

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 26CV000199-620

TODD MANESS,
Plaintiff,

v.

DEBORAH ANNE J. DUERRING and
DONNA ELIZABETH TANNER,
Defendants.

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT
TANNER'S MOTION TO DISMISS**

NOW COMES Defendant Donna Elizabeth Tanner ("Defendant Tanner"), by and through her undersigned counsel, and respectfully submits this memorandum of law in support of her Motion to Dismiss the Complaint in this action under Rule 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure. In support of her Motion to Dismiss, Defendant Tanner shows the Court as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff Todd Maness ("Plaintiff Maness") is the elected Clerk of Superior Court of Moore County, North Carolina, and, therefore, a public official. Defendant Tanner is a sitting District Court Judge in North Carolina Judicial District 29. At the time Plaintiff Maness filed this action, Defendant Deborah Anne J. Duerring ("Defendant Duerring") was his opponent in the 2026 election for Clerk of Superior Court.

2. In December 2023, Plaintiff Maness sued Defendant Tanner and former Senior Resident Superior Court Judge James Webb ("Judge Webb") in Moore County File No. 23 CVS 1738 ("Prior Action"). The complaint in the Prior Action asserted¹ only claims for abuse of process,

¹ Plaintiff Maness dismissed the Prior Action less than a month after filing it, and as a result, that action was never adjudicated on the merits. Nothing in this memorandum should be construed as an indication or

infliction of emotional distress, and civil conspiracy against Defendant Tanner. Its sole defamation claim, designated as slander *per se*, was asserted against Judge Webb alone. Plaintiff Maness voluntarily dismissed the Prior Action without prejudice on January 17, 2024.

3. Plaintiff Maness filed the Complaint in this action on January 29, 2026, during a contested Republican primary election for his office and Defendant Tanner's office. The Complaint attempts to state claims for libel and slander *per se* by Plaintiff Maness, a public official, and most of its allegations are recycled from the Prior Action. Specifically, paragraph 9(a) through (i) mirrors paragraph 35(a) through (i) of the Prior Action complaint; paragraphs 7 and 8 of the Complaint track paragraph 33 of the Prior Action complaint; and paragraph 10 of the Complaint restates paragraphs 37 and 38 of the Prior Action complaint. To that recycled material the Complaint adds two new alleged occurrences, a series of December 6, 2025 text messages from Defendant Tanner to Senior Resident Superior Court Judge Michael A. Stone ("Judge Stone"), attached to the Complaint as Exhibit 1, and allegations regarding statements Defendant Duerring purportedly made at a campaign event in January 2026.

4. The December 6, 2025 messages are private texts between Defendant Tanner and Judge Stone about Moore County's jury commission. Defendant Tanner's messages are tentative and qualified on their face. Defendant Tanner wrote that the subject was "not my direct knowledge," that she had not "researched it," and that she was passing along what she had "pieced together." Defendant Tanner acknowledged that the District Court cases she hears rarely involve juries, and she raised the matter to Judge Stone as a question based on her concern that a lapse in the

admission that Defendant Tanner considers the claims Plaintiff Maness asserted against her and Judge Webb in the Prior Action to be valid. To the contrary, Defendant Tanner considers the Prior Action, like this action, to be without any legitimate basis in law or fact.

commission process could bear on the constitutionality of future jury pools.

5. Under N.C. Gen. Stat. § 9-1, three officials appoint the members of a county's jury commission: the senior resident superior court judge, the clerk of superior court, and the board of county commissioners. Judge Stone and Plaintiff Maness are two of Moore County's three appointing officials.

ARGUMENT

I. THE COMPLAINT'S 2023 ALLEGATIONS ARE TIME-BARRED.

6. On a motion to dismiss under Rule 12(b)(6), the Court construes the complaint liberally and treats its well-pleaded factual allegations as true. *Sutton v. Duke*, 277 N.C. 94, 102-03, 176 S.E.2d 161, 166 (1970). However, the Court is not required to accept as true legal conclusions or unwarranted deductions of fact, and dismissal is proper when the pleading discloses a fact that defeats recovery. *Id.* at 98, 102-03, 176 S.E.2d at 163, 166. A statute of limitations bar apparent on the face of the complaint is a proper basis for dismissal under Rule 12(b)(6). *Horton v. Carolina Medicorp, Inc.*, 344 N.C. 133, 136, 472 S.E.2d 778, 780 (1996).

