

APPENDIX A

No. _____

IN THE
Supreme Court of the United States

JUSTICIA RIZZO,
Petitioner,

vs.

DOUG COLLINS
SECRETARY DEPARTMENT OF
VETERAN AFFAIRS
Respondent,

*ON APPEAL FROM THE UNITED STATES COURT OF
APPEALS SIXTH CIRCUIT
OCTOBER 7, 2024*

**APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI**

JUSTICIA RIZZO
Pro Se, Veteran
P.O BOX 2154
Hendersonville, TN 37077
202-819-1673
jsrizzo@mail.com

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-5957

re:

DISMISSAL FOR FAILURE TO SERVE DEFENDANT
DISPUTED BY PETITIONER

JUSTICIA RIZZO,

Appellant-Petitioner,

Versus,

SECRETARY DEPARTMENT OF VETERAN AFFAIRS

Respondent

**Appeal from The United States District Court for the
Eastern District of Kentucky**

October 7, 2024

HEARD on DOCKET Before Judges:

COLE READLER and BLOOMKATZ, Circuit Judges

[REFORMATED DOCKET SHEET]

23-5957 Justicia Rizzo v. Dennis McDonough

General Docket

United States Court of Appeals Sixth Circuit

Docketed : 10/30/2023 Termed: 10/07/2024

Court of Appeals Docket # 23-5957

Nature of Suit:2445 Americans w/Disabilities Act
Empl

Justicia Rizzo v. Dennis McDonough

Appeal From: Eastern District of Kentucky at
Covington

Fee Status : Form Pauperis

Case Type Information

1. Civil
2. United States as party
3. Civil Rights- Title VII

Originating Court Information

District 0643-2: 2:23-cv-00036

Trial Judge: David L Bunning US District Judge

Date Filed: 03/15/2023

Date Order Judgement : Date NOA Filed


09/27/2023 10/27/2023

Prior Cases: 23-5599 Date Filed 06/29/2023

Date Disposed 08/07/2023 Disposition: Motion Panel

Order Current Case : None

[REFORMATED 6TH CIRCUIT DOCKET ACTIVITY]

DATE	#	ACTIVITY
10/30/23	1	Civil Case Docketed. Notice filed by Appellant Ms. Justicia Rizzo Transcript Needed AEG Entered 10/30/23 9:59 AM
10/30/23	2	The case manager for this case is: Amy Gigliotti AEG Entered 10/30/23 10:05 AM
11/06/23	3	Copy of NOA(R#35), filed prose by Justicia Rizzo AEG Entered 11/07/23 9:58 AM
11/09/23	4	Appellant Representation Statement, filed by Ms Justicia Rizzo AEG Entered 11/09/23 11:15 AM
11/09/23	5	PETITION for intial en banc hearing filed by Ms Justicia Rizzo Certificat of Service 11/07/23 BLH Entered 11/09/23 11:37 AM
11/09/23	6	Appellant MOTION filed by Ms Justicia Rizzo to stay district court judgement pending appeal AEG Entered 11/09/2023 11:37 AM
12/01/23	7	Order filed to dismiss for want of prosecution for failure to pay the fee. Mandate to issue AEG Entered 12/01/23 8:53 AM
12/04/23	8	 SEALED DOCUMENT filed by Party Ms Justicia Rizzo. Document IFP motion and financial affidavit AEG Entered 12/04/23 1:07 PM
12/04/23	9	Appeallant MOTION filed by Ms Justicia Rizzo to file IFP motion and Financial Affidavit under eal AEG Entered 12/04/23 1:08 PM

12/04/23	10	LETTER SENT to Ms Justicia Rizzo regarding receipt of motion to seal and IFP document Entered 12/04/23 1:09 PM
01/02/24	11	Update fee status change to pending in the district court IFP motion filed 12/18 AEG Entered 1/02/24
01/09/24	12	Appellant Motion filed by Ms Justicia Rizzo to reinstate case Certificate of Service 1/09/24 Entered 1/09/24 4:02 PM
01/09/24	13	Copies of IFP and motion to seal(R#s 43 and 44) from the district court, filed by Justicia Rizzo AEG Entered 1/09/24 4:06 PM
01/09/24	14	Copy of Notification sent to appellant regarding plan to sell property(AEG) Entered 1/9/24 4:07 PM
01/10/24	15	ORDER filed granting motion to reinstate case[12] filed by Ms Justicia Rizzo (AEG) Entered 1/10/2024 12:21 PM
03/25/24	16	Copy of District Court Order filed R#48 granting in forma pauperis (AEG Entered 03/25/24 10:26 AM
04/09/24	17	Order filed denying petition for initial en banc hearing[5] filed by Ms Justicia Rizzo Entered by order of the court BHL Entered 04/09/24 8:28 AM
04/18/24	18	BRIEFING LETTER SENT setting pro se briefing schedule: appellant brief due 5/31/24 AEG Entered 04/18/24 3:46 PM
04/26/24	19	Appellant MOTION filed by Ms Justicia Rizzo for leave to file amended complaint due to recent Supreme Court ruling on involuntary reassignments and additional equitable relief. Certificate of service 4/25/24 AEG Entered 04/26/24 1:40 PM

05/09/24	20	Appeallent CORRECTED MOTION filed by Ms Justicia Rizzo for leave to file amended complaint Certificate of Service 05/07/24 JEC Entered 5/09/24 4:06 PM
05/29/24	21	ORDER filed:Accorddingly, the motion for stay pending appeal is DENIED . The motion to seal is GRANTED[6] [9] Eugene E. Siler Jr., Joan L Larsen and RachelBloomekatz, Circuit Judges (AEG) Entered 5/29/24 3:16 PM
05/30/24	22	APPEALLANT BRIEF filed by Ms Justicia Rizzo (AEG) Entered 5/30/24 3:46 PM
05/31/24	23	Case filed for possibe Rule 34 submission (KSL) Enterd 5/31/24 9:21 AM
07/02/24	24	Appellant MOTION filed by Ms Justicia Rizzo to stay district court judgement pending appeal. Certificate of service 06/29/24 JEC Enterd 7/03/24 8:50AM
08/22/24	25	The case manager for this case is now Gretchen S. Abruzzo (JEC) Enterd 8/22/24 5:05 PM
10/07/24	26	ORDER filed: Therefore we AFFIRM the district court's judgement. Manadate to issue pursuant to FRAP 34(a)(2)(C), decision not for publication R Guy Cole Jr. Cuircuit Judge Chad A Readler Circuit Judge and Rachel Bloomekatz, Circuit Judge (MMP) Entered 10/07/24 11:10 AM
10/07/24	27	ENTRY JUDGEMENT (MMP) Entered 10/07/2024 11:18 AM
12/03/24	28	MANDATE ISSUED with no costs taxed (ABH) Entered 12/03/34 8:41 AM
01/13/24	29	LETTER SENT to Ms Justicia Rizzo, returning unfiled Peition for Writ of Certiorari (GSA) Entered 1/13/25 3:36 PM

[REFORMATED SIXTH CIRCUIT ORDER]
NOT RECOMMENDED FOR PUBLICATION

No. 23-5957

UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

JUSTICIA RIZZO,

Plaintiff-Appellant, October 7, 2024

v.

KELLY L. STEPHENS, Clerk

DENIS RICHARD MCDONOUGH,

Secretary, U.S. Department of Veteran Affairs,

Defendant-Appellee.

ORDER

Before: COLE, READLER, and
BLOOMEKATZ, Circuit Judges.

Pro se litigant Justicia Rizzo appeals the district court's dismissal without prejudice of her employment-discrimination case for failure to properly serve the defendant. Rizzo also moves for leave to file [an] amended complaint and to stay the district court's judgment pending appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons below, we deny Rizzo's motions and affirm the district court's judgment.

In March 2023, Rizzo sued the Secretary of the United States Department of Veterans Affairs, seeking damages for wrongful termination, racial discrimination, retaliation, and related claims. The district court determined that she had failed to properly serve the defendant under Federal Rule of Civil Procedure 4: she did not issue a summons to all the correct recipients, she did not send the materials through the required type of mail, and she attempted service herself despite being a party. The district court advised Rizzo that if she did not properly affect service within 90 days of filing the complaint, as required by Rule 4(m), the case would be dismissed without prejudice.

