

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26CV000199-620

TODD MANESS,)
Plaintiff,)
vs.)
DONNA ELIZABETH TANNER,)
Defendant.)
_____)

**PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

Now comes the Plaintiff, the Honorable Todd Maness, by and through undersigned counsel, and submits this Brief in opposition to Defendant's Motion to Dismiss as follows:

I. Procedural History

This action was initiated on January 29, 2026 based upon, inter alia, libelous text messages sent by Defendant to Judge Stone on December 6, 2025. Defendant's Motion to Change Venue was heard and denied. This matter is now on for hearing for Defendant's various Rule 12(b) Motions to Dismiss.

II. Rule 12 Standard

The concept of "notice pleading" enunciated in Rule 8 substantially lessens the burden on a party in pleading a claim for relief. Given the broad scope of the concept of notice pleading, allegations must be liberally construed, *Gore v. George J. Ball, Inc.*, 279 N.C. 192, 182 S.E.2d 389 (1971); *Smith v. North Carolina Farm Bureau Mut. Ins. Co.*, 84 N.C. App. 120, 351 S.E.2d 774, *aff'd*, 321 N.C. 60, 361 S.E.2d 571 (1987), and the courts will exercise great restraint in ruling on the factual sufficiency of a complaint. *Smith v. City of Charlotte*, 79 N.C. App. 517, 339 S.E.2d 844 (1986). "A complaint should not be dismissed for failure to state a

valid claim unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim. Unless the face of the complaint shows an insurmountable bar, plaintiff's action should not be dismissed on the pleading." *Sutton v. Duke*, 277 N.C. 94, 176 S.E.2d 161 (1970). See also, *Piatt v. Krispy Kreme Doughnut Corp.*, 28 N.C. App. 139, 142, 220 S.E.2d 173, 175 (1975). *Accord Brad Ragan, Inc. v. Callicutt Enters., Inc.*, 73 N.C. App. 134, 326 S.E.2d 62 (1985); *Phillips v. Grand Union Co.*, 64 N.C. App. 373, 307 S.E.2d 205 (1983); *United Leasing Corp. v. Miller*, 45 N.C. App. 400, 263 S.E.2d 313, *cert. denied*, 300 N.C. 374, 267 S.E.2d 685 (1980); *Cassels v. Ford Motor Co.*, 10 N.C. App. 51, 178 S.E.2d 12 (1970).

Mere vagueness or lack of factual detail does not provide a basis for dismissal since this deficiency may be attacked by a motion for a more definite statement. *Redevelopment Comm'n v. Grimes*, 277 N.C. 634, 178 S.E.2d 345 (1971); *Gatlin v. Bray*, 81 N.C. App. 639, 344 S.E.2d 814 (1986); *Braun v. Glade Valley School, Inc.*, 77 N.C. App. 83, 334 S.E.2d 404 (1985); *North Carolina Nat'l Bank v. McCarley & Co.*, 34 N.C. App. 689, 239 S.E.2d 583 (1977); *Benton v. W.H. Weaver Constr. Co.*, 28 N.C. App. 91, 220 S.E.2d 417 (1975); *Brown v. Brown*, 21 N.C. App. 435, 204 S.E.2d 534 (1974). It does not matter that a claim is mislabeled or described under the wrong legal theory so long as the factual allegations give rise to a cause of action under some valid legal theory. *Stanback v. Stanback*, 297 N.C. 181, 254 S.E.2d 611 (1979); *Jones v. City of Greensboro*, 51 N.C. App. 571, 277 S.E.2d 562 (1981). A complaint is adequate to resist dismissal if it gives defendant sufficient notice of the claim against him to file a response and prepare for trial, allow for the application of res judicata, and show the type of action brought. *Redevelopment Comm'n v. Grimes*, 277 N.C. 634, 178 S.E.2d 345 (1971); *Sutton v. Duke*, 277 N.C. 94, 176 S.E.2d 161 (1970); *Carolina*

Wire & Cable, Inc. v. Finnican, 46 N.C. App. 87, 264 S.E.2d 138 (1980); *Brown v. Brown*, 21 N.C. App. 435, 204 S.E.2d 534 (1974).