7. The statute of limitations for defamation claims is one year. *See* N.C. Gen. Stat. § 1-54(3). The limitations period runs from the date of publication. The allegations recycled in paragraphs 7 through 10 of the Complaint describe conduct published no later than 2023, meaning that any purported defamation claim arising from that conduct expired in 2024, long before Plaintiff Maness filed this action on January 29, 2026. The Complaint does not allege that Defendant Tanner published any of the recycled material within the year preceding commencement of this action, and the statute of limitations bar is apparent on the face of the pleading as to those allegations.

8. The voluntary dismissal of the Prior Action does not revive Plaintiff Maness's stale allegations from the 2023 complaint. Rule 41(a)(1) permits a plaintiff who has taken a voluntary dismissal to refile "a new action based on the same claim" within one year, but that provision does not apply. Plaintiff Maness's voluntary dismissal of the Prior Action was filed on January 17, 2024, and he did not refile within the year that followed. Moreover, because Rule 41(a)(1) preserves only a claim that was actually asserted and dismissed, it does not render the allegations made against Defendant Tanner in the Prior Action a viable basis for Plaintiff Maness's defamation claim in this case.

II. THE DECEMBER 2025 MESSAGES ARE NOT DEFAMATORY AS A MATTER OF LAW.

9. After the time-barred material is excluded from consideration, Plaintiff Maness's defamation claim against Defendant Tanner rests exclusively on her December 6, 2025 text messages to Judge Stone, and those messages are not actionable as a matter of law. Whether Defendant Tanner's words are reasonably capable of a defamatory meaning, and whether they make a factual assertion capable of being proven false rather than expressing an opinion, are questions for the Court and not the jury. *See Renwick v. News & Observer Publ'g Co.*, 310 N.C. 312, 316-18, 312 S.E.2d 405, 408-09 (1984); *see also Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990) (holding that a statement is actionable only if it implies a provably false assertion of fact).

10. Because Plaintiff Maness attached and incorporated Defendant Tanner's text messages into his Complaint as Exhibit 1, the messages are part of the pleading, and the Court may consider them in ruling on this Motion. A court ruling on a Rule 12(b)(6) motion may properly consider documents that are the subject of the complaint and to which the complaint specifically refers. *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 60-61, 554 S.E.2d 840, 847 (2001). In *Oberlin*

Capital, the Court of Appeals approved the trial court's review of the loan agreement underlying the plaintiff's tort claims because the agreement was the subject of the complaint and was specifically referenced in it, and the court then relied on the agreement's own terms to affirm dismissal of the claims those terms defeated. *Id.* When considering a Rule 12(b)(6) motion, the Court may reject allegations that the documents attached or incorporated into the complaint contradict. *See Laster v. Francis*, 199 N.C. App. 572, 577, 681 S.E.2d 858, 862 (2009). Exhibit 1 is the publication on which the defamation claim against Defendant Tanner rests. Its text, and not the Complaint's characterization of that text, controls the analysis of what Defendant Tanner communicated to Judge Stone.

11. The Complaint mischaracterizes Defendant Tanner's messages as a flat accusation that Plaintiff Maness "violated" N.C. Gen. Stat. § 9-1, but messages in Exhibit 1 demonstrate that Defendant Tanner's statements were in the nature of a qualified inquiry seeking additional factual information. Defendant Tanner told Judge Stone that the information she conveyed about the jury commission was "not my direct knowledge," that she had not "researched it," and that she was passing along what she had "pieced together." Defendant Tanner's messages communicate a tentative concern, raised as a question and repeatedly qualified, rather than a charge that Plaintiff Maness broke the law.

