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 HAMBLEN, 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).

Defendants may assert affirmative defenses to be resolved on the merits under Fed. R. Civ. P. 12(b)(6) where the affirmative defenses are apparent from a fair reading of the complaint. A Motion to Dismiss tests the sufficiency of the complaint. Facts asserted are taken as true solely for purposes of argument on the 12(b)(6) Motion, and the complaint must be construed in the light most favorable to the plaintiff. *Iodice v. United States*, 289 F.3d 270, 273 (4th Cir. 2002). The Court should not dismiss the complaint unless it is clear that the facts alleged do not entitle plaintiff to relief. *GE Inv. Private Placement Partners II v. Parker*, 247 F.3d 543, 548 (4th Cir. 2001). However, legal conclusions couched as factual allegations need not be taken as true. *Estate Construction Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 217-18 (4th Cir. 1994); *Assa' Ad-Faltas v. Commonwealth*, 738 F. Supp. 982, 985 (E.D. Va. 1989) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)); see also *District 28, United Mine Workers of Am., Inc. v. Wellmore Coal Corp.*, 609 F.2d 1083, 1085 (4th Cir. 1979). Neither must the Court accept as true allegations that are merely conclusory, unwarranted deductions of fact or unreasonable inferences. *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002). The presence of a few conclusory legal terms does not insulate a complaint from dismissal where the facts alleged cannot support the claim. See *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001). Dismissal is appropriate when the face of the complaint clearly reveals the existence of a meritorious affirmative defense. See *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996).

Plaintiff herein failed to state a claim entitling him to relief. Nowhere in his complaint does plaintiff inform this Court how defendants' alleged acts, if they occurred at all, are a violation of his constitutional rights. Plaintiff believes defendants

demonstrated a particular bias when it came to his cases. Beyond conclusory statements, nothing is said about how defendants' conduct violated plaintiff's constitutional rights. Plaintiff failed to allege facts necessary to support his federal claims. The Judges and the Circuit Court also enjoy absolute judicial and/or Eleventh Amendment sovereign immunity. This Court does not have personal jurisdiction over these defendants. This Court does not have subject matter jurisdiction over plaintiff's claims by virtue of the domestic relations exception to federal court jurisdiction. Moreover, this Court does not have subject matter jurisdiction by virtue of either the Younger abstention doctrine or the Rooker-Feldman doctrine.

THIS COURT LACKS JURISDICTION UNDER THE DOMESTIC RELATIONS EXCEPTION

In *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992), the Supreme Court reaffirmed adherence to the domestic relations exception to federal court jurisdiction. As a result, federal courts abstain from exercising jurisdiction over claims involving "the issuance of a divorce, alimony, or child custody decree...." *Id.*, 504 U.S at 703. See also *Mazur v. Woodson*, 932 F. Supp. 144, 149 (E.D. Va. 1996)("Child custody cases fall squarely within the ambit of the domestic relations exception.") Further, in *Doe v. Doe*, 660 F.2d 101, 105 (4th Cir. 1981), the Court noted that "[t]his Court has consistently acknowledged and upheld this lack of federal court jurisdiction in the area of domestic relations." The Court added that "federal courts must be alert to keep genuinely domestic matters such as 'child custody' out of the federal courts." *Id.* In this case, despite conclusory allegations to the contrary, plaintiff clearly

challenges the Judges' orders from state court and seeks to nullify them and have this Court declare them void.

THE JUDGES ARE ENTITLED TO JUDICIAL AND SOVEREIGN IMMUNITY

The Judges are entitled to absolute immunity from all claims based on the doctrine of judicial immunity, which shields a judge from suit even when a judge is accused of having acted maliciously or corruptly in the performance of judicial acts. *Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978). Judges enjoy absolute immunity for acts in their judicial capacities. *Dennis v. Sparks*, 449 U.S. 24, 26-27 (1980). The doctrine grants judges immunity from suit, not just damages, and allegations of bad faith or malice are insufficient to defeat its protections. See *Mireles v. Waco*, 502 U.S. 9, 11 (1991). As the Supreme Court held when adopting the common law doctrine of judicial immunity in *Bradley v. Fisher*, 80 U.S. 335, 349 (1872), the purpose of judicial immunity is to protect the people who benefit from having judges that can exercise their judicial functions independently, without fear of the consequences.

