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4 ATTORNEY FOR WASHOE COUNTY
5

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

8 TERRY W. TIERNAY,

9 Plaintiff,

Case No. CV13-01460

10 v.

Dept. No. 3

11 RICHARD GAMMICK; BONNIE WEBER;
12 KITTY JUNG; and DAVID HUMKE,

13 Defendants.. /

14 **MOTION TO DISMISS PURSUANT TO NRCP 12(b)(4)**
15 **(Notice of Improper Process and Improper Service of Process)**

16 Comes now, Assistant District Attorney Paul Lipparelli, on behalf of Washoe County
17 District Attorney, Richard A. Gammick and/or Washoe County Commissioners David Humke,
18 Bonnie Weber and Kitty Jung (“County Defendants”), and moves this Court for to dismiss the
19 case. This Motion is based on the following AStatement of Points and Authorities@ and upon
20 all the papers, pleadings and records on file with the Court in this matter.

21 **STATEMENT OF POINTS AND AUTHORITIES**

22 County Defendants move for an order dismissing this case, pursuant to NRCP 12(b)(3)
23 and (4), for insufficiency of process and insufficiency of service of process.

24 A civil action is commenced by filing a complaint with the Court. Nevada Rule of Civil
25 Procedure (NRCP) 3. The court’s docket in this case which is available from the court’s website
26 reflects that a civil cover sheet and complaint were filed on July 3, 2013. See, Copy of On-line

1 Docket, attached hereto as Exhibit 1. That docket also establishes no summons was issued for
2 any of the defendants. Also, no return of service has been filed with the court pursuant to NRCP
3 4(g) and no certificate of service is attached to the complaint. In short, there is no proof that
4 proper service was accomplished.

5 NRCP 4(a) provides that upon the filing of a complaint, the court clerk shall “forthwith
6 issue a summons and deliver it to the plaintiff or to the plaintiff’s attorney, who shall be
7 responsible for service of the summons and a copy of the complaint.” The court’s file
8 establishes no summons was issued for any defendant.

9 NRCP 4(d)(1) through (5) provides for manner in which personal service is accomplished
10 for various persons and entities, other than individuals. NRCP 4(d)(6) provides that “ In all
11 other cases to the defendant personally, or by leaving copies thereof at the defendant’s dwelling
12 house or usual place of abode with some person of suitable age and discretion then residing
13 therein, or by delivering a copy of the summons and complaint to an agent authorized by
14 appointment or by law to receive service of process.” (Emphasis added.) The undersigned is
15 informed that the plaintiff sent by mail copies of the complaint and exhibits to the named county
16 commissioners at the executive office of the board of county commissioners. Attempting service
17 by mail does not comport with the rule. After an action is commenced and service has been
18 properly effectuated, the provisions of NRCP 5 come into effect. These other methods of service
19 of other papers by mail.

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1 Because the records of this Court clearly establish that process is insufficient in this case
2 and that initial service has not been properly effectuated, dismissal is proper under NRCP
3 12(b)(4)¹.

4 **AFFIRMATION PURSUANT TO NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document does not contain the
6 social security number of any person.

7 Dated this 18th day of July 2013.

8 RICHARD A. GAMMICK
9 District Attorney

10 By /s/ Paul A. Lipparelli
11 PAUL A. LIPPARELLI
12 Assistant District Attorney
13 P.O. Box 11130
14 Reno, NV 89520
15 (775) 337-5700

16 ATTORNEYS FOR WASHOE COUNTY

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18 ¹ NRCP 12 (b) provides:

19 Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim,
20 cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required,
21 except that the following defenses may at the option of the pleader be made by motion: (1) lack of
22 jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process,
23 (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be granted, (6)
24 failure to join a party under Rule 19. A motion making any of these defenses shall be made before
25 pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or
26 more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for
relief to which the adverse party is not required to serve a responsive pleading, the adverse party may
assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense
numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted,
matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as
one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given
reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

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CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing Motion to Dismiss Pursuant to NRCP 12(b)(4) in an envelope addressed to the following:

Terry W. Tiernay
3555 Crazy Horse Road
Reno, NV 89510

Further, an electronic copy was sent to Mr. Tiernay at the following email addresses:
terrytiernay@yahoo.com and ttierknee@aol.com

Dated 18th day of July, 2013.

/s/ Tina Galli
Tina Galli

EXHIBIT INDEX

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Exhibit 1 On line Docket Report2 pages

EXHIBIT INDEX

EXHIBIT 1

EXHIBIT 1

Report Selection Criteria

Case ID: CV13-01460
Docket Start Date:
Docket Ending Date:

Case Description

Case ID: CV13-01460 - TERRY TIERNAY VS. RICHARD GAMMICK, ETAL (3)
Filing Date: Wednesday, July 03rd, 2013
Type: GC - GENERAL CIVIL
Status: INITIAL - Case Initiated

Related Cases

No related cases were found.

Case Event Schedule

Event	Date/Time	Room	Location	Judge
ORDER TO SHOW CAUSE	18-JUL-2013 01:30 PM	COURTROOM 3 - 4TH FLOOR	District Court	POLAHA, JEROME M.

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name
1			Judge	<u>D3</u>	POLAHA, HONORABLE JEROME M.
Address:	P.O. BOX 30083 RENO NV 89520- 3083		Aliases:	none	
2			Plaintiff	<u>@1243763</u>	TIERNAY, TERRY W.
Address:	unavailable		Aliases:	none	
3			Defendant	<u>@1243764</u>	WEBER, BONNIE
Address:	unavailable		Aliases:	none	

4		Defendant	@1243765	JUNG, KITTY
Address:	unavailable	Aliases:	none	
5		Defendant	@1243766	HUMKE, DAVID
Address:	unavailable	Aliases:	none	

Docket Entries

Filing Date	Description	Name	Monetary
03-JUL-2013 10:17 AM	**Civil Cover Sheet		
Entry:	none.		
03-JUL-2013 10:17 AM	\$Complaint - Civil	TIERNAY, TERRY W.	
Entry:	none.		
03-JUL-2013 10:19 AM	**Payment Received		
Entry:	A Payment of -\$260.00 was made on receipt DCDC414411.		
15-JUL-2013 02:54 PM	Citation To Appear		
Entry:	Transaction 3854676 - Approved By: JULLESEI : 07-15-2013:15:12:52		
15-JUL-2013 03:14 PM	Proof of Electronic Service		
Entry:	Transaction 3854774 - Approved By: NOREVIEW : 07-15-2013:15:14:34		