12. Defendant Tanner's qualified messages do not assert, or even attempt to assert, a false fact about Plaintiff Maness. A public official or public figure plaintiff "must show the falsity of the statements at issue" to prevail in a suit for defamation. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 775 (1986). Where the truth or falsity of speech on public matters cannot be conclusively resolved, the First Amendment resolves the uncertainty in favor of protecting speech. *Id.* at 775-

77. Statements from one judicial officer to another about the lawful operation of a county jury commission concern the administration of justice and fall within that protection. A speaker who flags a subject as beyond her direct knowledge, acknowledges that she has not independently researched it, and presents it as something she has pieced together with the limited information available to her has not made a definitive factual charge the falsity of which Plaintiff Maness could plead or prove.

13. The remainder of Defendant Tanner's exchange with Judge Stone is a constitutionally protected expression of opinion and prediction, and neither is actionable. Statements that cannot reasonably be interpreted as stating actual facts about a plaintiff, including expressions of pure opinion incapable of being proven or disproven, will not support a defamation claim. *Daniels v. Metro Magazine Holding Co.*, 179 N.C. App. 533, 539-40, 634 S.E.2d 586, 590-91 (2006). In *Daniels*, an insurance adjuster sued over a magazine column that described her handling of the author's claim in derisive terms, and the Court of Appeals affirmed dismissal under Rule 12(b)(6). The court examined each challenged statement with regard to the circumstances of its publication, considered whether the language was loose, figurative, or hyperbolic in light of the general tenor of the piece, and held that the statements were either opinion that could not be proven true or false or hyperbole that no reasonable reader would credit. *Id.* Like the defendant in *Daniels*, Defendant Tanner's concern that a lapse in the commission process could bear on the constitutionality of future jury pools is a forecast about future events and a legal assessment, not an assertion of present fact about Plaintiff Maness. Defendant Tanner's passing remark that she felt vindicated states her own subjective reaction, which no factfinder could test for truth or falsity. Under *Daniels*, neither statement can support Plaintiff Maness's claim, and this conclusion is

apparent from the face of the Complaint and Exhibit 1.

III. PLAINTIFF MANESS'S EXHIBIT 1 NEGATES ACTUAL MALICE.

14. Because Plaintiff Maness has sued Defendant Tanner over statements made about his conduct as an elected official, he must plead and ultimately prove that Defendant Tanner spoke with actual malice. Establishing actual malice requires Plaintiff Maness to prove that Defendant Tanner made the allegedly defamatory statements with knowledge that they were false or with reckless disregard as to their truth or falsity. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Varner v. Bryan*, 113 N.C. App. 697, 702-03, 440 S.E.2d 295, 299 (1994).

15. Actual malice is a demanding, subjective standard that turns on the speaker's state of mind at the time the statement was made. Exhibit 1 to Plaintiff Maness's Complaint negates the state of mind he must prove. A speaker who tells her reader that a subject lies beyond her "direct knowledge," that she has not "researched it," and that she is relaying what she has "pieced together" is describing the limits of her knowledge and openly conveying uncertainty. Those are not the words of a person publishing information that she knows to be false or recklessly disregarding an evident truth. Defendant Tanner's statements in Exhibit 1 establish the absence of actual malice.

16. The Complaint's only attempted allegations of malice are conclusory and insufficient to support Plaintiff Maness's claim for defamation. Paragraphs 36 and 37 assert, without any supporting factual basis, that Defendant Tanner knew her statements were false, or spoke with reckless disregard of their falsity, and that she acted with malice. Those unsupported statements are legal conclusions, and on a Rule 12(b)(6) motion, the Court is not required to treat them as true to cure the pleading defects of Plaintiff Maness's claim. *Sutton*, 277 N.C. at 98, 176 S.E.2d at