Rizzo moved to submit a corrected certificate of service, which the district court denied. The court again explained that Rizzo had not complied with Rule 4. Among other reasons, the district court reiterated that, per Rule 4(c)(2), she may not affect service herself because she is a party. The district court also observed that, in her filing, Rizzo falsely swore under penalty of perjury that she, as the messenger who served the papers, was not a party to the case. The district court again warned Rizzo that her failure to properly and timely serve the defendant

would lead to dismissal without prejudice. Rizzo then unsuccessfully moved to disqualify the district judge, and we dismissed her appeal of that order for lack of jurisdiction. *See Rizzo v. McDonough*, No. 235599, 2023 U.S. App. LEXIS 20464 (6th Cir. Aug. 7, 2023).

In August 2023, long after the 90-day service period had expired, the district court ordered Rizzo to show cause why her case should not be dismissed without prejudice for lack of service. In response, Rizzo moved for an extension of time to complete proper service. In the motion, she explained why she <believe[d] she has properly served the Defendant. = The district court denied that motion and dismissed her case without prejudice under Rule 4(m) for failing to effect timely service or to show good cause for that failure.

>We review a district court's judgment dismissing a complaint for failure to effect timely service of process under the abuse-of-discretion standard. = *United States v. Oakland Physicians Med. Ctr., LLC*, 44 F.4th 565, 568 (6th Cir. 2022) (citation omitted). Federal Rule of Civil Procedure 4(m) states,

If a defendant is not served within 90 days after the complaint is filed, the court on

motion or on its own after notice to the plaintiff⁴ must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Under Rule 4(c)(2), <[a]ny person who is at least 18 years old and not a party may serve a summons and complaint. =

The district court informed Rizzo multiple times that she did not properly effectuate service because, among other reasons, she, as a party, could not serve the defendant with a summons. Rather than correct this mistake, Rizzo continued to assert that she had properly completed service. On appeal, she argues that the district court should have directed the Marshals to effect service. But as the district court explained, that assistance is provided to litigants proceeding in forma pauperis, which Rizzo was not. *See* Fed. R. Civ. P. 4(c)(3). She also argues that the district court should have given her an extension of time to fix any errors in effecting proper service, and that courts <must= grant an extension <if the plaintiff shows good cause for the failure= to effect timely

service. Fed. R. Civ. P. 4(m). But Rizzo presented no cause for her repeated failures to properly serve the defendant, and the district court gave her two opportunities to correct her mistakes, which the court explained in depth. Thus, the district court did not abuse its discretion in denying her motion for an extension of time. *See Oakland Physicians*, 44 F.4th at 568-69.

Rizzo also argues that the district court should have permitted her to file various documents and granted her motion for a default judgment. But the district court explained that she would be permitted to present evidence if the case proceeded to that stage, and the court noted that she could not obtain a default judgment without properly serving a defendant who has not appeared in the case. *See Burniac v. Wells Fargo Bank, N.A.*, 810 F.3d 429, 433 (6th Cir. 2016) (<[E]ither proper service on or the general appearance of a defendant is a necessary condition for a valid default judgment. =). In short, the district court committed no error in dismissing Rizzo's case without prejudice for failure to timely effectuate service. Therefore, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT
KELLY L. STEPHENS/s

[REFORMATED DOCKET ACTIVITY]
United States Court of Appeals for The
Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 10/07/2024.

Case Name: Justicia Rizzo v. Denis McDonough

Case Number: 23-5957

Docket Text:

ORDER filed: Therefore, we AFFIRM the district court's judgment. Mandate to issue, pursuant to FRAP 34(a)(2)(C), decision **not** for publication. R. Guy Cole, Jr., Circuit Judge; Chad A. Readler, Circuit Judge and Rachel Bloomekatz, Circuit Judge.

The Following document(s) are associated with this transaction: Document Description: Order

Notice will be sent to:

Ms. Justicia Rizzo

P.O. Box 2154

Hendersonville, TN 37077

A copy of this notice will be issued to:

Mr. Robert Carr

[REFORMATED SIXTH CIRCUIT JUDGEMENT]

NOT RECOMMENDED FOR PUBLICATION

No. 23-5957

**UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT**

JUSTICIA RIZZO,

Plaintiff-Appellant, October 7, 2024

v.

FILED

KELLY L. STEPHENS, Clerk

DENIS RICHARD MCDONOUGH,

Secretary, U.S. Department of Veteran Affairs,

Defendant-Appellee.

Before: COLE, READLER, and BLOOMEKATZ,

Circuit Judges

JUDGEMENT

On Appeal from the United States District Court

For the Eastern District of Kentucky at Covington

This Cause was heard on the record from the district court

and was submitted on brief without oral argument

IN CONSIDERATION THEREOF it is **ORDERED** that

the Judgement of the district court is **AFFIRMED**

ENTERED BY THE ORDER OF THE COURT

KELLY L. STEPHENS/s

Kelly L. Stephens, Clerk

APPENDIX B

[REFORMATED DISTRICT DOCKET SHEET]
U.S DISTRICT COURT
Eastern District of Kentucky (Covington)
CIVIL DOCKET FOR CASE #: 2:23cv- 00036-DLB

Rizzo v. McDonough

Assigned to: Judge David L. Bunning

Referred to: PSO

Case in other court: Sixth Circuit, 23-05599

Sixth Circuit 23-05957

Cause: 28:451 Employment Discrimination

Date Filed: 03/15/2023

Date Terminated: 09/27/23

Jury Demanded: Plaintiff

Nature of Suit:445 Civil Rights: Americans with
Disability- Employment

Jurisdiction: U.S. Government Defendant

Plaintiff represented by **Justicia Rizzo**

Justicia Rizzo

P.O Box 2154

Hendersonville, TN 37077

PRO SE

V.

Defendant



[REFORMATED US COURT DOCKET ACTIVITY]

Date	#	Docket Text
3/15/23	1	COMPLAINT FOR EMPLOYMENT DISCRIMINATION (Filing fee \$402; receipt number 2000000535) filed by Justicia Rizzo Attachment#1 Jury Demand #2 Summons Denis R. McDonough, #3Receipt TDB Entered 3/15/23
3/15/23	2	MOTION TO SUMBIT EEOC APPEAL DECISION by Justicia Rizzo pro se Motions referred to P SO Attachment#1 Attachment TDB Entered 3/15/23
3/15/23	3	MOTION TO SUBMIT MSPB FINAL DECSION by Justicia Rizzo pro se Motions referred to P SO Attachments#1 Attachment TDB Entered 3/15/23
3/15/23	4	MOTION TO ORDER CERTIFIED COPY OF ADMINISTRATIVE RECORD(S)by Justicia Rizzo pro se Motions referred P SO TDB Entered 3/15/23
3/15/23	5	PLAINTIFF MOTION TO REQUEST SEAL OF ADMINISTRATIVE RECORDS by Justicia Rizzo pro se Motions referred to P SO TDB Entered 3/15/23
3/26/23	6	PLAINTIFF REQUEST FOR RELEIF FORM A JUDGEMENT ORDER, by Justicia Rizzo prose TDB Entered 3/15/23

3/15/23	7	MOTION for Change Venue by Justicia Rizzo pro se TDB Entered 3/15/23
3/15/23	8	MOTION REQUESTING LEAVE TO FILE MOTION IN EXCESS of 25 PAGES by Justicia Rizzo referred to PSO TDB ENETED 3/15/23
3/15/23	9	Summons Issued as to Denis R McDonough Summons issued and returned to Plaintiff Justicia Rizzo, pro se via pick up from Office of Clerk (TDB Entered 3/15/23
3/15/23	10	IMPORTANT NOTICE to Pro Se Filer: Information relating to pro se filings and F.R.Civ.P.5.2 requiring personal identifiers be partially redacted from documents filed with the court Click here for more information on the rules. It is the sole responsibility of counsel and the parties to comply with the rules requiring redaction of personal data identifiers cc pro se filer via US Mail (Attachment #1 Sample Caption Page) Entered 3/15/23
3/15/23	11	STANDING ORDER re Disclosure of Contact Information 1pro se litigants must provide current telephone number, residential address& if different mailing address 2 pro se litigants must provide written notice of change of residential address & different mailing address 3 Clerk file copy of Order in all non-prisoner pro se actions. Failure to provide required information or change of address may result in appropriate sanctions. Signed by Judge Karen K