The standards for judicial immunity under Virginia law are the same as under federal law. *Battle v. Whitehurst*, 831 F.Supp. 522, 529, n.7 (E.D. Va. 1993) (citing *Johnston v. Moorman*, 80 Va. 131, 142, 1885 Va. Lexis 49 (1885); *Bellamy v. Gates*, 214 Va. 314, 200 S.E.2d 533 (1973)). In Virginia, a circuit court may speak only through written orders. *Berean Law Group, P.C. v. Cox*, 259 Va. 622, 528 S.E.2d 108 (2000). The Judges herein were acting at all times relevant in a judicial capacity. It is unquestioned from the earliest days of common law that a judicial officer cannot be called to account in a civil action for acts in his judicial capacity, however erroneous or by whatever motive.

Any acts by the Judges arose out of official duties as a judge of the Commonwealth. A fair reading of the complaint makes clear that the Judges were acting in a judicial capacity with respect to the proceedings involving plaintiff; they were exercising judicial authority when they issued rulings. Plaintiff pleads why he believes the Judges issued certain rulings. He presented argument before them and had the opportunity to challenge opposing counsels' argument in adversarial proceedings.

The acts of which he complains were judicial in nature. Even assuming for the sake of argument that there were sufficient facts to warrant going forward, suits against judges are severely circumscribed. Plaintiff has not alleged acts that deprive the Judges of judicial immunity.

THE FEDERAL COURT IS PRECLUDED FROM HEARING THIS CASE UNDER EITHER THE YOUNGER ABSTENTION DOCTRINE OR THE ROOKER-FELDMAN DOCTRINE

In addition, the Court should abstain from hearing this case under the *Younger* abstention doctrine, which precludes federal courts from hearing cases regarding concurrent state court proceedings. See *Younger v. Harris,* 401 U.S. 37 (1971). While originally the doctrine applied to injunction of state criminal proceedings, it has been expanded to require abstention from injunctive civil proceedings. See *Employers Resource Management Co., Inc. v. Shannon,* 65 F.3d 1126, 1134 n.7 (4th Cir. 1995) (tracing expansion of Younger doctrine).

In *Middlesex County Ethics Committee v. Garden State Bar Assn.,* 457 U.S. 423, 432 (1982), the Supreme Court stated that there are three steps in determining if Younger abstention applies to a non-criminal case, namely whether (1) there is an ongoing state

judicial proceeding, (2) the proceedings implicate important state interests and (3) there is opportunity in the state proceedings to raise constitutional challenges. Here, the facts support abstention under this doctrine - there are ongoing state judicial proceedings (Plaintiff filed an appeal to the Virginia Court of Appeals, which was dismissed, and has a pending Petition for Rehearing to that Court that he filed on March 15, 2007), the proceedings implicate important state interests and there is opportunity in the state proceedings to raise constitutional issues.

In *Moore v. City of Asheville*, 396 F.3d 385, 388 (4th Cir. 2005), the Fourth Circuit, citing *Younger* and related decisions, held that a party must exhaust state judicial remedies and not bypass them in favor of a federal court proceeding. State remedies are available to address the allegations in plaintiff's pleading. If this Court does not abstain from hearing this case, it will open federal courts to hear complaints about state proceedings before they are complete, let alone reviewed on appeal in the state court system.

Moreover, if plaintiff were to withdraw his Petition for Rehearing to the Court of Appeals of Virginia or if that court were to deny his Petition, his claims herein nevertheless would be barred by immunity the Rooker-Feldman doctrine, and this Court would lack jurisdiction. The Rooker-Feldman doctrine makes clear that a United States District Court has no authority to review judgments of a state court in judicial proceedings. *District of -Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); see also *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). Rooker-Feldman precludes federal district court review of decisions of state courts. *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192, 199 (4th Cir. 1997). Jurisdiction to review state judicial

proceedings lies exclusively with superior state courts and, ultimately, the United States Supreme Court. *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997). Despite his conclusory allegations to the contrary, plaintiff asks this federal Court to reverse the Judges' state court rulings and decisions and take action that calls all of those rulings and decisions wrong. Rooker-Feldman prohibits this Court from awarding such relief. The doctrine is implicated whenever, in order to grant the federal plaintiff the relief sought, the federal court must take action that would render an "inextricably intertwined" state judgment ineffectual. Plaintiff is seeking to collaterally attack the rulings and decisions before the state court. Rooker-Feldman will not permit him to do so.