IV. JUDICIAL IMMUNITY PROTECTS DEFENDANT TANNER'S REPORT TO JUDGE STONE.

17. The North Carolina Supreme Court recently confirmed that judicial immunity protects a judicial officer whether the plaintiff files a claim against a defendant in her official capacity or individual capacity. *Wynn v. Frederick*, 385 N.C. 576, 585-86, 895 S.E.2d 371, 379-80 (2023). Whether judicial immunity is available as a defense depends on the nature of the officer's conduct. A judge is not liable in a civil action for "errors committed in the discharge of his official duties," *Town of Fuquay Springs v. Rowland*, 239 N.C. 299, 301, 79 S.E.2d 774, 776 (1954), and an officer "acting in a judicial capacity or quasi-judicial capacity" is immune for the honest exercise of judgment, *Hedgepeth v. Swanson*, 223 N.C. 442, 444, 27 S.E.2d 122, 123 (1943).

18. In *Fuquay Springs*, the town sued a judge in his official capacity, alleging that he had instructed the clerk of court to refrain from taxing certain fees in select cases. 239 N.C. at 299-300, 79 S.E.2d at 775-76. The Supreme Court held the complaint failed to state a claim because the judge's instruction was an act committed in the discharge of the judge's official duties. *Id.* at 301, 79 S.E.2d at 776. Like the conduct at issue in *Fuquay Springs*, the statements that are the subject of Plaintiff Maness's defamation claim in this case are communications from one officer of the court to another about the administration of a court function. As a sitting judge of District 29, Defendant Tanner had a direct interest in the lawful administration of the jury system on which the trials in both District Court and Superior Court depend. Concerned about the effect of a potential lapse in the jury commission appointment process, she raised the matter with the only judge in Moore County the General Assembly charged with appointing a commission member, the senior resident superior court judge. *See* N.C. Gen. Stat. §§ 9-1, 9-2. A report to Judge Stone

as the only judge in District 29 designated as an appointing authority responsible, which was made to protect the integrity of jury selection, is conduct undertaken in the discharge of Defendant Tanner's office as a District Court Judge, just as the fee instruction in *Fuquay Springs* was conduct undertaken in the discharge of judicial office.

19. Judicial immunity protects the exercise of professional judgment. An officer acting in a judicial or quasi-judicial capacity is exempt from civil liability to private individuals for the honest exercise of judgment, even if the judgment proves erroneous. *Hedgepeth*, 223 N.C. at 444, 27 S.E.2d at 123. In *Hedgepeth*, the Supreme Court stated that rule in addressing an official capacity claim against a county sheriff who had procured a search warrant and an arrest warrant, functions the Court treated as judicial or quasi-judicial in character. *Id.* For acts that are judicial in nature, the protection is absolute. *State ex rel. Jacobs v. Sherard*, 36 N.C. App. 60, 64, 243 S.E.2d 184, 188, *disc. review denied*, 295 N.C. 466, 246 S.E.2d 12 (1978). Plaintiff Maness therefore cannot defeat the immunity by pleading malice. If the Court were to analyze Defendant Tanner's statements to Judge Stone under the standard governing discretionary acts of public officials, which yields only to corruption or malice, the result would be the same. As discussed above, the Complaint does not plead any facts that would constitute actual malice or corruption by Defendant Tanner, and Exhibit 1 conclusively defeats any mischaracterization of Defendant Tanner's statements made by Plaintiff Maness in an attempt to transform her benign communications with Judge Stone into nefarious acts for which she should be civilly liable. Accordingly, Plaintiff Maness's claim is barred by judicial immunity.

V. EVEN IF NOT IMMUNE, DEFENDANT TANNER'S REPORT TO JUDGE STONE WAS PROTECTED BY QUALIFIED PRIVILEGE.

20. If the Court determines that Defendant Tanner's communication with Judge Stone did

not constitute a judicial act, a qualified privilege nevertheless defeats Plaintiff Maness's defamation claim. A communication is protected by a qualified privilege when it is made in good faith, on a subject in which the speaker holds an interest or duty, to a person who shares a corresponding interest or duty, on a proper occasion, and in a proper manner. *Stewart v. Nation-Wide Check Corp.*, 279 N.C. 278, 285, 182 S.E.2d 410, 415 (1971). To determine whether qualified privilege applies, the Court must consider whether the subject, the parties, the occasion, and the manner of the communication, and each of those inquiries can be answered from the Complaint and Exhibit 1. When the existence of qualified privilege appears on the face of the complaint and the documents incorporated into it, the court may resolve the defamation claim at the pleading stage. *See Walker v. Wake Cty. Sheriff's Dep't*, 284 N.C. App. 757, 877 S.E.2d 298 (2022).

