

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Commonwealth of Virginia

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v.

CASE NO: MI-2005-1559

Wesley Smith

MOTION FOR ATTORNEY

The Defendant, Wesley Smith, respectfully moves the Court to provide him with an attorney to help defend him on the following basis:

1. On June 17, 2005, Mr. Smith was charged with trespass under Va. Code Ann. § 18.2-119.
2. Mr. Smith was determined by the District Court to qualify for a court appointed attorney based on his financial status.
3. The Court appointed Dawn Butorac of the Office of the Public Defender to represent him.
4. Mr. Smith requested both orally and in writing that Ms. Butorac defend him based on state law Va. Code Ann. § 22.1-4.3 which specifically grants non-custodial parents such as Mr. Smith the right to attend their children's school events unless a court order specifically prohibits attendance, combined with established case law such as *O'Banion v. Com.*, that a person with a claim of right can't be convicted of trespass.
5. Ms. Butorac refused to present either the state law or the relevant case references at the trial in District Court on Aug 8, 2005, as a result Mr. Smith was convicted and given a suspended sentence.

6. Mr. Smith having not obtained a ruling based on the state law and case rulings appealed the case to the Circuit Court
7. On Sep 6th, 2005 while waiting for the scheduling hearing, Ms. Butorac again advised Mr. Smith that her office was unwilling to represent him in Circuit Court by presenting the state law and case rulings. Mr. Smith informed her that the whole point of the appeal was to get a ruling based on the law and that he intended to get a ruling based on the law, not just gender/custody politics.
8. Mr. Smith asked Ms. Butorac if her office would at least be willing to present legal assistance/advice to subpoena documents, witnesses etc, and was told they would not.
9. Mr. Smith brought the matter up with the Judge who informed Mr. Smith he had a choice between the Public Defender (Who was refusing to represent him) or representing himself. Mr. Smith clearly stated to the Judge that he did not want to represent himself but that the Public Defender was refusing to represent him and present the relevant state law and case rulings.
10. The Judge instructed Mr. Smith to sign a waiver if he was unwilling to have the Public Defender represent him given their refusal to represent him as clients instead of representing themselves.
11. Mr. Smith having already noted his objection to the Judge about the conduct of the Public “Defender” and also having clearly stated that he did not wish to represent himself did sign the waiver to avoid contempt of court.
12. The lack of professional responsibility of the Public Defenders office to properly represent Mr. Smith in no way reduces the legal responsibility of the State of Virginia to provide an attorney for Mr. Smith, especially when the Court has also made clear it

intends to punish the Mr. Smith for any procedural errors he may make in spite of not being aware of them.

13. Given that the state has not yet complied with its obligation to provide an attorney to represent him and present HIS CASE and that Mr. Smith already been deemed qualified for assistance and having requested the assistance of an attorney to present his case, the state of Virginia is lacking any legal authority to hold a trial until the problem is corrected.
14. Mr. Smith, requests that unless the court dismisses the case based on his MOTION TO DISMISS, that it provide funds to pay for an attorney to assist Mr. Smith and continue the trial if needed.
15. If the Court is willing to either quickly dismiss the case or provide a competent attorney prior to the scheduled Oct 5th trial date Mr. Smith is willing to work with that attorney to still try and hold the trial on Oct 5th.

Wesley Smith
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Wesley Smith

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing was mailed first-class, postage pre-paid, to Fairfax County Commonwealth's Attorney's Office, 4110 Chain Bridge Rd., Room 123, Fairfax, VA 22030 on Sep 26th, 2005.

Wesley Smith