

COPY

Louis J. Clay, Jr. 08452  
CMCF-3 A-2  
P.O. Box 88550  
Pearl, Ms. 39288

**FILED**

MAY 21 2007

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

September 19, 2007

Ms. Betty W. Sephton, Clerk  
Mississippi Supreme Court  
P.O. Box 249  
Jackson, Ms. 39205-0249

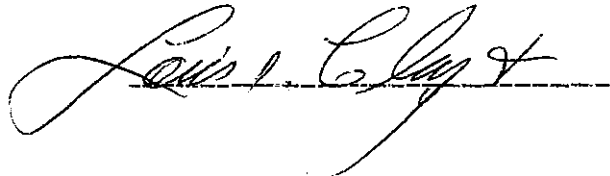
2007-CP-836

Ms. Sephton,

On April 17, 2007, Clay did file a notice of appeal, In forma pauperis application, designation of record, motion for appointment of counsel, certificate of service and plaintiff's letter brief. Clay await the State's response. See records submitted by the clerk of Greene County Circuit Court.

All parties have been served...

Respectfully,

A handwritten signature in cursive script, reading "Louis J. Clay, Jr.", is written over a horizontal dashed line.

**Supreme Court of Mississippi**  
**Court of Appeals of the State of Mississippi**  
*Office of the Clerk*

Betty W. Sephton  
Post Office Box 249  
Jackson, Mississippi 39205-0249  
Telephone: (601) 359-3694  
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*(Street Address)*  
450 High Street  
Jackson, Mississippi 39201-1082  
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August 1, 2007

To: COUNSEL OF RECORD

NO.2007-CP-000836 - Louis J. Clay, Jr. a/k/a Louis Clay a/k/a Spoola Boo v.  
Christopher Epps, et al.

This case has been docketed and assigned the above case number. Please use the above case number on all documents.

**NOTICE OF BRIEFING SCHEDULE:** Pursuant to MRAP 31, this is your notice that the record in the above styled and numbered appeal has been filed. Appellant's brief and record excerpts are due **within forty (40) days of the date of this letter**. Appellee's brief is due **within thirty(30) days after service of the brief of the appellant**. The appellant's reply brief is due **within fourteen(14) days after service of the brief of the appellee**.

**DISMISSAL OF APPEAL:** MRAP 2 allows the clerk to dismiss appeals, after notice, if deficiencies are not corrected. If the clerk has issued a deficiency notice pursuant to MRAP 2, motions for additional time will not be entertained.

**APPEARANCE FORM:** If an appearance form has not been filed, one must be submitted to this office **within thirty(30) days of the date of this letter**. (Pro Se individuals are not required to submit an appearance form.)

**MRAP ON INTERNET:** The Mississippi Rules of Appellate Procedure are on the court web site:  
<http://www.mssc.state.ms.us>.

  
CLERK

/bws

**Supreme Court of Mississippi**  
**Court of Appeals of the State of Mississippi**  
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September 14, 2007

Louis J. Clay, Jr.  
CMCF-III B-2 #08452  
P O Box 88550  
Pearl, MS 39288-8550

Re: Louis J. Clay, Jr. v. Christopher Epps  
2007-CP-00836  
Greene County, Case# 2005-04-043(1)

**Show Cause Notice**

Pursuant to the Rule 2(a) (2), M.R.A.P., "The clerk of the Supreme Court shall give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within 14 days after notification, the appeal shall be dismissed...."

The docket in this cause shows that the Appellant has substantially failed to prosecute this appeal as indicated below:

The Brief of Appellant has not been filed.

Accordingly, the Brief of the Appellant must be **received** fourteen (14) days from the date of this letter or the appeal shall be dismissed.

In addition if the Brief of the Appellant is not **received** within fourteen (14) days, you are hereby directed to show cause in accordance with Rule 2(b) of the Mississippi Rules of Appellate Procedure within this time frame why sanctions should not be imposed on you by the Supreme Court for failing to file the brief in the above styled cause.

  
CLERK

jgm

IN THE MISSISSIPPI SUPREME COURT  
STATE OF MISSISSIPPI

2007-75-836

Louis J. Clay, Jr.

Plaintiff

**FILED**  
APR 17 2007

v.

SCHARLOTTE FORTINBERRY, CIRCUIT CLERK  
GREENE COUNTY, MISSISSIPPI

Cause no. 2005-04-043(1)

BY: \_\_\_\_\_

Christopher Epps, ET AL

Defendant(s)

**FILED**

MAY 21 2007

"PLAINTIFF'S LETTER BRIEF"

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OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

As a matter of introduction, Louis J. Clay, Jr., [Clay] Pro Se Plaintiff, do respectfully submits that the events which transpired in the instant case constitute a denial of Clay's rights to due process of law as guaranteed by the Sixth, Seventh, Eighth, and Fourteenth amendment of the United States Constitution, also pursuant to the Prison Litigation Reform Act (PLRA) 42 USCA § 1997e(a), Miss. Code Ann. § 47-5-801 thru § 47-5-807, American with Disability Act (ADA) of 1990 and Logan v. State, 2000 771 So. 2d 970 (Miss.) also Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972).