THE FEDERAL COURT IS PRECLUDED FROM HEARING THIS CASE UNDER THE ELEVENTH AMENDMENT

Plaintiff's complaint also is barred by the Eleventh Amendment, which prohibits suits in federal court against states and state agencies. The Supreme Court of the United States has explained the judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a state without consent - not one brought by citizens of another state because of the Eleventh Amendment and not one brought by its own citizens because of the rule of which the Amendment is an exemplification. *Ex Parte New York*, 256 U.S. 490, 497 (1921) (citations omitted); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). The states' sovereign immunity operates to bar claims against states.

A state is not a person. *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989). Moreover, the Supreme Court recognized that sovereign immunity applies not only to states but also state agencies that act as arms of the state. See, e.g., *Regents of the*

Univ. of Cal. v. Doe, 519 U.S. 425, 429 (1997); *Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 684 (1982); see also *Ram Ditta v. Maryland Natl. Capital Park & Planning Commn.*, 822 F.2d 456, 457 (4th Cir. 1987). To the extent suit is against the Judges in their official capacity or against the Circuit Court, this Court is without subject matter jurisdiction over such an action. It is well settled that only a person can be held liable for depriving another of rights. The state official acting in an official capacity or the Circuit Court is not a person. *Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Will* at 70.

The Circuit Court is an arm of the Commonwealth, and the Judges sued in their official capacity are shielded from this action by immunity. The Virginia General Assembly chooses judges, who are charged with administering the Commonwealth's judicial system and adjudicating issues relating thereto. See Virginia Constitution Article VI, § 1 and § 17.1-300 through 17.1-329 and 17.1-500 through 17.1-524 of the Code of Virginia (1950, as amended). The Judges and the Circuit Court thus are subject to control of the Commonwealth, are involved with statewide concerns and are entitled to protection under the Eleventh Amendment. Moreover, all salaries and expenses of the Circuit Court are audited and paid out of the state treasury.

The Judges and the Circuit Court did not waive immunity from claims. To the extent plaintiff here sues the Judges for acts performed in their official capacity or sues the Circuit Court, his suit seeks damages that would be paid from the state treasury. Suit against a state official in their official capacity is not a suit against the official but against the office. Accordingly, this Court is without jurisdiction to hear any complaint against the Judges in their official capacity or against the Circuit Court.

In addition, plaintiff failed to state a claim against the Judges in their individual capacities. When a government official abuses office, an action for damages may offer the only avenue for vindication of constitutional guarantees. *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). On the other hand, permitting suits against government officials can entail substantial costs, including the risk that fear of litigation will inhibit officials in the discharge of their duties. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). These concerns are balanced by affording government officials performing discretionary functions qualified immunity from civil liability.

Qualified immunity protects officials from liability insofar as conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow*, 457 U.S. at 818; see also *Trulock v. Freeh*, 275 F.3d 391, 399 (4th Cir. 2001). The inquiry into whether conduct violated a clearly established right is fact specific, see, e.g., *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Qualified immunity is an entitlement to immunity from suit rather than a mere defense to liability. *Id.* at 200. Before liability will attach, the right must be clearly established in a particularized and relevant sense so unlawfulness of the conduct would have been apparent in light of existing law. *Zepp v. Rehrmann*, 79 F.3d 381, 387 (4th Cir. 1996).

Plaintiff herein does not allege violation of a clearly established right in a particularized and relevant sense. The determination of whether a right was clearly established, while fact specific, is a purely legal question. *Siegert v. Gilley*, 500 U.S. 226, 232 (1991). This standard requires a plaintiff to plead specific facts that he suffered violation of a clearly established right and serves the important purpose of assisting courts in weeding out non-meritorious claims before a defendant is forced to undergo

discovery. To the extent the Judges are sued in their individual capacity, they are entitled to be dismissed from this suit on the basis of qualified immunity.

There is a paucity of allegations herein demonstrating violation of plaintiff's rights. What is said is either conclusory or irrelevant in establishing a constitutional violation. Plaintiff relies on supposition and conjecture. Nevertheless, giving plaintiff the benefit of all doubts, he still cannot prevail. There is no basis on which to suggest, let alone conclude, that the Judges did anything more than preside over court and cases that came before them during their tenure at the bench; therefore, they are entitled to immunity.

Because plaintiff has not alleged facts establishing a personal connection between the Judges, the Circuit Court and deprivation of a federally protected right, his claims must fail. See *Alley*, 962 F. Supp. at 831 (citing *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977)). The injustice of imposing liability for exercising discretion, particularly while acting as a judge, justifies immunity. The public interest demands that officials make and implement decisions. The concept of immunity recognizes that officials make mistakes.