Moreover, **since a motion to dismiss is addressed solely to the pleading being assailed, the court may not consider outside matters without converting the motion to one for summary judgment** as provided in Rule 12(b). *Barnaby v. Boardman*, 313 N.C. 565, 330 S.E.2d 600 (1985); *Chrysler Credit Corp. v. Rebhan*, 66 N.C. App. 255, 311 S.E.2d 606 (1984). Finally, in testing the factual sufficiency of a complaint, the courts exercise great restraint. *Smith v. City of Charlotte*, 79 N.C. App. 517, 339 S.E.2d 844 (1986). On a motion to dismiss, **all material factual allegations are taken as true or deemed admitted, and viewed in the light most favorable to plaintiff.** *Isenhour v. Hutto*, 350 N.C. 601, 517 S.E.2d 121 (1999); *Cage v. Colonial Bldg. Co.*, 337 N.C. 682, 448 S.E.2d 115 (1994); *Ladd v. Estate of Kellenberger*, 314 N.C. 477, 334 S.E.2d 751 (1985); *Stanback v. Stanback*, 297 N.C. 181, 254 S.E.2d 611 (1979); *Smith v. Ford Motor Co.*, 289 N.C. 71, 221 S.E.2d 282 (1976); *Fox v. Wilson*, 85 N.C. App. 292, 354 S.E.2d 737 (1987); *Gatlin v. Bray*, 81 N.C. App. 639, 344 S.E.2d 814 (1986); *Hawkins v. Webster*, 78 N.C. App. 589, 337 S.E.2d 682 (1985); *Jenkins v. Wheeler*, 69 N.C. App. 140, 316 S.E.2d 354, *cert. denied*, 311 N.C. 758, 321 S.E.2d 136 (1984); *Andresen v. Eastern Realty Co.*, 60 N.C. App. 418, 298 S.E.2d 764 (1983); *Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982); *Rawls v. Lampert*, 58 N.C. App. 399, 293 S.E.2d 620 (1982); *Mebane v. Board of Medical Examiners*, 55 N.C. App. 455, 286 S.E.2d 112, *cert. denied and appeal dismissed*, 305 N.C. 586, 292 S.E.2d 6 (1982); *Brewer v. Hatcher*, 52 N.C. App. 601, 279 S.E.2d 69 (1981); *Burton v. Kenyon*, 46 N.C. App. 309, 264 S.E.2d 808 (1980); *Ford v. Peaches Entertainment Corp.*, 83 N.C. App. 155, 349 S.E.2d 82 (1986), *cert. denied*, 318 N.C. 694, 351 S.E.2d 746 (1987).

III. Facts

Beginning in 2023, Defendant Tanner set upon a course of action to undermine the Plaintiff in his capacity as the Clerk of Court of Moore County, N.C. Specifically, Defendant Tanner began to allege that Plaintiff was not performing his duties as the elected Clerk of Court in an effort to defame Plaintiff, turn public opinion against the Plaintiff and to have Plaintiff thrown in jail with the ultimate goal of seeking to have Plaintiff removed from office.

In 2023, Defendant Tanner began acting outside of her jurisdiction and authority as a District Court Judge to bait Plaintiff into pushing back against her unlawful conduct so that she could accuse Plaintiff of not performing his duties. Said conduct included the following:

- a. Defendant Tanner began usurping the statutory authority of the duly appointed Chief District Court Judge as specified in N.C. Gen. Stat. § 7A-146(1) by unilaterally scheduling court sessions without legal authority to do so, and demanding that Plaintiff make his deputy clerks available for said unlawful sessions of court. All matters heard and decided during said unlawful sessions of court are null and void, and this may result in an untold number of matters having to be re-heard, and may have dire consequences upon the parties that appeared before the court believing that said sessions were lawful and regular;
- b. Defendant Tanner repeatedly attempted to access Abuse, Neglect and Dependency files (DSS cases) to which she was not assigned, and which are strictly protected as confidential, and when she was denied access to said files, began to accuse Plaintiff of depriving her of the right to access said files while