Clay submits that the order denying motion to reinstate complaint should be vacated because of the Trial Court error. Such error were merely an oversight but substantially infringed upon Clay's State of Mississippi and United States Constitutional Rights, to bring a Valid, (triable issue) claim before the trial court.

CERTIFICATE OF INTERESTED PERSONS

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Plaintiff, Louis J. Clay, Jr., certifies that the following listed persons have an interest in the outcome of this case. There representations are made in order that the Justices of the Mississippi Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

Mrs. Scharlotte Fortenberry, Clerk  
Greene County Circuit Court  
P.O. Box 310  
Leakeville, Ms. 39451

Mr. \_\_\_\_\_ Fortenberry  
ARP Department SMCI  
P.O. Box 1419  
Leakeville, Ms. 39451

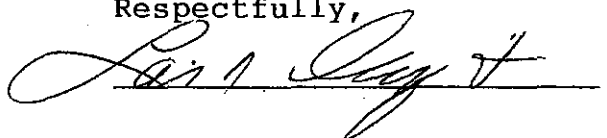
Mr. James M. Norris, Staff Atty.  
MDOC  
P.O. Box 36  
Parchman, Ms. 38738

Mr. Robert C. Krebs, Judge  
Greene County Court  
P.O. Box 310  
Leakesville, Ms. 39451

Mr. Christopher Epps, Commissioner  
MDOC  
723 N. President Street  
Jackson, Ms. 39205

Mr. Ronald King, Superintendent  
SMCI  
P.O. Box 1419  
Leakesville, Ms. 39451

Respectfully,

A handwritten signature in cursive script, appearing to read "Louis J. Clay, Jr.", written over a horizontal line.

JUDICIAL NOTICE

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2007-15-836

Plaintiff, Louis J. Clay, Jr., Pro Se, comes to this Honorable Court pursuant to Logan v. State, 2000 771 So. 2d 970 (Miss.) and Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972):

"The United States Supreme Court holds pro se complaints to less-stringent standards than pleadings drafted by a lawyer".

STATEMENT OF THE ISSUE

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1.) Whether the lower court erred by issuing an order affirming decision rendered by the Administrative Remedy Program, without an evidentiary hearing, without giving Clay an opportunity to amend complaint, denying a trial by jury and in conflict with Mississippi Rules of Civil Procedures.

**FILED**

MAY 21 2007

STATEMENT OF THE CASE

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OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

Clay filed his complaint to the trial court on April 20, 2005, his complaint was dismissed in error by the trial court, Clay filed an appeal to this Honorable Court. On June 20, 2006, Ms. Jane Mapp, Special Assistant Attorney General did in her Appellee Brief under conclusion, did advise this Honorable Court to reverse this cause for further proceedings because of the lower court error. This Hon. Court did reverse and remand on January 30, 2007 and on February 20, 2007 issued an Mandate. On February 21, 2007 the lower court, did Sua Sponte issue an order affirming decision of the Administrative Remedy Program. This was done without notice to Clay and the very

next day after the mandate was issued and in conflict with Ms. Jane Mapp request, ...to reverse this cause for further proceedings.

Clay now bring this timely filed appeal which is his "second" to this Honorable Mississippi Supreme Court.

#### SUMMARY OF ARGUMENT

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On November 9, 2004, Clay was hit in the head by another inmate, on March 24, 2005 Clay received his third step response, on April 20, 2005 Clay filed his complaint to the Greene County Circuit Court, his complaint was dismissed for failure to timely file, but the issues was not addressed, on January 30, 2007 this Honorable Court reversed and remanded, the mandate was issued on February 20, 2007 and the lower court issued an order affirming decision of the Administrative Remedy Program on February 21, 2007, or the next day.

Clay submit the fact that Ms. Jane Mapp or the lower court did not address the issues of Clay's complaint, although there are valid and triable issues within Clay's complaint which necessitate an evidentiary/spears hearing. See dates on appendixs.

#### ARGUMENT

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Clay submit the fact that he was "seriously" injured by another inmate on November 9, 2004, which required stitches in the front and back of his head, I.A.D. at SMCI did take pictures and there should be medical records at SMCI, also there are scars to prove the injury.

Clay is without the understanding as to why the lower court did

not recognize in the first filing of this lawsuit that Clay had a timely filed complaint with triable issues, still Clay's complaint was dismissed as untimely filed. Clay was forced to file an appeal to this Honorable Court, but prior to this Court decision Ms. Jane Mapps, Special Assistant Attorney General did advise this Honorable Court to..."reverse this cause for further proceedings", although this Honorable Court did reverse and remanded this case on February 20, 2007, the lower court did on February 21, 2007, or the next day issued an order affirming decision of the Administrative Remedy Program (ARP).