PLAINTIFF DID NOT ADEQUATELY ALLEGE A DUE PROCESS CLAIM

42 U.S.C. § 1983 protects only against violations of the United States Constitution or federal statutory rights. *Baker v. McCollan*, 443 U.S. 137, 146 (1979). To the extent plaintiff seeks to assert a Fourteenth Amendment procedural due process claim, the Constitution does not supplant tort law when state remedies are available to address such claims. See *Daniels v. Williams*, 474 U.S. 327, 332 (1986) ("[W]e have

previously rejected reasoning 'that would make the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the states.'"). Plaintiff's claims fall under the same analysis.

Even assuming a protected liberty or property interest at stake in this case, all that due process requires is opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319 (1972). Plaintiff's mere allegations standing alone are insufficient to state a claim as a matter of law. There is nothing in the complaint which adequately explains the nature of plaintiff's federal or state constitutional due process claims.

Substantive due process protects against the arbitrary exercise of power of government for purposes of oppression. *Daniels*, 474 U.S. at 331. Precedent of this federal circuit is articulated in *Temkin v. Frederick County Commissioners*, 945 F.2d 716, 723 (4th Cir. 1991), cert. denied, 502 U.S. 117 (1992), and *Rucker v. Hartford County*, 946 F.2d 278 (4th Cir. 1991), cert. denied, 502 U.S. 1097 (1992). Protections of substantive due process run only to state action so arbitrary and irrational, so unjustified by circumstance or governmental interest, as to be literally incapable of avoidance by any pre-deprivation procedural protections or of adequate rectification by any post-deprivation state remedies. Irrationality and arbitrariness imply a stringent standard against which state action is to be measured in assessing a substantive due process claim. *Id.* at 281.

In addition, not only must a plaintiff show grossly arbitrary and capricious governmental action to support a substantive due process claim, the conduct alleged must rise to such a level that it shocks the conscience. *Weller v. Department of Social Services*, 901 F.2d 387 (4th Cir. 1990), *Hall v. Tawney*, 621 F.2d 607, 613 (4th Cir. 1980).

Importantly, substantive due process protection is reserved only for sufficiently fundamental and important private interests. See *Shaw v. Stroud*, 13 F.3d 791 (4th Cir. 1994), cert. denied, 115 S.Ct. 67 (1994). Because such a fundamental interest is not at stake in this case, for the reasons argued above, defendants are entitled to immunity on this issue as well. See *Pinder v. Johnson*, 54 F.3d 1169 (4th Cir.) (en banc), cert. denied, 116 S.Ct. 530 (1995).

With regard to the facial challenge to the Commonwealth's statutory scheme, particularly with respect to any jury trial "right," state court proceedings are not governed by the Seventh Amendment of the United States Constitution but, rather, by corresponding provisions in state constitutions. *Boyd v. Bulala*, 672 F. Supp. 915 (W.D. Va. 1987). A Virginia state constitutional guarantee of a jury trial is not universal in application. The Constitution of Virginia does not guarantee a right to a jury trial in this case.

PLAINTIFF DID NOT ADEQUATELY ALLEGE AN EQUAL PROTECTION CLAIM

Plaintiff does not state a claim for equal protection, which prohibits states from creating unreasonable, arbitrary and invidious classifications. *Barefoot v. City of Wilmington*, 306 F.3d 113, 121 (4th Cir. 2002). Plaintiff must show that class-based, discriminatory animus lay behind defendants' acts. Here, the complaint fails to allege that plaintiff, as a divorced father, is a member of a class that would entitle him to protection. The alleged acts herein clearly pass equal protection muster and can hardly be considered invidious. Accordingly, his equal protection claim is without merit and must fail.

PLAINTIFF DID NOT ADEQUATELY ALLEGE A CONSPIRACY CLAIM

Plaintiff alleges defendants conspired to deprive him of civil rights. However, he alleges no facts in support of this claim. He alleges only that defendants conspired to prevent him from exercising his civil rights. The complaint fails to state a claim.

42 U.S.C. § 1985 requires plaintiff to show class-based, invidiously discriminatory animus behind the conspirators' acts and that the conspiracy aimed at interfering with rights. See *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268 (1993). The complaint does not allege facts in support of the broad assertion that defendants took any prohibited actions. The complaint fails to allege plaintiff, as a divorced father, is a member of a class that would entitle him to protection. The complaint makes only conclusory allegations and fails to allege facts suggesting an agreement among defendants.

To state a claim for conspiracy, plaintiff must allege facts showing defendants shared unity of purpose or common design to injure him. *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946). For example, where a plaintiff failed to allege who, when, how or where individuals conspired to deprive him of rights, his complaint failed to state a claim. See *Thompson v. Wise General Hosp.*, 707 F. Supp. 849 (W.D. Va. 1989), aff'd, 896 F.2d 547 (4th Cir. 1990), cert. denied, 498 U.S. 846 (1990). Here, the complaint regarding conspiracy is the conclusory allegation that defendants conspired to violate plaintiff's rights. The complaint alleges insufficient facts suggesting defendants formed an agreement or unity of purpose to injure plaintiff. The complaint alleges no specific facts setting forth the role each defendant supposedly played, and it pinpoints no

overt acts by defendants indicating a conspiracy. The complaint fails to allege when, how or where defendants conspired to violate plaintiff's rights.

To avoid evisceration of the purposes of immunity, courts require plaintiffs alleging unlawful intent in conspiracy claims to plead specific facts in a non-conclusory fashion to survive a motion to dismiss. *Simmons v. Poe*, 47 F.3d 1370, 1377 (4th Cir. 1995). Because of the high threshold that a plaintiff must meet to establish a prima facie case, courts often grant motions of dismissal. *Id.* ("This Court . . . has rarely, if ever, found that a plaintiff has set forth sufficient facts to establish a section 1985 conspiracy, such that the claim can withstand a summary judgment motion. Indeed, we have specifically rejected 1985 claims whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts."). For all these reasons, the complaint fails to state a claim for conspiracy.

PLAINTIFF IS NOT ENTITLED TO DECLARATORY RELIEF

Plaintiff seeks declaratory relief. The availability of declaratory relief against judicial officers, however, is limited to prospective relief. Plaintiff does not seek prospective relief despite his conclusory allegations to the contrary.

In violation of 42 U.S.C. § 1983, plaintiff seeks injunctive relief against the Judges. Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

> rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, *injunctive relief shall not be granted* unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (Emphasis added).

Because plaintiff's claims against the Judges are based on acts in their judicial capacity and relief is available under state law through the appeals process, § 1983 by its very terms precludes the claims. See *Willner v. Frey,* 421 F. Supp.2d 913, 926, n.18 (E.D. Va. 2006)(noting that 1996 amendments to § 1983 preclude prospective injunctive relief against judicial officers).

Article III of the United States Constitution limits the power of Federal Courts to hear only cases involving an actual case or controversy. *Jones v. Poindexter*, 903 F.2d 1006, 1009 (4th Cir. 1990). For declaratory relief, this requirement is met where facts show substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant declaratory judgment. *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941); see *Golden v. Zwickler*, 394 U.S. 103 (1969); *Waterford Citizens Ass'n v. Reilly*, 970 F.2d 1287, 1290 (4th Cir. 1992); *Natural Resources Defense Council v. Watkins*, 954 F.2d 974 (4th Cir. 1992); *Mobil Oil Corp. v. Attorney General of Virginia*, 940 F.2d 73 (4th Cir. 1991). As the Fourth Circuit has

explained, the very nature of Article III standing is whether granting relief would be meaningful. *Id.* at 75.

The granting of declaratory relief is discretionary in nature. *Lemon v. Kurtzman*, 411 U.S. 192 (1973); *Continental Cas. Co., v. Fuscardo*, 35 F.3d 963, 966 (4th Cir. 1994); *Richmond Tenants Organization v. Kemp*, 956 F.2d 1300 (4th Cir. 1992). Federal courts, however, should be particularly circumspect in granting relief against a state, must be cognizant of comity and reluctant to intervene in internal operations of state agencies (see *Rizzo v. Goode*, 423 U.S. 362, 378-90 (1976)) and should intervene only where there is a clear need for extraordinary remedy. *Id.*; see *Fuscardo*, 35 F.3d at 966. Declaratory relief would serve no purpose in this case and would conflict with unquestionably applicable mandates of federalism and comity.

CONCLUSION

WHEREFORE, for the reasons set forth above, Defendant Judges Lon Farris, Leroy Millette, Jr., Rossie Alston, Jr., William Hamblen, Richard Potter and H. Lee Chitwood and Prince William Circuit Court respectfully request that this Court grant the Motion to Dismiss the complaint with prejudice and grant any other relief deemed appropriate.

LON FARRIS
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system this 10th day of April, 2007, to:

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By: s/ James V. Ingold