

**VIRGINIA:**

**IN THE CIRCUIT COURT OF PULASKI COUNTY**

<b>DCSE,</b>	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>CL 07-114-00</b>
	)	<b>DCSE #: 0003051740</b>
<b>WESLEY C. SMITH,</b>	)	
<b>Defendant</b>	)	

**#2 - NO NOTICE OF HEARING**

A pdf copy of this motion is available at: <http://www.liamsdad.org/court/withhold>

**COMES NOW** the Defendant, Wesley C. Smith, and states that he did not receive proper Notice for a hearing on May 4<sup>th</sup> 2007:

1. The Defendant filed a Notice Of Appeal of the JD&R ruling on the order to withhold on Feb 22, 2007.
2. The Notice Of Appeal was filled out by a JD&R court clerk and stated that "Date and Time of Appearance in Circuit Court: 4-26-07 9:30am for" with the box checked next to "Setting of Trial Date".
3. The Defendant did not receive any Notice of any change and did appear at the Circuit Court on 4/26/2007. No person appeared to represent DCSE.
4. The Circuit Court Judge instructed the Defendant to call 540-980-1500 to work out a trial date.
5. The Defendant did call the number the judge specified, and the clerk provided several available dates and told the Defendant to work with DCSE to select a date.
6. On April 30, 2007 the Defendant called the phone number on the DCSE website for the Roanoke office and asked to speak to an attorney. The DCSE staff was unwilling to provide the phone number for the attorney handling the case. The Defendant provided his phone number and address so that DCSE could have the attorney contact him.
7. On April 30, 2007 the Defendant wrote and mailed a letter to the Roanoke DCSE office stating that DCSE refused to provide contact info for their attorney and requested their attorney contact him to set a trial date.

8. The Defendant did not hear from DCSE until he received a voice mail message on May 3<sup>rd</sup>, 2007

at 1:26pm. The Defendant called the number DCSE left [877-822-4612] which was just a general number for their “service center”. DCSE again refused to provide contact info for their attorney or any other useful information about the pending case.

9. The Defendant then called the Pulaski Court to tell them that DCSE was refusing to work with the Defendant to set a trial date. The clerk informed the Defendant that the case had a hearing set for the next day at 1pm. She provided me with the phone number of Judge Turk [540-394-2016]. The Defendant called the number, got a answering machine and left a message indicating the problem about no notice for the hearing.

10. Due Process requires proper notice. That hasn’t occurred in this case. To hold the trial on May 4<sup>th</sup> would be a violation of Due Process.

11. Allowing DCSE to schedule a hearing without contacting the Defendant, especially if they worked with Cheri Smith or her counsel would be a violation of the Equal Protection Clause.

12. A violation of Due Process or Equal Protection would make any order of this court null & void and thus unenforceable, as well as divest the court of further jurisdiction in the mater.

**WHEREFORE** the Defendant asks that the court either continue the case and order DCSE to act properly this time and work to set a trial date with the Defendant, allowing sufficient time for discovery and depositions or in the alternative dismiss the case with prejudice against DCSE for not attending the scheduling hearing on April 26th. (the court would have entered summary judgment against me if I failed to show, seems like Equal Protection would require the same against DCSE)

**Respectfully Submitted,  
Wesley C. Smith**

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Wesley C. Smith, Defendant  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing motion was served to DCSE, this 4th day of May 2007.

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Wesley C. Smith