		Caldwell on 5/2/2016 (TDB cc COR and Justicia Rizzo by US Mail Entered 3/15/23
3/15/23		Conflict Check run (TDB) Entered 3/15/23
3/15/23		***FILE SUBMITTED TO CHAMBERS of PSO for review 1 Complaint (TDB) Entered 3/15/23
3/22/23	13	SUMMONS Returned Executed by Justicia Rizzo, pro se via USPS to Denis R. McDonough (Attachments #1 Receipt USPS#2 USPS Tracking #3 Envelope) TDB Modified text on 3/22/23TDB Entered 3/22/23
3/29/23	14	MEMORANDUM ORDER (1) Rizzo's motion to submit EEOC appeal decision Doc#2 motion to submit MSPB final decision Doc 3 motion to order certified copy of the administrative records Doc 4 motion to request seal of administrative records Doc 5 motion seeking relief from a judgement entered her in Rizzo 1 Doc #6 motion for change of venue Doc 7 and motion requesting leave to file a motion in excess of 25 pages Doc 8 are DENIED and 2 Rizzo is advised that pursuant to Fed R Civ P 4m if the defendant is not properly served within 90 days from the date of the complaint was filed Rizzo's claim against the defendant will be dismissed without prejudice. Signed by Judge David L Bunning on 3/29/23 ECO cc COR and Justicia Rizzo by US Mail Entered 3/29/23

4/24/23	15	MOTION to Submit Corrected Certificate of Service by Justicia Rizzo pro se Attachment#1 Various Attachments (TDB) Additional attachment) (s) added on 4/24/23 #2 Envelope PM 4/19/23 TDB Entered 4/24/23
4/24/23	16	PROOF of Service- Eastern District Court, U.S. Attorney Carlton S. Shier, filed by Justicia Rizzo pro se TDB Additional attachment(s) added on 4/24/23#1 Envelope PM 4/19/23 TDB Entered 4/24/23
4/24/23	17	PROOF of Service – Secretary for Department of Veteran Affairs, Denis McDonough filed by Justicia Rizzo, pro se TDB Additional attachments(s) added on 4/24/23 #1 Envelope PM 4/19/23 TDB Entered 4/24/23
4/24/23	18	PROOF of Service- Department of Veteran Affairs Regional Counsel, Dennis McGuire filed by Justicia Rizzo, pro se (Attachments#1 Envelope PM 4/19/23 TDB Entered 4/24/23
5/05/23	19	ORDER (1) Rizzo's Motion to Submit Corrected Certificate of Service <u>15</u> DENIED (2) Rizzo is advised that pursuant to Fed R. Civ P4(m) if the defendant is not properly served within 90 days from the date that the complaint was filed, Rizzo's claims against the defendant will be dismissed without prejudice. Signed by Judge David L. Bunning on 5/5/23 TDB cc COR and

		Justicia Rizzo by US Mail Entered 5/5/23
5/15/23	20	MOTION TO DISQUALIFY JUDGE BUNNING FROM CASE by Justicia Rizzo, pro se (Attachments: #1 Envelope) TDB(Entered) TDB Entered 5/15/23
6/06/23	21	ORDER that Rizzo's Motion to Disqualify Judge Bunning from case 20 is DENIED Signed by David L Bunning on 6/6/23 TDB cc: COR and Justicia Rizzo by US Mail (Entered: 6/6/23)
6/23/23	23	NOTICE OF INTERLOCUTORY APPEAL as to Order 21 on MOTION TO DISQUALIFY JUDGE BUNNING FROM case20 by Justicia Rizzo, pro se Attachments 1 6CCA Letter TDB Entered 6/28/23
6/26/23	22	Copy of Motion to Appeal Decision to Disqualify Judge Bunning from case to 6CCA from Justicia Rizzo, PROSE Attachments#1 Copy of Request to Seal Application for Pauper Status 6CCA #2 Copy of Motion for Pauper Status 6CCA #3 USPS Envelope TDB Entered 6/26/23
6/26/23	24	  *Sealed* Motion for leave to appeal in forma pauperis by Justicia Rizzo pro se Motions referred to PSO TDB Motion on 6/28/23 TDB Modified on 6/28/23 TDB Entered 6/28/23
6/26/23	25	Motion for leave to seal a Document 24 MOTION for Leave to Appeal in forma pauperis by Justicia Rizzo Motions referred to P SO TDB Entered 6/28/23

6/29/23	26	USCA Case Number 23-5599, Case Manager Roy G. Ford for 23 Notice of Interlocutory Appeal filed by Justicia Rizzo Motions TDB Entered 6/29/23
7/31/23	27	ORDER Rizzo's notion for leave to proceed in forma pauperis on appeal 24 is GRANTED and the collection of appellate filing fee in this case is WAIVED; Rizzo's motion for leave to seal a document 25 is GRANTED. The Clerk of the court shall maintain Rizzo's motion for leave to proceed in forma pauperis on appeal 24 UNDER SEAL pending further Order from the Court. The Clerk of this court shall forward a copy of this Order to the clerk of the United States Courts of Appeals for the Sixth Circuit Signed by Judge David L. Bunning on 7/32/23 SLG cc COR, Justicia Rizzo by US Mail and 6CCA Entered 7/31/23
8/07/23	28	ORDER of USCD as to 23 notice of Interlocutory Appeal filed by Justicia Rizzo. The appeal is DISMISSED for lack of jurisdiction (Attachments #1 Notice TJZ Entered 8/07/23
8/07/23	29	USCA JUDGEMENT as to 23 Notice of Interlocutory Appeal filed by Justicia Rizzo. The appeal is DISMISSED (TJZ) Entered 8/07/23
8/11/23	30	ORDER 1) within 14 days shall SHOW CAUSE in writing why this matter should not be dismissed 2 If Rizzo fails to comply, her complaint will be dismissed without prejudice for failure

		to comply, Signed by Judge David L. Bunning on 8/11/23 TJZ cc: COR and Justicia Rizzo by US Mail Entered 8/11/23
8/28/23	31	MOTION for Extension to Address Serving Summons Justicia Rizzo Attachments #1 Affidavit of Past Practice #2 Attachments #3 Envelope dated 8/25/23 TJZ Entered 8/28/23
8/31/23	32	REQUEST ENTRY FOR DEFAULT by Justicia Rizzo, pro se Attachments #1 envelope TJZ Entered 8/31/23
9/27/23	33	ORDER 1) Plaintiff Rizzo's Motion for Extension 31 DENIED 2 Plaintiff Rizzo's Request for Entry Default 32 Denied 3 Plaintiff Rizzo's Complaint 1 is DISMISSED without prejudice 4) This matter is STRICKEN from the Court's docket 5 A Judgement in favor of Defendant will be entered contemporaneously herewith. Signed by Judge David L. Bunning on 9/27/23 TJZ cc COR and Justicia Rizzo by US Mail Entered 9/27/23
9/27/23	34	JUDGEMENT 1) Plaintiff Rizzo's Complaint 1 is DISMISSED without prejudice 2 Judgement is ENTERED in favor of Defendant. Signed by Judge David L. Bunning on 9/27/23 TJZ cc COR and Justicia Rizzo by US Mail Entered 9/27/23
10/27/23	35	NOTICE OF APPEAL as to 34 Judgment by Justicia Rizzo (SHORT RECORD MAILED. cc COR 6CC

		Attachments #1 envelope TJG Modified on 1/10/24 TDB Entered 10/27/23
10/30/23	36	USCA Case Number 23-5957 Case Manager Amy E. Gigliotti 23 Notice of Appeal filed by Justicia Rizzo TDB Modified on 10/30/23 TDB Entered 10/30/23
11/06/23	37	Request by Justicia Rizzo, pro se for copies of Federal Rules of Appellate Procedure docket sheet and case files Attchments#1 envelope TJG Entered 11/06/23
11/06/23		CLERKS VIRTUAL NOTICE TO Justicia Rizzo re 37 Notice of Filing : A courtesy copy of the docket sheet in the above styled case is enclosed, If you would like a copy of any document previously filed in your record, please send a request to the Office of the clerk noting the docket entry number for each copy requested. You will receive a response advising you of the total number of pages and the amount of money required to obtain the requested copies. Copies of the documents in your record will require a pre-payment of 50 cents per page. You also requested a copy of the Federal Rules of Appellate Procedure which are a total of 76 pages and will cost \$38 cc Justicia Rizzo by US Mail TJG Entered 11/6/23
11/9/23	38	COPY OF Motion to Set Aside Judgement, filed in Sixth Circuit Court of Appeals by Justicia Rizzo

