

FILED

OCT 28 2014

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. 66604
District Court No. CF-1111054
Due Date: November 17, 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

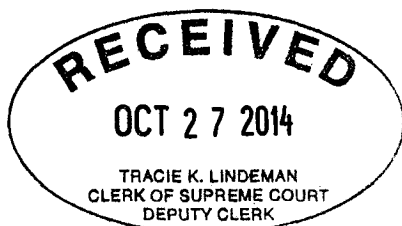
CIVIL PROPER PERSON APPEAL STATEMENT

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Appellant in Proper Person

The State of Nevada Department of
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Renee Baker, Warden
Respondents



14-35811

CIVIL PROPER PERSON APPEAL STATEMENT

INSTRUCTIONS: You must complete and file this Appeal Statement with the Nevada Supreme Court on or before **November 17, 2014**.

HOW TO FILL OUT THE FORM: The form must be typed or clearly handwritten. Write only in the space allowed on the form. **Additional pages and attachments are not allowed.** The Nevada Supreme Court prefers short and direct statements. You do not need to refer to legal authority or the district court record.

WHERE TO FILE THE FORM: You may file your form in person or by mail.

To file your form in person: Bring the form to the Clerk's Office at the Supreme Court of Nevada, 201 SOUTH CARSON STREET, CARSON CITY, NEVADA 89701-4702. You can file your form Monday through Friday, 8:00 a.m. to 4:00 p.m.

To file your form by mail: Mail the form to the Clerk of the Supreme Court of Nevada, 201 SOUTH CARSON STREET, CARSON CITY, NEVADA 89701-4702. Your form must be postmarked by the due date.

You must file the original form and 1 copy with the Clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your form, you must submit the original form and 2 copies and include a self-addressed, stamped envelope. Forms cannot be faxed or e-mailed to the Nevada Supreme Court Clerk's Office.

Copies of the completed form must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also fill out the certificate of service that is attached to the form. The Nevada Supreme Court may return any document that does not meet these requirements.

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
30 Sept. 2014	Order Denying Plaintiff's Motion For Partial Summary Judgment And Order Granting Defendants' Motion For Summary Judgment

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 8 October 2014

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 |

☒ other—briefly explain: denial of Summary Judgment / granting of Defendants' MST

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

On 28 Nov. 2011, Plaintiff filed a civil rights complaint and demand for a jury trial. On 10 April 2012, Plaintiff filed a Motion For TRL and/or Preliminary Injunction. Since then the parties have traded motions seeking to dismiss parties, compel discovery and for injunctive relief. Plaintiff filed a Motion for Partial Summary Judgment on 14 March 2013. On 16 March 2013 the district court issued an order dismissing a purported defendant. Plaintiff served notice of his appeal of this order on 14 May 2013. Plaintiff's appeal was dismissed and remitted because a final judgment on his case had not been rendered. On 29 March 2013 defendant filed their opposition to Plaintiff's MST. On 10 April 2013, Plaintiff filed