- knowing full well that the same are protected, even from Defendant Tanner;
- c. In fact, on at least two occasions, Defendant Tanner summoned bailiffs to the Clerk of Court's office to force them to allow her entry into the area whereat the highly confidential and statutorily protected files are kept. This was totally improper, illegal and an abuse of her office as a District Court Judge. It is unknown by Plaintiff exactly which files Defendant Tanner illegally gained access to, but Plaintiff strongly objected to Defendant Tanner's unlawful conduct. It is also unknown how many other times Defendant Tanner gained said illegal access to said confidential files without Plaintiff's knowledge;
 - d. Defendant Tanner attempted to gain access to an area of the Clerk of Court's office whereat monies paid by the general public are processed and kept without any legal or valid reason, and accused the Plaintiff of misconduct when she was denied said requested access;
 - e. Defendant Tanner began usurping the statutory authority of the duly appointed Chief District Court Judge as specified in N.C. Gen. Stat. § 7A-146(3) by attempting to supervise the Plaintiff, when said authority rests solely with the Chief District Court Judge and the Senior Resident Superior Court Judge of Moore County;
 - f. Defendant Tanner, to inflame the entire situation, began to verbally abuse Plaintiff's deputy clerks while they performed their duties while in court with Defendant Tanner;
 - g. Defendant Tanner refused to appear at regularly scheduled court dates as assigned by the Chief District Court Judge, instead handling personal matters

to include, inter alia, working with the North Carolina Innocence Commission and posting her location on social media knowing full well that the citizens of Moore County were depending upon her to hold court on those dates so that their cases could be heard; and

- h. Defendant Tanner began holding court, without jurisdiction or authority, on days that had been assigned to her by the Chief District Court Judge as “chambers days”, which are days she was supposed to be reviewing, approving and signing court orders and performing other administrative tasks as part of her official duties.

Defendant Tanner then attempted to illegally hold Plaintiff in Criminal Contempt of Court despite having no authority to initiate such a proceeding against a fellow elected judicial official. Ultimately, Plaintiff filed a civil action against Defendant Tanner for various causes of action to include for defamation (Moore County File: 23-CVS-1738). The previous civil action was eventually resolved and dismissed, as was the Contempt action against the Plaintiff. As a direct result of Defendant Tanner’s misconduct, the Senior Resident Superior Court Judge Michael A. Stone entered an Administrative Order outlining, inter alia, the proper chain of command between the Plaintiff, the Chief District Court Judge, Defendant Tanner and the Senior Resident. Moreover, Defendant Tanner was assigned to hold Court primarily in Hoke County, the other county within her judicial district, for well over one year so that Plaintiff and his staff would not have to interact with her in a professional capacity.

Plaintiff had hoped that this would be the end of Defendant Tanner’s smear campaign against him; however, Defendant Tanner has continued on her path to cause harm to the Plaintiff. On December 5th, 2025, Plaintiff filed to run for re-election for Moore County Clerk of Court.

On or about December 6th, 2025, Defendant Tanner sent a series of text messages to Senior Resident Superior Court Judge Michael A. Stone, and alleged that: (1) Plaintiff, as the Clerk of Court, had violated N.C. Gen. Stat. § 9-1 et. seq. by failing to initiate the process for a “jury commission” as required by law; and (2) That Plaintiff had requested that the Moore County Board of Commissioners pass a resolution to dissolve the “jury commission” in violation of N.C. Gen. Stat. § 9-1 et. seq. (See Exhibit “1” to the Complaint, which are the actual text messages from Defendant Tanner to Judge Stone). Moreover, Defendant Tanner alleged that said conduct would cause the future juries in Moore County to be “unconstitutional”. Not only were these allegations false, but Defendant Tanner ignored the chain of command in Judge Stone’s prior Administrative Order by going directly to Judge Stone, instead of to her Chief District Court Judge, Don “Skipper” Creed.

That night, Judge Stone called Defendant Tanner on the telephone to confirm that it was actually her making these very serious allegations, and to confirm the nature of her allegations, which, upon information and belief, Judge Tanner repeated verbally once again to Judge Stone. As a result, and given the serious nature of the allegations lodged against Plaintiff, Judge Stone launched a full investigation into the matter. Judge Stone concluded, in very short order, after consulting with Plaintiff, the Moore County Commissioners, the properly formed “Jury Commission” and counsel for Moore County, that Judge Tanner’s allegations were completely false and without any merit.

Judge Stone asked Plaintiff to simply let Defendant Tanner’s allegations pass without public comment in hopes of keeping the peace between Plaintiff and Defendant Tanner because they are both elected judicial officials and in hopes that Defendant Tanner would recant and apologize to the Plaintiff. However, Defendant Tanner never recanted her allegations, even after

they were revealed to be completely false, and apparently repeated those allegations to her friend, Defendant Duerring. Defendant Tanner has harmed the professional reputation of Plaintiff by, once again, falsely alleging that Plaintiff has failed to discharge his professional/statutory duties. Moreover, Defendant Tanner has brought disrepute and dishonor to the entire judicial system by calling into question the jury process in Moore County. Defendant Duerring was running against Plaintiff for Moore County Clerk of Court

IV. Argument

a. The libelous text messages were sent in December, 2025, and this action was brought well within the applicable Statute of Limitations.

