

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

TERRY MARK TONEY, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 3:09-0986

MIKE COLEMAN,  
Director of Security,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the Court deny Plaintiff's Motion to Proceed Without Prepayment of Fees (Doc. #1), grant Plaintiff's Motion to Voluntarily Withdraw Complaint (Doc. #7), dismiss Plaintiff's Complaint (Doc. #2) without prejudice and remove this matter from the Court's docket. Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **DENIES** Plaintiff's Motion to Proceed Without Prepayment of Fees (Doc. #1), **GRANTS** Plaintiff's Motion to Voluntarily Withdraw Complaint (Doc. #7), **DISMISSES** Plaintiff's Complaint (Doc. #2) without prejudice and **REMOVES** this matter from the Court's docket, consistent with the findings and recommendation.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER:        October 5, 2010

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE