

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CLINTON L., by his guardian and
next friend CLINTON L., SR., and
TIMOTHY B., by his guardian and
next friend ROSE B., VERNON W.,
by his guardian and next friend
VERNON D. W., STEVEN C.,
JASON A., by his guardian and next
friend BRENDA A., and DIANE D.
by her guardian and next friend
THOMAS S.,

Plaintiffs,

vs.

LANIER CANSLER, in his official
capacity as Secretary of the
Department of Health and Human
Services, and DAN COUGHLIN, in
his official capacity as CEO and Area
Director of the Piedmont Behavioral
Healthcare Local Management Entity,

Defendants.

Civil Action No. 1:10-cv-123-JAB

DEFENDANTS'
MOTION TO DISMISS

Defendants Lanier Cansler and Dan Coughlin, by and through their undersigned attorneys and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.3 (MDNC), respectfully move this Court to dismiss Plaintiffs' Second Amended Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Defendants submit a memorandum of law in support of their motion contemporaneously.

Respectfully submitted, this the 16th day of August, 2010.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Stephen D. Martin

Wallace C. Hollowell III

N.C. State Bar No. 24304

Stephen D. Martin

N.C. State Bar No. 28658

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Telephone: (919) 877-3800

Facsimile: (919) 877-3799

E-Mail Address: chuck.hollowell@nelsonmullins.com

E-Mail Address: steve.martin@nelsonmullins.com

Counsel for Defendant Dan Coughlin

ROY COOPER

By: /s/ Lisa G. Corbett (by permission)

Lisa G. Corbett

Assistant Attorney General

N.C. State Bar No. 15877

P.O. Box 629

Raleigh, North Carolina 27602-0629

Telephone: (919) 716-6880

Facsimile: (919) 716-6756

E-Mail Address: lcorbett@ncdoj.gov

Counsel for Defendant Lanier Cansler

CERTIFICATE OF SERVICE

I, the undersigned attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Dan Coughlin do hereby certify that on August 16, 2010, I electronically filed the foregoing DEFENDANTS' MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- John R. Rittelmeyer (john.rittelmeyer@disabilityrightsnc.org)
- Jennifer L. Bills (jennifer.bills@disabilityrightsnc.org)
- Andrew B. Strickland (andrew.strickland@disabilityrights.org)

Attorneys for the Plaintiffs

- Lisa G. Corbett (lcorbett@ncdoj.gov)

Attorney for Defendant Lanier Cansler

/s/ Stephen D. Martin

Stephen D. Martin

N.C. State Bar No. 28658

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Telephone: (919) 877-3800

Facsimile: (919) 877-3799

E-Mail Address: steve.martin@nelsonmullins.com

Counsel for Defendant Dan Coughlin