Clay submit the fact that the lower court did error pursuant to Miss. Code Ann. Sec. 47-5-801 thru 47-5-807 which allow him to file his complaint to the lower court after exhaustion of the Administrative Remedy. The lower court had a duty to recognize the triable issues, issue an order compelling the defendants to answer the complaint, hold an evidentiary or spears hearing and set the case for trial with a jury as requested by Clay. But instead, the lower court issued an order affirming decision of the Administrative Remedy Program without acknowledging the issues of Clay's complaint or even knowing whether the defendants had a defense. See: Appendixs.

Clay submit the fact that in his complaint to the lower court he alleged the following issues:

- 1.) That inmate John Smith R8486 did hit him in the head with a weapon/fan motor part, (Aggravated Assault) that caused Clay serious bodily injury.
- 2.) That inmate John Smith had prior filed a "RED TAG" against Clay, which meant that he and Clay could not be housed together, but the staff ignored the red tag.



3.) That pursuant to MDOC inmate handbook, Chapter VI(II), MDOC and SMCI is in violation of their own policy, also clay's rights.

4.) That pursuant to MDOC inmate handbook Chapter IV(I)(A)(1), MDOC is in violation of their own policy and Clay's rights.

5.) That Clay filed his complaint for conspiracy under color of state law and pursuant to 42 USCA Sec. 1997e(a), rights secured by A.D.A. of 1990 and The United States Constitution, but denied by MDOC and SMCI.

Interestingly, the lower court dismissed Clay's complaint the first time because the defendants told the court that Clay's complaint was untimely filed, which was misleading. Now after this Honorable Court reversed and remanded the case, the lower court sua sponte issued an order affirming the Administrative Remedy Program decision without acknowledging Clay's due process rights and Mississippi Rules of Civil Procedure. By so doing the lower court denied Clay the opportunity to bring to trial a triable issue complaint, to amend his complaint and a trial by jury, all the above even though Clay has since paid the filing fees.

Clay submit pursuant to Mississippi Rules of Civil Procedure Rule 3(a) he filed a triable issue complaint, that pursuant to MRCP Rule 3(c) he filed to proceed in forma pauperis, that pursuant to MRCP Rule 4 he filed to have summons issued, that pursuant to MRCP Rule 12 he filed to have the defendants to answer the complaint, that he filed to have a preliminary hearing pursuant to MRCP Rule 12(d), that the lower court erred in it's order affirming decision prior to giving Clay the opportunity to amend or supplement his complaint pursuant to MRCP Rule 15, that the trial court did error as to pre-trial procedure pursuant to MRCP Rule 16, no opportunity

to amend his complaint, Logan v. State, 2000 771 So. 2d 970 (Miss) and Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972), both of the high courts holds pro se complaint/filings to less-stringent standards than pleadings drafted by a lawyer. Nor did the lower court allow Clay the opportunity to proceed with obtaining discovery pursuant to MRCP Rule 26, also denied Clay a requested trial by jury pursuant to MRCP Rule 38, and that the lower court erred by issuing a premature order in conflict with MRCP Rule 41 and MRCP Rule 56, see comment:

A motion for summary judgment lies only when there is no genuine issue of material fact; summary judgment is not a substitute for the trial of disputed fact issues.

Accordingly; the court cannot try issues of fact on a rule 56 motion; it may only determine whether there are issues to be tried.

Given this function, the court examines the affidavits or other evidence introduced on a rule 56 motion simply to determine whether a triable issue exists, rather than for the purpose of resolving that issue.

#### CONCLUSION

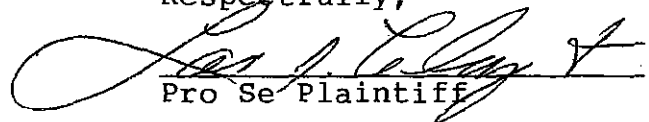
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Clay assume that the lower court's order affirming decision is an order dismissing his complaint, which was done in error and Sua Sponte by the lower court only, no motion by the defendants, all in conflict with Mississippi Rules of Civil Procedure and Clay's due process and equal protection rights. See the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment of The U.S. Constitution. Because of such errors by the lower court, Clay's case should be

reversed and remanded to the lower court for further proceeding as requested by Ms. Jane Mapps, Special Assistant Attorney General as to the issues, and this Honorable Court should issue an order to Hon. Judge Robert P. Krebs, Circuit Court Judge to recuse himself because of conflict of interest due to the fact that his Circuit Clerk, (Mrs. Scharlotte Fortinberry) is the wife of Mr. Fortinberry Of SMCI ARP department.

Clay prays that this Honorable Court do grant him the relief he seek, or any relief due him under Mississippi Rules of Civil Procedure. Also remember this cause have been pending in the lower court since April 20, 2005 or about two (2) years.

Respectfully,

  
Pro Se Plaintiff

Subscribed and sworn before me this 25 day of April 2007