21. In this case, each element of qualified privilege appears on the face of the Complaint and Exhibit 1. Defendant Tanner held an interest and a duty in the lawful operation of the jury system in Moore County as a sitting judge of District 29. Judge Stone shared that interest and duty, because by statute, the senior resident superior court judge appoints a member of the jury commission and is involved in the administration of the jury system for the district. *See* N.C. Gen. Stat. §§ 9-1, 9-2. The occasion for Defendant Tanner's communication to Judge Stone was proper, because she promptly shared her concerns with the senior judicial official involved in the appointment process, and the manner was proper, because Defendant Tanner raised her concerns to Judge Stone in a private message rather than airing it in a public forum.

22. Paragraph 19 improperly faults Defendant Tanner for addressing questions about the jury commission to Judge Stone rather than to Chief District Court Judge Creed. However, unlike the senior resident superior court judge, the chief district court judge has no statutory role in

appointing or overseeing the jury commission. Directing a concern about the commission to the Senior Resident Superior Court Judge of District 29, who is statutorily responsible for appointing a commission member, was the correct course of action, and it is understandable that Defendant Tanner chose to bring the matter to Judge Stone's attention instead of routing it through an official with no role in the process.

23. A statement actionable as defamation *per se* ordinarily carries a presumption of malice, but a qualified privilege removes that presumption and shifts the burden to the plaintiff to prove actual malice. *Stewart*, 279 N.C. at 285-86, 182 S.E.2d at 415-16. Plaintiff Maness has not pleaded any factual basis that would support actual malice, and as set out above, Exhibit 1 to the Complaint demonstrates the absence of actual malice.

VI. THE COMPLAINT FAILS TO PLEAD A BASIS FOR PUNITIVE DAMAGES.

24. There is no basis for Plaintiff Maness's demand for punitive damages, because the Complaint does not plead an aggravating factor that is required for such relief. Punitive damages require fraud, malice, or willful or wanton conduct to be established by clear and convincing evidence. N.C. Gen. Stat. § 1D-15(a), (b). If a complaint fails to allege sufficient facts to support the existence of an aggravating factor under N.C. Gen. Stat. § 1D-15, a request for punitive damages may be dismissed pursuant to Rule 12(b)(6) at the pleading stage. *See Shugar v. Guill*, 51 N.C. App. 466, 477-78, 277 S.E.2d 126, 134 (1981) (reversing the trial court's denial of a defendant's motion to dismiss the plaintiff's request for punitive damages where the complaint failed to make factual allegations regarding the existence of an aggravating factor and only conclusorily asserted that "a wrongful act was committed in a malicious, willful or wanton manner"); *Cook v. Lanier*, 267 N.C. 166, 172-73, 147 S.E.2d 910, 915-16 (1966). The Complaint

references malice only as a legal conclusion, and that conclusion is not supported by any factual allegations. Accordingly, Plaintiff Maness's request for punitive damages should be dismissed.

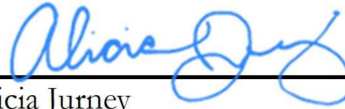
CONCLUSION

For the foregoing reasons, Defendant Tanner respectfully requests that the Court dismiss Plaintiff Maness's Complaint against her in its entirety.

This the 8th day of July, 2026.

**PARKER BRYAN BRITT
TANNER & JENKINS, P.L.L.C.**

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing Memorandum in Support of Defendant Tanner's Motion to Dismiss in the above-entitled action upon all other parties to this cause via Odyssey eFile & Serve properly addressed as follows:

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This the 8th day of July, 2026.



Alicia Journey
Attorney for Defendant Tanner