		Attachments #1 priority mail envelope THG Entered 11/09/23
11/9/23	39	APPEALLANT REPRESENTATION STATEMENT, filed by Justicia Rizzo TJG Entered 11/9/23
12/1/23	40	ORDER of USCA as to 35 Notice of Appeal Case No 23-5957, filed by Justicia Rizzo pro se that this cause be, and it hereby is dismissed for want of prosecution. No Mandate to issue Attachments#1 U.S. Mail Notice Docket Activity TDB Entered 12/1/23
	41	
12/1/23	42	Copy of Request to Seal Documents filed in 6CCA by Justicia Rizzo pro se Attachments #1 envelope pm 11-28-23 TJG Entered 12/1/23
	43	
12/18/23	44	MOTION TO SEAL APPLICATION FOR PAUPER STATUS AND FINANCIAL STATEMENT ADDENDUM43 MOTION for Leave to Proceed in forma pauperis by Justicia Rizzo pro se Attachments #1 Envelope PM 12/14/23 TDB Entered 12/18/23
12/18/23	45	Copy of USCA APPEALLANT's MOTION TO REINSTATE CASE from Justicia Rizzo pro se Attachments #1 Envelope PM 12/14/23 TDB Entered 12/18/23
12/20/23	46	USCA RECEIVED 12/18/23 STAMPED COPIES of documents filed in the USCA and USDA Attachments #1 Request to

		seal #2 Motion for Pauper Status#3IFP #4 Envelope PM 12/18/23
1/10/24	47	ORDER by Sixth Circuit Court of Appeals to Reinstate Appeal 35 Notice of Appeal; Case No. 23-5957 Upon consideration of the appellant's motion to reinstate the case. And it is appearing that the default which led to dismissal of the appeal has been cured, it is ORDERED that the motion be, and it hereby is GRANTED (Attachments #1 US Mail Notice of Docket Activity (TDB Entered 1/10/24
3/23/24	48	ORDER 1 Rizzo's motion for leave to proceed in forma pauperis on appeal 43 is GRANTED and the collection of an appellate filing fee in this case is WAIVED 2 Rizzo's motion for leave to seal a document 44 is GRANTED. The Clerk of the court shall maintain Rizzo's Motion for Pauper Status 43 and the copy of her Motion Pauper Status previously filed with the Sixth Circuit 41 UNDER SEAL pending further Order from the Court and 3 The Clerk of this court shall forward a copy of this order to the clerk of the United States Court of Appeals for the Sixth Circuit. Signed by Judge David L Bunning on 3/23/24 TDB cc COR USCA and Justicia Rizzo by US Mail Entered 3/35/24
5/13/24	49	NOTICE OF FILING USCA Motion for Leave to File Amended Complaint by Justicia Rizzo, pro se Attachments #1

		USCA Affidavit#2 USCA Cover Letter #3 Envelope TDB Entered 5/13/24
5/31/24	50	Copy of USCA OPENING BRIEF mailed in by Justicia Rizzo pro se Attachments#1 Copy of USCA Affidavit #2 Envelope TDB Entered 5/31/24
7/2/24	51	Appellant's Motion to Re-File Stay Action captioned for 6CCA, filed by Justicia Rizzo pro se Attachments#1 Affidavit of Justicia Rizzo #2 envelope TJG Entered 7/2/24
10/7/24	52	INFORMATION COPY OF ORDER/JUDGEMENT of USCA as to 35 Notice of Appeal filed by Justicia Rizzo, District Court TDB Entered 10/7/24
10/7/24	53	USCA JUDGEMENT as to 35 Notice of Appeal filed by Justicia Rizzo; that the judgement of the district court AFFIRMED TDB Entered 10/7/24
12/3/24	54	MANDATE of USCA as to 35 Notice of Appeal filed by Justicia Rizzo Appeal AFFIRM Appeal 23-5957 Attachments #1 cover letter WHP Entered 12/3/24
1/10/24	55	Service Copy of Petition for Writ of Certiorari before SCOTUS as to Justicia Rizzo filed Justicia Rizzo Attachments#1 envelope PM 1-8-25 WHP Entered 1/10/25

[REFORMATED ORDER]
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
CIVIL ACTION NO. 23-36-DLB

JUSTICIA RIZZO
v.
DENIS R. McDONOUGH

ORDER OF DISMISSAL

This matter is before the Court for consideration of Plaintiff Justicia Rizzo's responses **(Docs. # 31 and 32)** to the Court's **August 11, 2023** Order directing her to show cause why this matter should not be dismissed for her failure to properly serve Defendant within the 90-day time period provided by Rule 4(m) of the Federal Rules of Civil Procedure. **(Doc. #30)**. Having considered Rizzo's responses, the Court concludes that this matter will be **dismissed** without prejudice.

Proceeding without an attorney, on **March 15, 2023**, Rizzo filed her complaint against Defendant Denis R. McDonough, the United States Secretary of Veterans Affairs, and paid the \$350.00 filing fee and the \$52.00 administrative fee. **(Doc. #1)**. At the

time that she filed her complaint, Rizzo presented a summons to the Clerk of the Court issued to “Denis R. McDonough, 810 Vermont NW, Washington (*sic*), DC 20420.” (Doc. # 1-2) 1). Although this summons had not yet been issued at the time she presented it to the Clerk, Rizzo pre-emptively completed and filed the Proof of Service, which she signed on March 15, 2023, indicating that she served the summons via “USPS with Signature Confirmation to the Secretary (*sic*) of Department of Veteran Affairs and email to the US Attorney of Record Tiffany Fleming EMAIL: Tiffany.Fleming@usdoj.gov.” (*Id.* at 2). Rizzo further noted that “[t]he Plaintiff is Electronically Sending to The Last Counsel of Record Tiffany Flemming previous Action SEE 17-95-DLB-CJS.” (*Id.*).

Less than a week later, Rizzo filed a copy of the same Proof of Service that she previously filed with her complaint, now updated with United States Postal Service (“USPS”) tracking numbers for items sent to Washington, D.C., and to Lexington, Kentucky. **(Doc. # 13)**. Rizzo also attached a copy of a receipt from the USPS for two flat rate envelopes sent via priority mail from Nashville, Tennessee to Washington, D.C., and Lexington, Kentucky, as well

as tracking histories noting deliveries and signatures for each envelope. (Docs. # 13-1 and 13-2).

However, Rizzo's first two "Proof of Service" filings were plainly deficient. Rule 4(i) governs service on the United States and its "Agencies, Corporations, Officers, or Employees."

See Fed. R. Civ. P. 4(i). "To serve . . . a United States officer or employee sued only in an official capacity" – which appeared to be Rizzo's intent – "a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee." Id. at 4(i)(2) (emphasis added).

In turn, to serve the United States, the applicable provisions of Rule 4(i)(2) require a party to complete both of the following tasks:

A.(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk— or (ii) send a copy of each by registered or certified mail to the civil process clerk at the United States

attorney's office; [and] send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; See Fed. R. Civ. P. 4(i)(2).

Rizzo's service attempts failed to satisfy these requirements. First, her chosen method of service – USPS priority mail – did not comply with the Rule's requirement that copies of the summons and complaint be sent via registered or certified mail. In addition, the mail tracking information Rizzo filed did not indicate either the name of the party served nor the address to which it was mailed. Finally, **Rule 4(c)(2)** provides that service may be made by "[a]ny person who is at least 18 years old and not a party." **Fed. R. Civ. P. 4(c)(2) (emphasis added).** Thus, because Rizzo is a party to the proceeding, she may not serve summons herself. *Id.*; *Lee v. George*, 2012 WL 1833389, at *3 (W.D. Ky. May 18, 2012) ("Since Lee is a party to the action, his attempt to serve process upon Judge George renders the service improper.").

