

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

TERRICK TERRELL NOONER, et al.,

Plaintiffs

v.

Civil Action No. 5:06-cv-00110-SWW

LARRY NORRIS, Director,  
Arkansas Department of Correction,  
et al.,

Defendants.

RESPONSE TO *PRO SE* MOTION

Comes now undersigned counsel, Julie Brain of the Arkansas Federal Public Defender Office, appointed counsel for Plaintiff Terrick Terrell Noonner, and respectfully submits this Response to Mr. Noonner's *pro se* pleading, [Doc. 47], pursuant to this Court's Order of December 15, 2006, [Doc. 49]. Counsel respectfully urges the Court to decline to consider Mr. Noonner's *pro se* pleading, in accordance with its usual policy of rejecting motions filed *pro se* by parties who are represented by counsel, as it has on previous occasions.

On May 1, 2006, Plaintiff, Terrick Terrell Noonner, through undersigned counsel, initiated the instant action pursuant to 42 U.S.C. § 1983, challenging the constitutionality of the lethal injection protocol selected and used by Defendants for executions in the State of Arkansas. Since that time Mr. Noonner, who suffers from severe mental illness and has a lengthy history of filing voluminous, largely incomprehensible lawsuits and pleadings

in the local, state and federal courts of Arkansas and Missouri, has filed a variety of *pro se* pleadings under the case number of the instant action and that of the associated appeal in the Eighth Circuit Court of Appeals.

For example, on August 9, 2006, the Court received a document styled “Motion for Disclosure of Impeachment Evidence,” with a number of attachments in the form of documents relating to the Arkansas Department of Correction inmate grievance procedure. *See Exhibit 1.* The pleading purported to request that Defendants “[p]roduce suspension of all alias employed federal officer’s [sic] in ADC if no medical photograph is made of my damaged penis for exhibit to court … [and] [p]roduce search and seizure by criminal court clerk of rape evidence on my penis.” *Id.* On two occasions the Court has formally instructed Mr. Noonier that he must pursue such claims in a separate lawsuit, [Doc.’s 38, 44], to no avail.

On August 21, 2006, the Eighth Circuit Court of Appeals received a pleading from Mr. Noonier entitled “Motion of Civil Action Complaint Against En Banc Justices of 8th Circuit” and “Motion for Production of Documents and Entry Upon Land for Inspection.” *See Exhibit 2.* The Clerk of Court instructed Mr. Noonier that, as a party represented by counsel, all filings must be made by his attorney. *Id.* The Clerk responded in similar fashion to a pleading received from Mr. Noonier on August 24, 2006, entitled “Motion for Injunction Pending Appeal.” *See Exhibit 3.* In that Motion, Mr. Noonier requested an “order suspending Attorney Generals Svoboda and Hagermeier under 28 USC § 528 for failure to disclose evidence of sexual misconduct. They didn’t file a motion for

protective order to avoid medical photograph of my damaged penis.” *Id.*

Most recently, the Eighth Circuit Court of Appeals received a pleading from Mr. Noonier on December 18, 2006, that is styled “Motion for Voluntary Dismissal” and is similar to the pleading received by this Court. *See Exhibit 4.* The Clerk of Court once again responded to Mr. Noonier, reminding him that he is represented by counsel and counsel must file all motions and pleadings in the appeal. *Id.*

Undersigned counsel is in regular telephonic and in-person contact with Mr. Noonier. Counsel last visited Mr. Noonier at the ADC Varner Unit on December 28, 2006, and had a very pleasant visit. To the limited extent that counsel is able to meaningfully communicate with Mr. Noonier regarding legal matters, counsel was able to ascertain that Mr. Noonier has no desire that the instant action be dismissed as to him *per se*. Rather, as is evident from many of Mr. Noonier’s actions and pleadings in this and many other cases that he has filed, his overriding goal is to seek redress for, and relief from, the physical harm that he perceives is being repeatedly inflicted on him by the staff of the ADC. As the courts routinely do not file these *pro se* motions, Mr. Noonier continues to seek court attention to what he perceives to be his ongoing mistreatment.

Mr. Noonier believes very strongly that he is being seriously and permanently injured by ADC staff in several ways. His chief complaint is that staff have damaged his penis, implanting a device with which they control his body, and that his repeated requests to have the damage photographed for purposes of litigation have been ignored. He also complains that staff are contaminating his food, and that a variety of people he is

familiar with from the free world, including people from the neighborhood of Little Rock that he used to live in, are impersonating ADC correctional officers, appearing around him in the prison and raping him.

Mr. Nooner's purpose in filing his *pro se* pleadings in this case, including the motion to which the Court directed undersigned counsel to respond, is to try to convince some court, somewhere, to listen to and act upon the only claims that are real to him and that make sense within the context of his delusional thought disorder. The urgency with which Mr. Nooner seeks to have his claims heard, and the fervor with which he believes in their merit, is completely understandable in the context of the psychotic disorder that he suffers and the particular fixed delusions that are caused by it. Undersigned counsel is actively seeking the opportunity to identify and diagnose Mr. Nooner's condition in the context of another action, a Petition for Writ of Habeas Corpus which challenges the ADC's refusal to allow counsel's mental health professionals access to Mr. Nooner to evaluate his condition. *See Nooner v. Norris*, No. 5:96-cv-00495GH (E.D. Ark), *appeal docketed*, No. 06-3487 (8th Cir.). Counsel is unable to convey to Mr. Nooner that this Court, in this case, is unable to address the matters that are of concern to him, or that his interests will best be served by continuing to raise those concerns in separate lawsuits.

The proceedings in the instant case are reminiscent of the way in which Mr. Nooner's mental illness interfered with his ability to comprehend the scope of the prior habeas corpus action in which his appointed counsel challenged his conviction and sentence of death. *See Nooner v. Norris*, 402 F.3d 801 (8th Cir. 2005). Before the

district court, Mr. Nooner filed a *pro se* pleading apparently seeking to dismiss his habeas petition in its entirety and waive federal court review of his capital conviction and sentence. *Id.* at 804.

An inquiry into his competency to waive his appeals, however, revealed that Mr. Nooner did not wish to “volunteer” for execution after all. *Id.* at 806. He had no desire to be executed, nor did he comprehend that withdrawing his petition might hasten his death; to the contrary, he had a delusional belief that “withdrawing his habeas petition would trigger a series of events (the setting of an execution date and his appearance before a clemency board) that would result in a ‘hidden or removed lawsuit’ that would exonerate him.” *Id.* The Eighth Circuit accordingly found that Mr. Nooner’s actions could not be deemed knowing and voluntary, and proceeded to adjudicate the merits of his petition. *Id.*

A district court has no obligation to entertain *pro se* motions filed by a represented party. *See, e.g., Abdullah v. United States*, 240 F.3d 683, 686 (8th Cir. 2001); *Taylor v. Dickel*, 293 F.3d 427, 429 (8th Cir. 2002). In light of Mr. Nooner’s prolific history of filing pleadings *pro se* that are manifestations of his delusional beliefs and symptomatic of his severe mental illness, the Court should decline to entertain Mr. Nooner’s most recent pleading just as it has rejected his previous submissions.

Respectfully submitted,

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FEDERAL DEFENDER

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 3rd day of January, 2007, the foregoing Response to *Pro Se* Motion was filed using this Court's EF/CMS electronic filing system and thereby automatically delivered electronically to Assistant Attorneys General C. Joseph Cordi and Joseph V. Svoboda, Catlett-Prien Tower Bldg., 323 Center Street, Suite 200, Little Rock, AR 72201-2610.

/s/ Julie Brain  
Julie Brain