Defendant sent libelous text messages regarding the Plaintiff, which are attached to the Complaint, to Judge Stone on December 6, 2025. Plaintiff brought this action on January 29, 2026. This action was brought well within the applicable Statute of Limitations. Any defamatory statements, or other outrageous conduct by the Defendant, that is mentioned in the Complaint is done so to demonstrate Defendant's long-standing animosity towards the Plaintiff, based upon her actions. More to the point, the history between the parties in this matter is detailed in the current Complaint to demonstrate Defendant's malicious intent to defame and harm the Plaintiff. Accordingly, Defendant's Motion to Dismiss must be denied.

b. The Defendant's text messages (attached to the Complaint) are libelous per se because they, inter alia, impugn Plaintiff in his profession and accuse him, as a public official, of neglecting his duties.

Defendant, via text message late on a Saturday night, made numerous libelous statements about the Plaintiff to Judge Stone, and as alleged in the Complaint, to at least one other person. Said messages and statements, in short, accuse the Plaintiff of failing to uphold and carry out his

statutory duties as the elected and sworn Moore County Clerk of Court, which is the Plaintiff's literal occupation. In this matter, Defendant not only defamed the Plaintiff in his occupation, but she also essentially accused him of a crime. N.C.G.S. § 14-230 states:

If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, **shall willfully omit, neglect or refuse to discharge any of the duties of his office**, for default whereof it is not elsewhere provided that he shall be indicted, **he shall be guilty of a Class 1 misdemeanor**. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.

“Under the well established common law of North Carolina, a libel per se is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace.” *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984) (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1937)).

Defendant, in the offending text messages, accuses the Plaintiff of the following: (1) Seeking to have the Moore County Jury Commission dissolved (this would be quite literally illegal, if done, because this would violate N.C.G.S. § 9-1 *et. seq.*); (2) Failing, as the Moore County Clerk of Superior Court, to do his official duties related to the Moore County Jury Commission to include, inter alia, a failure to “start” the process (This would be a violation of N.C.G.S. § 14-230); and (3) Delaying to fulfill his duties as the Moore County Clerk of Superior

Court in relation to the Moore County Jury Commission (This would be a violation of N.C.G.S. § 14-230). Defendant went on to state that the alleged failings of the Plaintiff, in his role as the Moore County Clerk of Superior Court, could put “all criminal trials at risk.” Defendant then apparently sent, via text, Judge Stone internet links that she contended would support her allegations, and Judge Stone indicated he would launch an investigation into the matter, which he did.

Defendant has attempted to skirt this issue by arguing that she was merely repeating what she had heard from others, or that she was otherwise simply espousing her opinions. These arguments cannot protect her. One, if this argument were true, media outlets could almost never be sued for libel and held liable, which, of course, is false as a matter of law. Moreover, the texts of Defendant are not “opinions.” They are declaratory statements and alleged direct quotes from the Plaintiff. Defendant’s Motion to Dismiss must be denied.

c. Defendant’s libelous texts were sent with malice as demonstrated by her long-standing attacks on the Plaintiff, to include, inter alia, trying to have the Plaintiff thrown in jail in December, 2023.

"Actual malice" may be proved by circumstantial evidence. *Dobson v. Harris*, 134 N.C. App. 573, 581, 521 S.E.2d 710, 717 (1999) (citing *Harte-Hanks Comm’ns, Inc. v. Connaughton*, 491 U.S. 657, 657, 105 L. Ed.2d 587, 587 (1989)), overruled on other grounds by, *Dobson v. Harris*, 352 N.C. 77, 530 S.E.2d 829 (2000). See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 11 L. Ed. 2d 686, 706 (Where the plaintiff is a "public official" and the alleged defamatory statement concerns that official’s conduct, the official must prove that the statement was "made with 'actual malice'- that is, with knowledge that it was false or with reckless disregard of whether it was false or not."); see also *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 155, 18 L. Ed.2d

1094, 1011 (1967), and *Varner v. Bryant*, 113 N.C. App. 697, 702-03, 440 S.E.2d 295, 299 (1994).