a reply in support of his MST. On 19 2013 defendants filed a MST. On 6 December 2013 Plaintiff filed an opposition to defendants' MST. Defendants filed their reply to Plaintiff's opposition on 20 December 2013. Plaintiff's complaint alleges that the defendants do not equally apply N.D.C. regulations & procedures in an act of discrimination that is objectively unreasonable. That the defendants' regulations & procedures are intentionally vague & capriciously generalize Plaintiff's Thelemic faith with other religious faith such as Hindu, Celtic, Pagan, & Pre-Christian, that are completely separate faiths from that of the Plaintiff. Plaintiff's faith is Thelema, a religion that was developed by the 20th century British writer & ceremonial magician, Aleister Crowley after a religious experience that he had in Egypt in 1904. By Crowley's account, a possibly non-corporeal being that called itself 'Aiwass' contacted him & dictated a text known as 'The Book of the Law' or 'Liber AL vel Legis', which outlined the principles of Thelema. In these books was included 'Oz: Liber XXVII' that explicitly commands its adherents that "Do what thou wilt shall be the whole of the Law," "Man has the right to eat what he will..." "has the right to kill those who would thwart these rights." That in these books, 'The Law of Liberty', explicitly commands: "Do not lower yourself & destroy & cheapen your pleasure by leaving out the supreme joy; the consciousness of the peace that passeth understanding." Plaintiff based his request for an Egyptian diet, or barring that, a kosher diet, in keeping with what he asserts is a diet mandated by his faith, which was denied by prison staff. Plaintiff further alleges that defendants incorrectly listed his faith amongst other faiths, collectively, as if they are all of the same beliefs, adhere to the same laws & tenets, & celebrate the same holy days. Plaintiff alleges that defendants also denied his request to access to the chapel to congregate & hold a service with other Thelemites. Plaintiff further alleges that he requested to celebrate one of his faith's Holy Days & to be provided a Holiday Meal like defendants provided to the other mainstream religions on their Holy Days, by claiming no knowledge of the Holy Day (Summer Solstice) or Holiday Meal. Plaintiff alleges these refusals violate his First, Eighth, & Fourteenth Amendment Rights under the U.S.C. & seeks declaratory relief, injunctive relief, nominal damages & punitive damages under 42 U.S.C. § 1983 and the Religious Land Use & Institutionalized Persons Act (RLUIPA).

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).

Reversible error has occurred in the form of rights not conferred, standards not met, and constitutional guarantees improperly applied and denied. The court erred in granting defendant's Motion to Dismiss purported defendant McNeely when the Plaintiff diligently provided the Sheriff's Office with proper documents and information so that service may be effectuated. Proof of Service was given to Plaintiff by the Carson City Sheriff's Department. Defendant should not be dismissed when a pro se, indigent pauper, Plaintiff is entitled to rely on the U.S. Marshal for service.

The court was biased and/or prejudiced against the Plaintiff in that they refused to grant or deny his Motion for T.R.O. and/or Preliminary Injunction, ignoring his repeated attempts to have his Motion submitted for review.

The court's analysis was flawed in certain respects. First, the court apparently assumed that Plaintiff's complaint was due to denial of a Kosher diet. The record is to the contrary. Plaintiff's complaint, Motion for Partial Summary Judgment & supporting affidavit, states that he was also denied access to chapel, religious items in accordance with his faith, to eat lunch in the prison cullinary, provide him with a Thelomist volunteer, recognize his Holy Days, provide Holy Day/Holiday meals in accordance with his faith, to forward his grievance issue to the Religious Review Team for review, and to supply any books/material on Theloma. Second, that the defendant's regulations (810) does not leave open any other alternative(s) for Plaintiff to exercise his constitutional rights, creating a constitutional

deprivation by implementing a procedure/policy that is an impermissible burden on the free exercise of religion. The Plaintiff argues that the court failed to consider the limitations set forth upon Plaintiff's right to worship. It did more than just turn down a request for an accommodation of his demand for a diet. Remand is necessary because as the record shows, that the Plaintiff being denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts, is an impairment on the free exercise of religion.

The court erred in that it did not assess the record in light most favorable to the nonmoving party (the Plaintiff) but instead resolved disputed issues of fact by crediting Defendants' assertions, and ignored the Books of Law; Oz: Liber LXXVII; & The Law of Liberty, that assert the Laws and tenets of Thelemites in order to achieve the Great Work, which is not a matter of personal preference but one of deep religious conviction, therefore making Summary Judgment improper.

Therefore, this Court should reverse and remand this matter for future proceedings.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.

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):

Nathan Hastings
Attorney General
100 N. Carson St.
Carson City, NV 89701

DATED this 23 day of October, 2014.



Signature of Appellant

Gilbert Jay Palioda

Print Name of Appellant

P.O. BOX 1939

Address

City, NV 89701

City/State/Zip

Telephone