG in incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the summons and complaint, and, having provided the necessary information to effectuate service, plaintiff should not be penalized by having his or her action dismissed for failure to effectuate service where the U.S. Marshal or the court clerk has failed to perform the duties required of each of them under 28 U.S.C. § 1915(e) and Rule 4 of the Federal Rules of Civil Procedure." *Puett v. Blandford*, 912 F.3d 270, 275 (9th Cir. 1990); see also, *Graham v. Sot Koski*, 51 F.3d 710, 712 (7th Cir. 1995).

Here, the Plaintiff not only properly served summons/complaint to Defendant McNeely, but it was accepted by "authorized individual" as Proof of Service shows.

## CERTIFICATE OF SERVICE


I certify that on the date indicated below, I served a copy of this completed appeal statement upon all parties to the appeal as follows:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served by mail):

Office of the Attorney General  
100 N. Carson St.  
Carson City, NV 89701-4717

DATED this 16 day of June, 2013.

  
\_\_\_\_\_  
Signature of Appellant

Gilbert Jay Palloff  
\_\_\_\_\_  
Print Name of Appellant

P.O. Box 1989  
\_\_\_\_\_  
Address

City, NV 89301  
\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Telephone

Gilbert Jay Palotta # 46244, pro se  
P.O. Box 1959, Ely, NV 89301  
16 June, 2013

Supreme Court of Nevada  
Office of the Clerk  
201 S. Carson St., Suite 201  
Carson City, NV 89701

Re: Palotta v. State, et al.,  
Supreme Court No. 63205    District Court No. CF-111054

Dear Clerk,

Enclosed please find for filing in the above entitled civil  
matter as cited below:

01. Civil Proper Person Appeal Statement

Will you kindly bring my petition to attention of this court  
and inform me of the decision and/or hearing date?  
Thank you for your attention and patience.

Sincerely,