Because this matter is on for Rule 12(b) hearings, and not a Summary Judgment motion, Plaintiff's facts must be accepted by the Court as true. The Complaint is replete with allegations of a long-standing history of the Defendant attacking the Plaintiff, and allegedly knowing that her statements were outright false, or at a minimum, made with a reckless disregard for the truth. Moreover, and this must also be accepted as true, Defendant's allegations were fully investigated by Judge Stone, and proven by his investigation to be baseless and false.

Plaintiff has more that met the burden of pleading "actual malice" and/or "reckless disregard" for the truth regarding Defendant's texts messages. Her Motion to Dismiss must be denied.

d. Judicial Immunity does not shield the Defendant's tortious conduct because she was not acting in her capacity as a District Court Judge when she libeled Plaintiff to the Moore County Senior Resident Superior Court Judge late on a Saturday night regarding a matter over which she had no authority.

Defendant cites to the cases of *Wynn v. Frederick*, 385 N.C. 576, 586-89, 895 S.E.2d 371, 380-81 (2023) and *Walker v. Wake Cty. Sheriff's Dep't*, 284 N.C. App. 757, 764, 877 S.E.2d 298, 304 (2022) as authority for her tortious conduct being shielded by Judicial Immunity. However, the two cited cases **do not support Defendant Tanner's legal argument**. In fact, in *Wynn v. Frederick*, 385 N.C. 576, 586-89, 895 S.E.2d 371, 380-81 (2023) the Court of Appeals specifically **declined** to sift through the facts in that matter to determine what conduct is or is not covered by "judicial immunity." The Court of Appeals explained this in footnote 12 of the majority opinion as follows: "It should be noted that we discuss judicial immunity to correct a mistake made by the Court of Appeals which had limited the defense of judicial immunity. The

dissent would go much further and summarily find defendant's conduct as not the type of conduct normally performed by a judicial officer, without the benefit of full briefing or argument on the issue. **In fact, this Court specifically declined to consider how judicial immunity applies to the facts of this case by denying this very issue in plaintiff's conditional petition for discretionary review.** Additionally, both parties concede in their briefs **that this issue is not properly before the Court and would need to be remanded for its initial consideration**" (Id., emphasis added).

The next case cited, *Walker v. Wake Cty. Sheriff's Dep't*, 284 N.C. App. 757, 764, 877 S.E.2d 298, 304 (2022), actually holds that a sheriff's communications to the press were not automatically protected by any type of qualified privilege or public official immunity. Neither case holds that communications between judges are "privileged communications". In fact, there is not any caselaw or other authority in the entire country that undersigned counsel has located that holds such a thing.

The actual law that governs whether "judicial immunity" applies requires the court to determine whether the judge was actually making a ruling as a judge, and it is explained very well in the concurring opinion in *Wynn*:

Judicial immunity attaches to acts, not offices. *Forrester v. White*, 484 U.S. 219, 227, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988). Under that doctrine, a judicial officer is absolutely immune for his judicial conduct. *See Stump v. Sparkman*, 435 U.S. 349, 359, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978). Magistrates are "judicial officers." *Bradshaw v. Admin. Off. of the Cts.*, 320 N.C. 132, 134, 357 S.E.2d 370 (1987); *see also id.* ("Our legislature has prescribed by statute many of the functions performed by magistrates, most of which require such independent judgment by a judicial officer."). And so here, the question is whether Mr. Wynn has sued Magistrate Frederick for a judicial act. If so, judicial immunity bars Mr. Wynn's claim. If not, we then ask whether sovereign immunity applies and whether the state has waived it. At its core, judicial immunity safeguards the "independent and impartial exercise of judgment vital to the judiciary." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435, 113 S.Ct. 2167, 124 L.Ed.2d 391 (1993). Still, an absolute bar to liability is "strong medicine." *Forrester*, 484 U.S. at 230, 108 S.Ct. 538 (cleaned up). **So rather than**

