

EXHIBIT NUMBER # 19

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

EUGENE MILLER,

Plaintiff,

v.

Case No.: 06-C-303-3
Judge Fred L. Fox, II

JUDGE JOHN LEWIS MARKS, JR.,
MARY DYER, TOM DYER,
SHERIFF JIM JACK,
DON WILSON, LIZ WILSON,
BEVERLY CROSBY,
KRISTI WARDELL,
DANA LAFFERTY,
ROBERT LAFFERTY, and
L&J DEVELOPERS,

Defendants.

DISMISSAL OF CASE UNDER RULE 41(b) OF THE
WEST VIRGINIA RULES OF CIVIL PROCEDURE

This case came before the Court on 10 August 2009 for a hearing pursuant to Dimon v. Mansy, et ux., 198 W.Va. 40, 479 S.E. 2d 339 (1996) allowing all named parties notice and an opportunity to be heard prior to the Court dismissing this matter under the provisions of Rule 41(b) of the "West Virginia Rules of Civil Procedure for Trial Courts of Record." The plaintiff appeared pro se. Thomas G. Dyer, Esquire, appeared on behalf of the defendants.

Having reviewed the court file, the arguments of counsel and the plaintiff, and having researched the legal issues presented, the Court is of the opinion that this case should be dismissed

PLAINTIFF'S EXHIBIT	
CASE NO.	<u>06-C-303-3</u>
EXHIBIT NO.	<u>19</u>

pursuant to Rule 41(b) of the "West Virginia Rules of Civil Procedure for Trial Courts of Record" for failure to prosecute. In support of this ruling, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. On 07 July 2006, plaintiff filed his complaint against the defendants. By Order dated 17 July 2006, the Supreme Court of Appeals of West Virginia temporarily assigned Judge Fred L. Fox, II, to preside in this matter. By Order dated 08 November 2006, this Court dismissed Judge John Lewis Marks, Jr. and Sheriff Jim Jack from this matter. The plaintiff then submitted paperwork to the Court entitled "MOTION to SEEK the DISQUALIFICATION and REMOVAL of Honorable Judge Fred Fox II from case # 06-C-303-3 (RULE 17) and have another Judge Appointed outside Harrison County by the WEST VIRGINIA SUPREME COURT." (sic) on 12 December 2008. This Court then informed the plaintiff, by letter, that his submission did not conform with West Virginia Trial Court Rule 17.01 and would be lodged in the file until he brought the document into compliance. The next submission to the Court by the plaintiff was on 8 September 2008, entitled, "MOTION TO REQUEST THAT BECKY HINKLE BE ARRESTED FOR PERJURY IN

CIVIL CASE TRIAL # 04-C-630-2 TO HONORABLE JUDGE FRED FOX." (sic). This submission is believed to ask for relief outside the jurisdiction of this Court and has never been addressed by the plaintiff. On 19 July 2009, this Court sent the plaintiff a letter informing him that his action was subject to involuntary dismissal under Rule 41(b) of the "West Virginia Rules of Civil Procedure for Trial Courts of Record." The plaintiff then submitted a document titled "MOTION REQUEST:" on 24 July 2009. The defendants submitted a response to the plaintiff on 07 August 2009.

Conclusions of Law

1. Rule 41(b) of the West Virginia Rules of Civil Procedure provides that:

(b) Involuntary dismissal; effect thereof. -

...

Any court in which is pending an action wherein for more than one year there has been no order or proceeding, or wherein the plaintiff is delinquent in the payment of accrued court costs, may, in its discretion, order such action to be struck from its docket; and it shall thereby be discontinued. The court may direct that such order be published in such newspaper as the court may name. The court may, on motion, reinstate on its trial docket any action dismissed under this rule, and set aside any nonsuit that may [be] entered by reason of the nonappearance of the plaintiff, within three terms after entry of the order of dismissal or nonsuit; but an order of reinstatement shall not be entered until the accrued costs are paid.

Before a court may dismiss an action under Rule 41(b), notice and an opportunity to be heard must be given to all parties of record.

2. This Court is of the opinion that neither of the plaintiff's submissions tendered to the Court in the thirty-one (31) months prior to the initiation of Rule 41(b) proceedings constitute a "proceeding" within Rule 41(b). Both were ill-formatted and were never pursued further than the initial tendering by the plaintiff. The only submission that was tendered in the prior year to the initiation of the Rule 41(b) proceedings was the bizarre five-page motion to this Court to arrest a woman who testified in a 2005 legal matter pursued by the plaintiff. This Court does not recognize such a "motion" as advancing the plaintiff's case in any way. While this Court recognizes that the plaintiff is proceeding pro se, this plaintiff has participated in a civil trial before in Harrison County and has to have been aware that he needed to advance his case. While this Court is accommodating to its pro se litigants, the Court cannot advance a case to trial without initiative by the plaintiff. This plaintiff has failed to show good cause as to why this case should not be dismissed.

Accordingly, this Court, under the provisions of Rule 41(b) of the "West Virginia Rules of Civil Procedure for Trial Courts of Record," utilizing the procedures set forth in Dimon v. Mansey, et ux., 198 W.Va. 40, 479 S.E.2d 339 (1996), does hereby ORDER that this case be stricken from the docket of this Court for failure to prosecute.

The Circuit Clerk of Harrison County is directed to provide certified copies of the foregoing "Dismissal of Case Under Rule 41(b) of the West Virginia Rules of Civil Procedure" to Eugene Miller at Post Office Box 1641, Cockeyville, Maryland 21030; and to Thomas G. Dyer, Esquire, at Dyer Law Offices, Post Office Box 1332, Clarksburg, West Virginia 26302-1332.

ENTER: 15 SEPTEMBER 2009

Fred L. Fox, II

FRED L. FOX, II, CIRCUIT JUDGE

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT:

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 15 day of September, 2009.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

Seal of the Court this 17 day of September, 2009.

Donald L. Kopp II PA
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia