

2016-50

James J. Duran #11083-081
Federal Prison Camp
9595 W. Quincy Avenue
Littleton, CO 80123

June 6, 2016

RECEIVED
JUN 13 2016
Per [Signature]

State Records Committee
Attention: Susan Mumford
346 South Rio Grande
Salt Lake City, UT 84101

NOTICE OF APPEAL WITH SUPPORTING EXHIBITS
INITIAL APPEAL ATTACHED

Dear Ms. Mumford:

On May 19, 2016, I Recieved a letter of denial from Sonia Sweeney dated May 11, 2016, Chief Administrative Officer of Department of Human Services, in regard to appealing the denial of my request for records dated April 20, 2016. The original denial letter I recieved from DJJS was dated January 27, 2016. In my initail records appeal, I stated that I had recieved the denial letter on or about February 20, 2016. I also asserted that I was unable to timely file my appeal because of actions of Federal Correctional Institution employees, postal employees, by interference of my legal mail placed in prison authorities hands on April 20, 2016, for forwarding, which is deemed filed pursuant to Houston V. Lack, as cited on attached certificate of service. As described in my initial appeal, I had a number of listed reasons for my excusable untimely delay, with supporting exhibited responses as to confirm such delay's by counselor's at each institution, before and after an unexpected transfer from one institution to another during the time of said appeal with a 30 day deadline.

EXCUSABLE REASONS

As explained in initial Appeal of denial, I had initially recieved the denial on February 20, 2016 though the denial was dated January 27, 2016. Due to the fact Federal Inmates do not have access to State Grama Rules or law cites, for research and preporation I had to contact family on outside to research GRAMA ACT rules. during this time I was notified of an unexpected transfer to a Camp from and FCI. The transfer was initially commenced on Febuary 29, 2016, as I was notified on March 5, 2016, and advised to pack all personal belongings including legal papers. I was advised I was to be transfered on same day 3/5/16, and under the unexpected circumstances decided to wait to file at designated facility as all paper work, caselaw, and legal material was all packed, including the fact I was awaiting for Copy of GRAMA ACT rules from family on outside. Due to Correctional Staff error transfer was delayed one week. I was finally transfered one week later on 3/11/2016 to Prison Camp. Upon arrival at Prison Camp, I was advised by Staff I had to store the majority of my legal work in storage room, as we have to share rooms with up to four other inmates. To my suprise when finally getting everything unpacked, I relized I placed the wrong box in storage that contained the denial for records in question. On or about 3/15/16 I had sent a request to my requesting access to storage room to retrieve said denial and other exhibited documents needed to perfect my appeal. I recieved no reply. I again sent another request to on 3/31/16, this time placing it under his door. Finally on 4/15/16 I was allowed to retrieve said records denial and exhibited documentation needed for my appeal as per response to my second request submitted on matter. On 4/20/16 I

had completed and filed my appeal in accordance with Houston V. Lack, 101 L. Ed. 2d 245 (1988). Which deems said documentation filed at time it was delivered to prison hands fore forwarding. It was handed to Counselor for forwarding on 4/20/16 for forwarding. Due to postal prison staff error package was returned stating with labelin that postage was due because prison staff had foregot to add a zero stamp barcode on package before forwarding to post office for forwarding. had confirmed this in response to my request dated 4/26/16. then aquired the Zero meter stamp and replaced package in mail for forwarding. See copies of email request and paper request sent to prison staff on matter of unexpected transfer at ECI, access to legal documents in storage at designated Prison Camp, and postal error as to Zero Meter required for forwarding, all of which are contained at Exhibit (P) of original appeal sent, and are also attached hereto, of this appeal. I am also attaching proof of past late deliveries of my legal mail by prison authorities as documented proof of past interference with a protected activity in past as well as present case. This evidence consists of a number of requests responded to by Correctional staff delivering past legal notices that were held by prison staff up to 30 days past postal delivery date, as was done in this instance, with the exception of the unexpected transfer and documents placed in storage, in which had no acces to until 4/15/16. In the past as to the additional none related request of late delivery of legal mail in other instances attached, the Court had excused my untimeliness due to proof my legal mail was withheld up to 30 days by prison authorities, as is the case here, with the exception of an unexpected transfer and documents caselaw placed in storage in process of unpacking, as all personal pappers were in identical green duffle bags for transfer which consisted of five duffle bags. I had no idea which bag contained which legal work, when unpacking for storage purposes. I request excusable neglect for the above reasons and be allowed to proceed with appeal on record.

As stated in Chief Administrative Officer Sonia Sweeney's response dated May 11, 2016 it indicates I may appeal to States records Committee or District Court. If Court were to dictate Excusable Neglect, the law has been applied that if an inmate can provide documentation of excusable neglect, then he may proceed on appeal. Ms. Sweeney expressed that Utah Statute does not contain such provisions that would allow a requestor the oppertunity to demonstrate that compliance with the 30 day timeframe was virtually impossible or unreasonably burdensome, or any other cause or standard that would foregive non-compliance with the timeframe established by legislature. Well as pointed laws of the Court especially the supreme Court's do apply as being established by laws of the United States and the already established law overrides any droconian policy or advisory notes of any state or federal agencies as to my understanding and belief of the law.

Law of excusable neglect

Excusable Neglect In pratice, and particularity with reference to the setting aside of a judgement taken against a party through his excusable neglect," this means a failure to take proper steps at the proper time, not in consequence of the parties own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavaliable hinderence or accident, or reliance on the care and vigilence of his counsel or on promisses made by the adverse party. As vused in Rule (e.g., Fed R. Civ. P. 6(b) authorizing court to permit an act to be done

after expiration of the time within which the rules such act was required to be done, where failure to act was the result of "excusable neglect", quote phrase is ordinarily understood to be the act of a reasonably prudent person under the same circumstances. Colan V. Colan, KY., 293 S.W. 2d 710, 712. For purpose of motion to vacate judgement, "excusable neglect" is that neglect which might have the act of reasonably prudent person under the circumstances. Hollingsworth V. American finance Corp., 86 W.S. 2d 172, 171 N.W. 2d 872, 878. (All statutes apply here from initial appeal) I believe my evidence rendered is more than enough to prove excusable neglect, as the circumstances rendered were behong my controll. As soon as I was able to regain access to my documents after transfer, I had imediately prepared my appeal and mailed it, but due to the neglence of prison staff, by not placing a zero meter stamp on package it was returned and remailed after zero stamp meter was applied by prison staff as acknowledge in response rendered. See attachments in support of excusable neglect. (1) Request and response confirming unexpected transfer and one week delay. (2) Request and response confirming delayed access to appeal documents and exhibits in storage. (3) Request and response confirming postal error of staff failure to place zero meter stamp on envelope after placed in prison authority hands for forwarding.

RELIEF SOUGHT

Request under these circumstances, to be able to proceed on appeal and have a full review of my initial appeal, exhibits rendered, and be granted access to records requested for and have a redress of his and my grievance on his behalf. Thanks please respond.

(SEE ATTACHED CERTIFICATE OF SERVICE/EXHIBITS/COPY OF APPEAL)

Submitted this 6 day of June 2016.

By: James J. Duran
James J. Duran #11083081
Complainant

[Signature]
Notary

Before:
On this 6 day of June 2016.