woodenly insulating judicial officers, judicial immunity "is justified and defined by the functions it protects and serves, not by the person to whom it attaches." *Id.* at 227, 108 S.Ct. 538; *see also id.* at 224, 108 S.Ct. 538 (explaining that immunity turns on "the nature of the functions with which a particular official or class of officials has been lawfully entrusted"). Courts have thus drawn a firm "line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges." *Id.* at 227, 108 S.Ct. 538. **And so a judge's acts as a judge are distinct from "the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform."** *Id.*; *see also Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980). Anchoring judicial immunity in judicial acts aligns the doctrine with its purpose and historical roots. *See Antoine*, 508 U.S. at 432–36, 113 S.Ct. 2167. The "touchstone" of a judicial act is whether the officer performs the "function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Id.* at 435–36, 113 S.Ct. 2167 (cleaned up); *accord Forrester*, 484 U.S. at 227, 108 S.Ct. 538 (describing "paradigmatic judicial acts" as those "involved in resolving disputes between parties who have invoked the jurisdiction of a court"). Courts also consider whether an act "is a function normally performed by" a judicial officer. *Stump*, 435 U.S. at 362, 98 S.Ct. 1099; *see also Ex parte Va.*, 100 U.S. 339, 348, 25 L.Ed. 676 (1879) (declining to apply judicial immunity for conduct that "might as well have been committed to a private person as to one holding the office of a judge"). Relevant, too, is the officer's discretion in carrying out the conduct. *See Hedgepeth v. Swanson*, 223 N.C. 442, 444–45, 27 S.E.2d 122 (1943) (explaining that immunity protects "public officers acting in a judicial capacity or quasi-judicial capacity" when they are "engaged in official acts involving the exercise of judgment and discretion"); *Antoine*, 508 U.S. at 436, 113 S.Ct. 2167 (withholding judicial immunity from court reporters transcribing proceedings because they are "afforded no discretion" in that task and must simply "record, as accurately as possible, what transpires in court"). But the key point is clear: **A judicial officer is only immune for the "kind of discretionary decisionmaking that the doctrine of judicial immunity is designed to protect."** *Antoine*, 508 U.S. at 435, 113 S.Ct. 2167; *see also Peavey v. Robbins*, 48 N.C. 339, 341–42 (1856) (granting immunity to election inspectors who were "acting judicially under a public law" and exercising "judicial power to adjudge upon the right of every man to vote at that precinct"). The reverse is true, too—judicial immunity does not extend to "such acts as are not judicial." *See Furr v. Moss*, 52 N.C. 525, 526–27 (1860).

Id. at 382–383 (emphasis added).

In the offending text messages, Defendant admits the following: (1) "We don't do jury trials really; and (2) "That has NOTHING to do with me." The Defendant's conduct of sending libelous late-night weekend texts to Judge regarding matters over which she had no judicial authority whatsoever and had no duties to whatsoever, to include never having even presided

over a jury trial, are not and cannot be, by law, shielded by Judicial Immunity, and the Plaintiff's Motion to Dismiss must be denied.

Specifically, Defendant has absolutely no authority over the Clerk of Court or the Jury Commission; therefore, she could not have been acting in any judicial capacity when sending libelous text messages. The office of the clerk of superior court is a constitutional office of the State of North Carolina. N.C. Const. art. IV, § 9(3). The clerk is elected every four years by qualified voters of the county. N.C. Const. art. IV, § 9(3); N.C.G.S. § 7A-100(a). The General Assembly is responsible for proscribing the jurisdiction and powers of the clerk. N.C. Const. art. IV, § 12(3). The clerk is a full-time employee of the state of North Carolina, and employs assistant clerks, deputy clerks, and a head bookkeeper. N.C.G.S. §§ 7A-101 (a), -102. The judicial branch is created by the North Carolina constitution. N.C. Const. art. IV. The district courts are created by statute pursuant to the North Carolina constitution. N.C. Const. art. IV, § 10; N.C.G.S. § 7A-130. Each district court judge is elected by qualified voters of the district court district in which she serves. N.C.G.S. § 7A-140.

The Chief Justice of the North Carolina Supreme Court designates a chief district judge for each district. N.C.G.S. § 7A-141. The legislature has vested authority with regard to all administrative matters of the district court in the chief district judge alone, including "arranging schedules and assigning district judges for sessions of district court," "arranging or supervising the calendaring of noncriminal matters for trial or hearing," "supervising the clerk of superior court in the discharge of clerical functions of the district court," and "designating another district judge of his district as acting chief district judge during the absence or disability of the chief district judge." N.C.G.S. §§ 7A-146(1), (2), (3) and (10). In contrast, district court judges that are

not designated as chief district court judge have "limited" authority. *Austin v. Austin*, 12 N.C. App. 286, 294 (1971).