Accordingly, on **March 29, 2023**, the Court entered a Memorandum Opinion and Order explaining all of these requirements to Rizzo and pointing out the reasons why her chosen methods of

service fell short. (**Doc. # 14**). The Court's Order further advised Rizzo that, under **Rule 4(m)**, the time period for service is 90 days after the complaint is filed, absent a showing of good cause. (*Id.* at 3 (citing **Fed. R. Civ. P. 4(m)**)). The Court specifically warned Rizzo that "if the Defendant in this case is not *properly* served within 90 days from the date the complaint was filed, Rizzo's claims will be dismissed without prejudice." (**Doc. # 14 at 3**) (emphasis in original).

On April 24, 2023, Rizzo filed a "Motion to Submit Corrected Certificate of Service" **Doc. # 15**), to which she attached a "Certificate of Service" (*id.* at 2), indicating that she sent various documents via USPS Certified Mail to (i) the Secretary for the Department of Veteran Affairs; (ii) the United States Attorney for the Eastern District of Kentucky; (iii) the Attorney General of the United States, and (iv) the Regional Counsel for the Department of Veteran Affairs, including a receipt, Summons, a "Civil Action Complaint," Proof of Service, and Jury Demand, as well as copies of motions filed by Rizzo at the time she filed her complaint. That same day, she also filed three pleadings captioned "Proof of Service," purporting to have executed service on (i)

the United States Attorney for the Eastern District of Kentucky (Carlton S. Shier) on April 12, 2023 **(Doc. # 16)**; (ii) the Secretary for the Department of Veteran Affairs (Denis McDonough) on April 13, 2023 **(Doc. # 17)**; and (iii) the Regional Counsel for the Department of Veteran Affairs (Dennis McGuire) on April 12, 2023. **(Doc. # 18)**. However, Rizzo's filings confirmed that she had again failed to properly serve Defendant or the United States. First, although she had previously returned the Summons that had originally been issued by the Clerk of the Court as "executed" (even though it was not properly executed), she had failed to request that new Summons be issued. Moreover, Rizzo signed her "Proof of Service" forms herself, swearing and affirming under the penalty of perjury that she is the "messenger" who "served the papers . . . and that [she is] not a party to the aforementioned legal proceedings." (Docs. # 16 at 2, 17 at 2, and 19 at 2) (emphasis added). This sworn affirmation was plainly false, as Rizzo is the Plaintiff in this action. Thus, Rizzo ignored the Court's clear instructions that, pursuant to **Rule 4(c)(2)**, "because Rizzo is a party to the proceeding,

she may not serve summons herself.” (Doc. # 14 at 3) (emphasis added).

Because Rizzo’s second service attempts were also ineffective, on **May 5, 2023**, the Court entered an Order (i) denying Rizzo’s “Motion to Submit Corrected Certificate of Service;” (ii) explaining again the requirements of the Federal Rules; and (iii) warning Plaintiff that that if Defendant was not *properly* served within 90 days from the date the complaint was filed, her claims will be dismissed without prejudice. (Doc. # 19).

The 90-day period provided by Rule 4(m) expired on or around June 13, 2023, and Rizzo has yet to file proof of effective service into the record. Rather, on **June 23**, she filed a “Notice of Interlocutory Appeal” with the Sixth Circuit Court of Appeals. **(Doc. # 23)**. On **August 7, 2023**, the Sixth Circuit dismissed her appeal for lack of jurisdiction. **(Doc. # 28)**.

On **August 11, 2023**, the Court entered a Show Cause Order directing Rizzo to file a written response explaining her failure to properly serve Defendant within the 90-day time period provided by Rule 4(m). **(Doc. # 30)**. The Court’s Order specifically warned Rizzo that if she failed to show good cause for her

failure to effect timely service, or if she otherwise failed to comply with the Order, the Court would dismiss her complaint without prejudice for failure to prosecute and failure to comply with a Court Order. (*Id.* at 3).

The 14-day time period provided by the Court's Show Cause Order has now expired and Rizzo has filed two documents: a "Request for Extension to Address Serving Summons" (**Doc. # 31**) and a "Request for Entry for Default" (**Doc. # 32**), neither of which excuse her failure to properly serve Defendant within the time period provided by Rule 4(m).

In her "Request for Extension to Address Serving Summons" (**Doc. # 31**), Rizzo argues that she is entitled to an extension of time to cure her failure to serve Defendant under **Rule 4(i)(4)** because she properly served the United States Attorney for the Eastern District of Kentucky and the United States Attorney General. (*Id.* at 1). As support, she submits a response from the USPS to her inquiry requesting proof of delivery of the items that she mailed to (i) the United States Attorney for the Eastern District of Kentucky (Carlton S. Shier) on April 12, 2023, (ii) the Secretary for the Department of Veteran Affairs (Denis McDonough)

on **April 13, 2023**, (iii) the Regional Counsel for the Department of Veteran Affairs (Dennis McGuire) on **April 12, 2023**, and (iv) the United States Attorney General Merrick Garland on **April 14, 2023**. (*Id.*). However, Rizzo has previously filed proof of delivery of these same items (*see* **Docs. # 15-1, 16, 17, and 18**), and the Court has already determined that these mailings were insufficient, both because Rizzo failed to request that Summons be re-issued and because, as a party to the proceedings, Rizzo may not effectuate service herself. (**Doc. # 19**). Thus, despite her claim in her motion for an extension, Rizzo has failed to properly serve either the United States Attorney for the Eastern District of Kentucky, the United States Attorney General, or the named Defendant, Denis R. McDonough. Accordingly, Rizzo is not entitled to an extension of time within which to effectuate service pursuant to **Rule 4(i)(4)**. Rizzo further submits an “Affidavit of Past Practice Accepted in Eastern District of KY” (**Doc. # 31-1**), and claims that her Proof of Service should be accepted in this case because the Court previously allowed her to effectuate service via USPS mail in three prior cases: (i) *Rizzo v. Wilkie*, No. 2:17-cv-095-DLB-CJS (“*Rizzo I*”) (E.D. Ky. 2017); (ii) *Rizzo v.*

Shulkin, No. 2:18-cv-035-DLB-CJS (“*Rizzo II*”) (E.D. Ky. 2018); and iii) *Rizzo v. Wilkie*, No. 2:18-cv-135-DLB-CJS (“*Rizzo III*”) (E.D. Ky. 2018). However, Rizzo’s claim is misleading with respect to service in *Rizzo I* and false with respect to service in *Rizzo II and III*. In *Rizzo I*, Defendant filed an answer to Rizzo’s amended complaint (apparently despite being improperly served by Rizzo), thus waiving the issue. *See Rizzo I* at **Doc. # 22**. In *Rizzo II* and *III*, Rizzo was granted permission to proceed *in forma pauperis*, thus the Court directed the United States Marshals Service to effectuate service on her behalf pursuant to **Rule 4(c)(3)**. *See Rizzo II* at **Doc. # 10**; *Rizzo III* at **Doc. # 6**. Even so, Rizzo’s method of service in prior cases is irrelevant to her obligation to comply with the Rules *in this case*, an obligation that this Court has consistently advised her is required if she wishes to proceed.

In this case, the Court has repeatedly (i) directed that Defendant must be served properly in compliance with the Federal Rules of Civil Procedure (which includes proper service on the United States); (ii) painstakingly instructed Rizzo on the Rules’ requirements; (iii) informed her on multiple occasions that she may not serve Defendant or the

United States herself, and (iv) clearly warned her that, should she fail to timely serve Defendant in compliance with the Rules, her case will be dismissed.

Rizzo has given no reason for her failure to follow these instructions, but instead continues to insist that her method of service is appropriate (notwithstanding that the Court has specifically informed her that it is not). Because Rizzo has not, in fact, properly served any of the required parties, she is not entitled to an extension of time pursuant to Rule 4(i)(4). Nor does the Court find that an extension of time is otherwise warranted under the circumstances, as Rizzo has had ample time and opportunity to properly serve Defendant and has refused to comply with the Rules of Civil Procedure and/or this Court's Orders.

Thus, her motion for an extension of time is **denied**. Rizzo has also filed a Request for Entry of Default on the grounds that Defendant has failed to plead or otherwise defend against her claims. (**Doc. # 32**). However, as Defendant has not been properly served as required by Rule 4(c)(1), he has been under no obligation to file an answer or otherwise respond to Rizzo's complaint.

