

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WALTER DUANE WHITE,

Plaintiff,

v.

Civil Action No. 5:06CV166  
(STAMP)

JOYCE FRANCIS, Warden,

Defendant.

**ORDER DENYING MOTION FOR SUBPOENA  
FOR PRODUCTION OF DOCUMENTS,  
MOTION FOR APPOINTMENT OF COUNSEL,  
AND MEMORANDUM PROVIDING TORT CLAIM**

On July 18, 2007, this Court dismissed the plaintiff's civil rights complaint for failure to state a claim. The Court also notified the plaintiff of his right to appeal the judgment of this Court. On July 30, 2007, the plaintiff filed a notice of appeal. On August 8, 2007, the plaintiff filed a motion for subpoena for production of documents under Rule 34. On August 31, 2007, the plaintiff filed a motion for appointment of counsel. On September 26, 2007, the plaintiff filed a document styled "Memorandum: Plaintiff Providing Tort Claim."

The plaintiff's motions are DENIED because this Court lacks jurisdiction to address them. Before the plaintiff filed the above motions, this case was dismissed and stricken from the active docket of this Court and the plaintiff filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit.

Additionally, the plaintiff's motion for appointment of counsel is moot because the plaintiff requests counsel at the trial

court level, where his claim has already been dismissed, rather than at the appellate court level. Finally, to the extent that the plaintiff seeks to assert by motion an additional claim in this civil action through the September 26, 2007 memorandum, this motion is DENIED AS MOOT because it was filed after this Court's opinion affirming and adopting the report and recommendation of the magistrate judge. If the plaintiff desires to file a new claim, he may seek to do so by obtaining information from the Clerk about using forms to file a new action. However, these instructions are not to be construed as an opinion by this Court as to the merits of any such claim, or claims, if filed.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the plaintiff. The Clerk is further DIRECTED to send this order to the Clerk, United States Court of Appeals for the Fourth Circuit.

DATED:      October 1, 2007

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE