

STATE OF NORTH CAROLINA

COUNTY OF LEE

FILED  
2014 APR 11 AM 10:18

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 14 CVS 315

JOSEPH CALENDINE, JR., )  
Plaintiff, )

Vs. )

THE BOARD OF COMMISSIONERS )  
FOR LEE COUNTY, NORTH )  
CAROLINA, and CHARLES PARKS, )  
KIRK SMITH, and ANDRE KNECHT, )  
individually and in their capacity as )  
Commissioners, AND LEE COUNTY, )  
NORTH CAROLINA, )  
Defendants. )

**MOTIONS TO DISMISS**

NOW COMES, the Defendants, by and through counsel, and moves the Court to dismiss the Complaint and Motion for Injunctive Relief, hereinafter "the Action," pursuant to North Carolina Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(b)(7) and further shows the Court as follows:

**I. Motion to Dismiss Pursuant to Rule 12(b)(1)**

The Action should be dismissed as to all Defendants pursuant to North Carolina Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction in that the Plaintiff lacks sufficient standing to prosecute The Action.

**II. Motion to Dismiss Pursuant to Rule 12(b)(6)**

The Action should be dismissed as to all Defendants pursuant to North Carolina Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted in that the Plaintiff has failed to allege sufficient material facts to establish a claim and has pled facts which necessarily defeat Plaintiff's claims.

### **III. Motion to Dismiss Pursuant to Rule 12(b)(7)**

The Action should be dismissed as to the individual Defendants pursuant to North Carolina Rule of Civil Procedure 12(b)(7) for failure to join a necessary party, to wit: Commissioner Amy Dalrymple.

This the 11<sup>th</sup> day of April, 2104.

YARBOROUGH, WINTERS & NEVILLE, P.A.



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### **CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing Motions to Dismiss has been delivered by the office of the Postal Service to the individual named below:

**Mr. Kevin C. Foushee**  
**Doster, Post, Silverman, Foushee, Post & Patton, P.A.**  
**205 Courtland Drive**  
**Sanford NC 27330**

This the 11<sup>th</sup> day of April, 2014.



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