Accordingly, Rizzo's motion requesting entry of default will be denied.

Finally, it has now been over six months since Rizzo filed her complaint and she has yet to file proof of proper service in the record, despite being given multiple warnings that her chosen methods of service are improper and opportunities to correct her ineffective service.


Certainly, the Court must afford additional latitude to parties untrained in the law, Haines v. Kerner, 404 U.S. 519, 596 (1972), as their misguided actions may be the consequence of inexperience or lack of specialized knowledge rather than borne of a desire to harass or delay. However, "[w]hile pro se litigants are afforded significant leeway . . . , those who proceed without counsel must still comply with the procedural rules that govern civil cases." Frame v. Superior Fireplace, 74 F. App'x 601, 603 (6th Cir. 2003) (citations omitted). Thus, this forgiving approach to compliance with procedural rules has never "[been] interpreted so as to excuse mistakes by those who proceed without counsel." McNeil v. United States, 508 U.S. 106, 113 (1993).

Here, Rizzo has failed to show good cause for her failure to timely serve the Defendant in a manner

that complies with the requirements of the Federal Rules of Civil Procedure. To the contrary, her responses to the Court's Show Cause Order only demonstrate her unwillingness to follow this Court's rules and procedures. Thus, having previously provided notice to Rizzo (**Doc. # 30**), this Court will **dismiss** Rizzo's complaint (**Doc. # 1**) without prejudice pursuant to **Fed. R. Civ. P. 4(m)**. Accordingly, it is hereby **ORDERED** as follows:

1. Plaintiff Justicia Rizzo's "Motion for Extension to Address Serving Summons" (**Doc. # 31**) is **DENIED**;
2. Plaintiff Justicia Rizzo's Request for Entry of Default (**Doc. # 32**) is **DENIED**; Plaintiff Justicia Rizzo's Complaint (**Doc. # 1**) is **DISMISSED** without prejudice;
3. This matter is **STRICKEN** from the Court's docket; and
4. A Judgment in favor of Defendant will be entered contemporaneously herewith.

This 27th day of September 2023.

 United States District Court Eastern District	Signed By <i>David L. Bunning DB/s</i> United States District Judge
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APPENDIX C

[PETITIONER'S REFORMATED MOTION]
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF KENTUCKY AT COVINGTON
CIVIL ACTION 23-CV-36 DLB
(JURY DEMAND)
JUSTICIA RIZZO
v.
DENIS R. McDONOUGH

PLAINTIFFS REQUEST FOR EXTENSION
TO ADDRESS SERVING SUMMONS

COMES NOW, the Plaintiff , **JUSICIA RIZZO**,
Non Attorney, **HONORABLY DISCHARGED**,
PROTECTED VETERAN (ARMED FORCES
SERVICE MEDAL AND CAMPAIGN BADGE)
Veteran , **pro se**, a bi-racial (African American
and Caucasian with an Italian decent), female,
over 40 to submit to request to request an
extension to address disputes in serving summons
on Defendant in accordance with **Federal Rules**
of Civil Procedure Rule 4. Summons
(i) SERVING THE UNITED STATES AND ITS
AGENCIES, CORPORATIONS, OFFICERS, OR
EMPLOYEES. (EXTENDING TIME) Where its
states in pertinent part: (4) *Extending Time*. The
court must allow a party a reasonable time to cure

its failure to: **(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or**

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

Though The Plaintiff believes she has properly served the Defendant, and thinks the Agency's lack of response is possibly Deliberate as the MSPB has already articulated via a phone conference that it is the WORST case they have ever seen against the Agency and the Agency is aware of the BOTH the discriminatory actions they took against the Appellant as well as Retaliatory, the Plaintiff is assuming the lack of response by the Agency may be deliberately allowing the Plaintiff to simply get a DEFAULT Judgement, because they have NO defense, just about everything they have submitted in defense was fraudulent. However, in an effort to address any possible errors in providing service the Plaintiff request an extension in order to resolve the errors, which she doesn't understand Judge Bunning instructions.

PENALTY OF PERJURY DECLARATION

JUSTICIA RIZZO, pro se, make the following declarations regarding the service of Summons and argument outlined in this instant motion under the penalty of perjury.

SUMMONS ARGUMENT

The Plaintiff Claims she has served the Appropriate Parties as outlined in **Federal Rules Civil**

Procedure

4 (1) "Serving the United States and its Agencies, Corporations, Officers or Employees. (i) SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES. (1) United States. To serve the United States, a party must:(A) (i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought States attorney designates in a writing filed with the court clerk—or(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office

APPELLANTS RESPONSE: The Appellant served; US Attorney Carlton S. Shier, the US Attorney for the Eastern District on April 12, 2023

[REFORMATED USPS PROOF OF DELIVERY]

United States Postal Service

AUGUST 24, 2023

Dear Justicia Rizzo

The following is in response to your request for proof of delivery n your item and tracking number

9514 8066 7076 3100 5199 41



Item Details

Status	Delivered, Left with Individual
Satus Date	April 12, 2023 12:47 PM
Location	Ft. Mitchell, KY 41017
Postal Product	First Class Mail
Extra Services	Certified Mail



Return Reciept Electronic

Recipient Name CARLTON SHIER

Shipping Details

Weight 14.0oz

Recipient Signature

Electronic signature captured /s

Address:207 Grandview Drive

Fort Mitchell, KY 41017

Note: Scanned image may reflect a different destination address due to Intended Recipients delivery instructions on file

Thank you for selecting the United States Postal Service for your mailing needs .If you require additional assistance , please contact your local Post Office or postal representative at 1-800-222-1811

Sincerely

United States Postal Service
475 L Enfant Plaza SW
Washington DC 202560-0004

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

APPEALLANTS RESPONSE:

The Appellant Served; US Attorney General Merrick Garland, on April 14, 2023 Address: 950 Pennsylvania Ave, NW Washington, DC 20530

[REFORMATED USPS PROOF OF DELIVERY]

United States Postal Service

AUGUST 24, 2023

Dear Justicia Rizzo


The following is in response to your request for proof of delivery n your item and tracking number

9514 8066 7076 3100 5199 03



Item Details

Status :Delivered, Individual picked up at Postal Facility

Satus Date April 14, 2023 5:52 AM
Location Washington, DC 20530
Postal Product First Class Mail
Extra Services Certified Mail 
Return Reciept Electronic

Recipient Name MERRICK GARLAND

Shipping Details

Weight 14.0oz

Recipient Signature

Electronic signature captured/s

Address: JUSTICE 20530

Note: Scanned image may reflect a different destination address due to Intended Recipients delivery instructions on file

Thank you for selecting the United States Postal Service for your mailing needs .If you require additional assistance , please contact your local Post Office or postal representative at 1-800-222-1811

Sincerely

United States Postal Service
475 L Enfant Plaza SW

Washington DC 202560-0004

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

APPELLANTS RESPONSE:


The Appellant served the local Chief of General Council
[REFORMATED USPS PROOF OF DELIVERY]

United States Postal Service

AUGUST 24, 2023

Dear Justicia Rizzo

The following is in response to your request for proof of delivery n your item and tracking number

9514 8066 7076 3100 5199 65 

Item Details

Status :Delivered, Left with Individual

Satus Date April 12, 2023 12:16 PM

Location Akron ,OH 44311

Postal Product First Class Mail

Extra Services Certified Mail



Return Reciept Electronic

Recipient Name Denis McGuire

Shipping Details

Weight 14.0oz

Recipient Signature

Electronic signature captured/s

Address: 441 Wolf Ledges Pkwy

Akron, OH 44311

Note: Scanned image may reflect a different destination address due to Intended Recipients delivery instructions on file

Thank you for selecting the United States Postal Service for your mailing needs .If you require additional assistance , please contact your local Post Office or postal representative at 1-800-222-1811

Sincerely

United States Postal Service

475 L Enfant Plaza SW

Washington DC 202560-0004

(3) Officer or Employee Sued Individually. To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) Extending Time. The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

APPELLANTS RESPONSE:

The Appellant served the Secretary of Department of Veteran Affairs, Dennis McDonough on April 13, 2023 Address: VA Central Office 810 Vermont Ave Washington, DC 20420

[REFORMATED USPS PROOF OF DELIVERY]

