

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

Roanoke Division

WESLEY C. SMITH,)
)
 Plaintiff,)
)
 v.) Case No. 7:07-CV-00117
)
 CHERI SMITH, et. al.,)
)
 Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OF
DEFENDANT JUDGES LON FARRIS, LEROY MILLETTE, JR., ROSSIE
ALSTON, JR., WILLIAM HAMBLÉN, RICHARD POTTER and H. LEE
CHITWOOD and PRINCE WILLIAM CIRCUIT COURT**

Defendant Judges Lon Farris, Leroy Millette, Jr., Rossie Alston, Jr., William Hamblen, Richard Potter and H. Lee Chitwood (“the Judges”) and Prince William Circuit Court (“the Circuit Court”) submit this Memorandum in Support of their Motion to Dismiss.

The nature of his action is difficult to discern. Construing the complaint liberally, see, e.g., *Ransom v. Danzig*, 69 F. Supp. 2d 779, 787 (E.D. Va. 1999), plaintiff is attempting to state a claim for violation of protected rights. Assuming this to be the case, defendants move to dismiss the complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). When a defendant moves to dismiss for lack of jurisdiction pursuant to Rule 12(b)(1), the burden is on plaintiff, as the party asserting jurisdiction, to prove that federal jurisdiction is proper. *White v. CMA Const. Co., Inc.*, 947 F. Supp. 231, 233 (E.D. Va. 1996).