While judges have broad inherent authority to do things that are "reasonably necessary for the proper administration of justice," *Beard v. North Carolina State Bar*, 320 N.C. 126, 129 (1987), that authority is limited. The North Carolina Constitution gives the General Assembly considerable control over the courts. Where the legislature has addressed a subject, the court does not have inherent authority to act. See Crowell, UNC School of Government, Administration of Justice Bulletin, Inherent Authority, pp. 2-3 (Nov. 2015), available at: [https://www.sog.unc.edu/sites/default/files/reports/2015-11o4%20201510oo%20AOJB%202015-02%20Inherent%20Authority Crowell.pdf](https://www.sog.unc.edu/sites/default/files/reports/2015-11o4%20201510oo%20AOJB%202015-02%20Inherent%20Authority%20Crowell.pdf) (citing *State v. Gravette*, 327 N.C. 114, 124 (1990); *In re Wharton*, 305 N.C. 565, 573 (1982); *State v. Hardy*, 293 N.C. 105, 125 (1977). Further, a judge "must have jurisdiction over a matter before it can exercise any authority, including inherent authority." *Id.* at p.3 (citing *In re Transportation of Juveniles*, 102 N.C. App. 806, 808 (1991); *In re Kill Devil Hills Police Dep't*, 223 N.C. App. 113, 116, 733 S.E.2d 582, 586 (2012).

Chief Judge Don Creed did not delegate any of his authority under 7A-146, either explicitly or impliedly, to Judge Tanner. See Creed Affidavit. Additionally, because Defendant lacked any lawful authority to supervise the clerk of superior court in the discharge of clerical functions of the district court, to include, inter alia, his duties regarding the Jury Commission, Judicial Immunity cannot protect her from liability in this matter.

The foregoing legal analysis consist partially of excerpts from an analysis of these issues prepared by the office of the North Carolina Attorney General at that time, Josh Stein, by Special Deputy Counsel Elizabeth Curran O'Brien and said excerpts, along with an even more detailed

argument, were filed in 23CR827-620 on December 15, 2023 as part of the Attorney General's Motion to Dismiss the "Show Cause" order in 23CR827-620. Said absurd and illegal "Show Cause" was ultimately dismissed.

Defendant's Motion to Dismiss must be denied.

e. Defendant's libelous texts are not shielded by "Qualified Privilege".

In the offending text messages, Defendant admits the following: (1) "We don't do jury trials really; and (2) "That has NOTHING to do with me." The Defendant's conduct of sending libelous late-night weekend texts to Judge regarding matters over which she had no judicial authority whatsoever and had no duties to whatsoever, to include never having even presided over a jury trial, are not shielded by "qualified privilege" anymore than they are protected by "Judicial Immunity." The legal analysis is essentially the same. Defendant had no duties relating to jury trials or the jury commission and she most importantly has no statutory authority over the clerk, as outlined above. This was not "one judge to another." This was a Defendant with a long-standing history of attacking the Plaintiff without any official power or duties that allowed such an attack.

f. Plaintiff has plead sufficient facts to be awarded punitive damages.

By Defendant's own argument, a pleading that alleges malice may also appropriately requests punitive damages. Plaintiff has alleged malice, and the facts alleged, which must be accepted as true, support a finding of malice. Defendant's Motion to Dismiss must be denied.

V. Conclusion

Based upon the foregoing standards, alleged facts and arguments, Defendant's Motions to Dismiss should be and must be denied, as a matter of law.

This the 9th day of July, 2026.

Respectfully Submitted,



Michael R. Porter, Esq.
N.C. State Bar No.: 37000
The Michael Porter Law Firm
Attorney for Plaintiff
5851 Ramsey Street
Fayetteville, NC 28311
Telephone: (910) 339-3131
Facsimile: (910) 339-3132
michael@michaelporterlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Brief** was this day served on the below named counsel, via electronic mail, addressed to the attorney for said party as follows:

Alicia Journey
N.C. State Bar #37133
P.O. Box 1069
Raleigh, NC , 27602
Telephone: (919) 833-3115
Facsimile: (919) 833-3116
Email: alicia@parkerbryanlaw.com

This the 9th day of July, 2026.



Michael R. Porter, Esq.
N.C. State Bar No.: 37000
The Michael Porter Law Firm
Attorney for Plaintiff
5851 Ramsey Street
Fayetteville, NC 28311
Telephone: (910) 339-3131
Facsimile: (910) 339-3132
michael@michaelporterlaw.com