United States Postal Service

AUGUST 24, 2023

Dear Justicia Rizzo

The following is in response to your request for proof of delivery on your item and tracking number

9514 8066 7076 3100 5199 27



Item Details

Status :Delivered, Individual Picked up at Postal Facility

Satus Date April 13, 2023 5:53 AM

Location Washington, DC 20420

Postal Product First Class Mail

Extra Services Certified Mail



Return Reciept Electronic

Recipient Name Denis McDonough

Shipping Details

Weight 14.0oz

Recipient Signature

Electronic signature captured/s

Address: VA CENTRAL 20420

Note: Scanned image may reflect a different destination address due to Intended Recipients delivery instructions on file

Thank you for selecting the United States Postal Service for your mailing needs .If you require additional assistance , please contact your local Post Office or postal representative at 1-800-222-1811

Sincerely

United States Postal Service

475 L Enfant Plaza SW

Washington DC 202560-0004

ARGUMENT OF NAMED DEFENDANT

The Plaintiff, JUSTICIA RIZZO Asserts the following information: The ONLY CURRNET Named Defendant to this Civil Action is: **US Department of Veteran Affairs Secretary Dennis McDonough**, Appointed by President Joe Biden December 10,2020 and Senate Confirmed on February 8, 2021. The SUMMONS was ISSUED by the Clerk of Court Eastern District of Kentucky on **March 15, 2023 and Sealed by the Courts. for the ONLY named Defendant: Denis McDonough.**

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 3/15/2023

SEAL
CLERK OF COURT
Eastern District of Kentucky
Signature of Clerk /s
Copy of Summons posted to Plaintiffs/Motion

The Plaintiff argues she has served the Defendant, Denis McDonough, who is the CURRENT Head of the Agency. The Plaintiff claims the Defendant is only responsible under the legal authority of **Respondent Superior**, though he bears NO involvement in any discriminatory acts toward her as he was NOT in office at the time of the alleged events. The Plaintiff argues in addition to serving the **Head of the Department of Veteran Affairs**, she also served the other parties recognized by law to receive notice of her Civil Action on BEHALF of the Secretary. In Addition to serving the summons to Department of Veteran Affairs Secretary Dennis McDonough, she has sent notice to the following individuals:

***Department of Justice Attorney General
Merrick Garland, US Attorney for the Eastern***

***District of Kentucky Carlton S. Shier IV, Chief
Counsel for the Cincinnati Department of
Veteran Affairs Dennis McGuire.***

The Plaintiff sent the SUMMONS and ALL previous motions she submitted to the Eastern District Court of Kentucky to the ALL Parties: The Plaintiff sent the following papers to the named individuals:

1. Receipt of Summons (1) pg.
2. Copy of Summons Dated March 15, 2023 (1) pg.
3. Civil Action Complaint (8) pg.
4. Proof of Service (1) pg.
5. Motion to Submit Certified Copies of
Administrative Record (7) pgs.
6. Motion to Seal the Administrative Record (2) pgs.
7. Motion to Submit the EEOC Appeal Decision (5)
pgs.
8. Motion to Submit MSPB Final Decision (26) pgs.
9. Motion for Leave of Court to File Motion in
Excess (2) pgs.
10. Motion for Change of Venue (5) pgs.
11. Motion for Relief of Judgment Order (9) pgs.
12. Jury Demand (2) pgs.

In Addition to the Summons and Civil Action, copies of all motions were also sent, for a total of 71 pages. The Plaintiff has also been sending copies via

USPS mail all the additional motions that have been filed since initiating her claims.

CONCLUSION

Wherefore, the reasons stated, The Plaintiff, **JUSTICIA RIZZO**, request Judge David Bunning to GRANT an Extension pursuant to **Rule 4. Summons (i) SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES. (EXTENDING TIME)** Where its states in pertinent part: (4) *Extending Time*. The court must allow a party a reasonable time to cure its failure to: (A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or (B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

Respectfully Submitted,

Justicia Rizzo /s

Dated: August 25, 2023

Justicia Rizzo, Non-Attorney / Veteran

PO Box 2154 Hendersonville, TN 37077

EMAIL: jsrizzo@mail.com TEL. (202) 819-1673

CERTIFICATE OF SERVICE

The undersign certifies the foregoing request for an Extension has been sent as outlined below.

6th CIRCUIT COURT OF APPEALS

Clerk of Courts

100 E 5th St Cincinnati OH 45202(USPS Priority Mail)

EASTERN DISTRICT OF KENTUCKY

Clerk of Courts 35 West Fifth Street

Covington, KY 41011 (USPS Priority MAIL)

Secretary for the Department of Veteran Affairs

Denis McDonough

Department of Veteran Affairs, 810 Vermont. NW

Washington, DC 20420 (Sending USPS Mail)

Eastern District Court US Attorney

Pursuant to Federal Rule Civil Procedure 4

Carlton S. Shier IV, Esquire

207 Grandview Drive, Ste. 400

Ft. Mitchell, KY. 41017-2762

Phone: (859) 655-3200 (Sending USPS Mail)

Attorney General of the United States

(Pursuant to Federal Rule Civil Procedure 4)

Honorable Merrick Garland since March 11, 2021

US Attorney General's Office U.S. Department of

Justice 950 Pennsylvania Avenue, NW

Washington, DC 20530-0001 (Sending USPS Mail)

Department of Veteran Affairs ~Regional Counsel

Dennis McGuire Office of Chief Counsel

441 Wolf Ledges Parkway Suite 403

Akron, Ohio 44311 Sending USPS Mail

Dated: August 25, 2023

/s/ _____

Justicia Rizzo, Prepared

Appellant, Pro Se

[REFORMATED POSTAL RECIEPT]
**UNITED STATES
POSTAL SERVICE**
NASHVILLE MAIN OFFICE WINDOW

525 ROYAL PKWAY
NASHVILLE TN 37229- 9715
(800) 275-8777

04/10/2023

3:42

Product	Qty	Unit Price	Prjj
First Class Mail	1		\$4.14
Large Envelope			
WASHINGTON, DC 20530			
Weight :12.60 oz			
Estimated Delivery Date			
Thu 04/13/2023			
Tracking #			
9514 8066 7076 3100 5199 03			
Certified Mail			\$4.15
e-return receipt			\$2.10
Total			\$10.39
First Class Mail	1		\$4.14
Large Envelope			
WASHINGTON, DC 20420			
Weight 12.60 oz			
Estimated Delivery Date			
Thu 4/13/2023			
Tacking #:			
9514 8066 7076 3100 5199 27			
Certified Mail			\$4.15
e-return receipt			\$2.10
Total			\$10.39
First Class Mail	1		\$4.15

Large Envelope
FT Mitchell, KY 41017
Weight 12.60 oz
Estimated Delivery Date
Thu 04/13/2023
Tracking number #:
9514 8066 7076 3100 5199 41
Certified Mail \$4.15
e-return Receipt \$2.10
Total \$10.39

First Class Mail
Large Envelope
Akron, OH 44311
Weight: 12.60 oz
Estimated Delivery Date Thu 4/13/2023
Tracking #
9514 8066 7076 3100 5199 65
Certified Mail \$4.15
e-return receipt \$2.10
Total \$10.39

Grand Total: \$41.56

Debit Card Remitted \$41.56
Card Name: Visa
Account #: xxxxxxxxxxxxxx6623
Approval #: 044116
Transaction #: 023537
Receipt #: 023537
AID: A0000000980840
AL: US DEBIT Chip
PIN: Verified

[REFORMED PROOF OF SERVICE]

AO440 (REV 06/12) Summons in a Civil Action (Page2)

Civil Action No. 23-36 DLB

PROOF OF SERVICE

(This section should not be filed with the court unless
required by Fed. R. Civ. P 4 (1))

This summons for DENNIS MCDONOUGH was
received by me on the date _____.

☐ I personally served the summons on the individual at
(place) _____ on _____; or

☐ I left the summons at the individual's residence or
usual place of abode with _____, a person of
suitable age and discretion who resides there, on
(date) _____, and mailed a copy to the individual's
last known address; or

☐ I served the summons on (name of individual) _____,
Who is designated by law to accept service of process on
behals of (name of organization) _____,
on (date) _____; or

☐ I returned the summons unexecuted because _____,
or

☒ Other (specify): I MAILED THE SUMMONS
CERTIFIED MAIL ON APRIL 10, 2023
TRACKING NUMBER 9514 8066 7076 3100 5199 27
(SEE ATTACHED USPS TRACKING AND PROOF OF
DELIVERY)

My fees are \$16.64 for travel and ____ for service for a
total of \$16.64

I declare under penalty of perjury that this information
is true.

Date 8/24/2023

Justicia Riggs s/
Sever's Signature

[CONT. REFORMATED PROOF OF SERVICE]
PROSE LITIGANT USARMY HONORABLY DISCHARGED VET

Printed name and title

PO BOX 2154

HENDERSONVILLE, 37077

Server's address

Additional information regarding attempted service, etc:

THE ITEM WAS DELIVERED ON APRIL 13, 2023 5:35AM
VA CENTRAL OFFICE
DEPARTMENT OF VETERAN AFFAIRS
810 VERMONT AVE
WASHINGTON, DC 20420

[REFORMATED PROOF OF SERVICE]
AO440 (REV 06/12) Summons in a Civil Action (Page2)

Civil Action No. 23-36 DLB

PROOF OF SERVICE

(This section should not be filed with the court unless
required by Fed. R. Civ. P 4 (1))

This summons for DENNIS MCDONOUGH was
received by me on the date _____.

☐ I personally served the summons on the individual at
(place) _____ on _____; or

☐ I left the summons at the individual's residence or
usual place of abode with _____, a person of
suitable age and discretion who resides there, on
(date) _____, and mailed a copy to the individual's
last known address; or

☒ I served the summons on (name of individual)
US ATTORNEY GENERAL MERRICK GARLAND,
Who is designated by law to accept service of process on
behals of (name of organization) DEPARMTNET OF
VETERNA AFFAIRS on (date) _____; or

☐ I returned the summons unexecuted because __, or

☒ Other (specify): I MAILED THE SUMMONS
CERTIFIED MAIL ON APRIL 10, 2023
TRACKING NUMBER 9514 8066 7076 3100 5199 03
(SEE ATTACHED USPS TRACKING AND PROOF OF
DELIVERY)

My fees are \$16.64 for travel and ____ for service for a
total of \$16.64

I declare under penalty of perjury that this information
is true.

Date 8/24/2023

Justicia Riggs s/
Sever's Signature

[CONT. REFORMATED PROOF OF SERVICE]
PROSE LITIGANT USARMY HONORABLY DISCHARGED VET

Printed name and title

PO BOX 2154
HENDERSONVILLE, 37077

Server's address

Additional information regarding attempted service, etc:

THE ITEM WAS DELIVERED ON APRIL 14, 2023 5:52AM
DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVE, NW
WASHINGTON, DC 20530-0001

[REFORMATED PROOF OF SERVICE]
AO440 (REV 06/12) Summons in a Civil Action (Page2)

Civil Action No. 23-36 DLB

PROOF OF SERVICE

(This section should not be filed with the court unless
required by Fed. R. Civ. P 4 (1))

This summons for DENNIS MCDONOUGH was
received by me on the date _____.

☐ I personally served the summons on the individual at
(place) _____ on _____; or

☐ I left the summons at the individual's residence or
usual place of abode with _____, a person of
suitable age and discretion who resides there, on
(date) _____, and mailed a copy to the individual's
last known address; or

☒ I served the summons on (name of individual)
US ATTORNEY CARLTONSHIER, Who is designated
by law to accept service of process on behalfs of (name of
organization) DEPARMTNET OF VETERNA AFFAIRS
on (date) 4/12/2023; or

☐ I returned the summons unexecuted because __, or

☒ Other (specify): I MAILED THE SUMMONS
CERTIFIED MAIL ON APRIL 10, 2023
TRACKING NUMBER 9514 8066 7076 3100 5199 65
(SEE ATTACHED USPS TRACKING AND PROOF OF
DELIVERY)

My fees are \$16.64 for travel and ____ for service for a
total of \$16.64

I declare under penalty of perjury that this information
is true.

Date 8/24/2023

Justicia Riggs s/
Sever's Signature

[CONT. REFORMATED PROOF OF SERVICE]
PROSE LITIGANT USARMY HONORABLY DISCHARGED VET

Printed name and title

PO BOX 2154

HENDERSONVILLE, 37077

Server's address

Additional information regarding attempted service, etc:

THE ITEM WAS DELIVERED ON APRIL 12, 2023 12:16 PM
441 WOLF LEDGES PARKWAY SUITE 403
AKRON, OH 44311
PHONE 614-388-7038

[REFORMATED PROOF OF SERVICE]
AO440 (REV 06/12) Summons in a Civil Action (Page2)

Civil Action No. 23-36 DLB

PROOF OF SERVICE

(This section should not be filed with the court unless
required by Fed. R. Civ. P 4 (1))

This summons for DENNIS MCDONOUGH was
received by me on the date _____.

☐ I personally served the summons on the individual at
(place) _____ on _____ ; or

☐ I left the summons at the individual's residence or
usual place of abode with _____, a person of
suitable age and discretion who resides there, on
(date) _____, and mailed a copy to the individual's
last known address; or

☒ I served the summons on (name of individual)
DENNIS MCGUIRE FOR SECRETARY, Who is
designated by law to accept service of process on behalfs
of (name of organization) DEPARMTNET OF
VETERNA AFFAIRS on (date) 4/12/2023 ; or

☐ I returned the summons unexecuted because ____, or

☒ Other (specify): I MAILED THE SUMMONS
CERTIFIED MAIL ON APRIL 10, 2023
TRACKING NUMBER 9514 8066 7076 3100 5199 27
(SEE ATTACHED USPS TRACKING AND PROOF OF
DELIVERY)

My fees are \$16.64 for travel and ____ for service for a
total of \$16.64

I declare under penalty of perjury that this information
is true.

Date 8/24/2023

Justicia Riggs s/
Sever's Signature

[CONT. REFORMATED PROOF OF SERVICE]
PROSE LITIGANT USARMY HONORABLY DISCHARGED VET

Printed name and title

PO BOX 2154
HENDERSONVILLE, 37077
Server's address

Additional information regarding attempted service, etc:

THE ITEM WAS DELIVERED ON APRIL 13, 2023 5:35AM
VA CENTRAL OFFICE
DEPARTMENT OF VETERAN AFFAIRS
810 VERMONT AVE
WASHINGTON, DC 20420

**[REFORMATED OPM GUIDELINE 32-36]
33-36 THE GUIDE TO PROCESSING PERSONNEL
ACTIONS**

Figure 32-3 Actions to Provide Interim Relief(Continued)

SITUATION	INTERIM RELIEF IS REQUIRED	EMPLOYEE PREVAILS ON REVIEW BY THE FULL BOARD OR WHEN INITIAL DECISION BECOMES FINAL	AGENCY PREVAILS OR EMPLOYEE REQUEST OR AGREES WITH AGENCY THAT INTERIM RELIEF SHOULD BE CANCELLED
Employee who was placed in nonpay/ nonduty status is being returned to pay but not to duty status because agency determines employees return to duty or presense would be unduly	Process standard form SF50 for 293/Return to Pay Status, using R9R/5 CFR part 772 as the authority. Cite block 45 remark A25/This action provides relief required by Public law 101-12	Cancel SF50 that provided interim relief the one placing employee in a non pay status, and all subsequent actions that are the result of or reflect the non pay status (See Note 3 of this figure) Process all	If employee already would have been returned to duty, cancel the SF50 that provided interim relief. Replace it with a 292/RTD SF50 effective on the day following the original not to exceed (NTE) date , use Table 16-C to select the authority.

disruptive to the work environment	pending final decision of the MSPB (See Note 1 of this figure)	actions that should have occurred as a result of the decision	Cancel any other SF50 that resulted from the RTD that provided interim relief. Process all actions that should have occurred during or after the original period in a nonpay status. If employee would still be in a nonpay non duty status had he or she not prevailed on the initial decision process another furlough suspension or placement in non pay status action to return employee to non pay status . If employee requests
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			<p> termination of interim relief or agrees with agency that it should be cancelled cite R9Q/772.102 (b) (3) as the authority. Otherwise cite AGM (MSPB decision number and date as the authority </p>
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