

6. Defendant was, on November 3, 2020, elected by this district as its next district court judge, replacing the retiring chief judge, the Honorable Richard K. Walker. It is understood that he will be sworn into that office on January 1, 2021. Defendant ran as a Republican and won over sixty-five (65%) of the total vote in the November 3, 2020, general election.
7. Justin B. Greene, Esquire (~~%Greene+~~), is a licensed practicing attorney in North Carolina. He was Defendant's Democrat opponent for the office of district attorney.
8. Jim Faasse (~~%Faasse+~~) is Plaintiff's partner of almost 20 years. They co-own their home in Murphy, Cherokee County, North Carolina.
9. Bennie Jo McKinnon (~~%McKinnon+~~) is the chair of the Cherokee County GOP and was at all times relevant to the acts giving rise to this action.
10. Aubrey Woodard (~~%Woodard+~~) is the regional chairman of the North Carolina GOP. His region covers both Cherokee and Haywood Counties, as well as several more. He was the regional chairman at all times relevant to the acts giving rise to this action.
11. In addition to practicing law and advocating for the GOP, Plaintiff also pays for a local radio show. He generally interviews Republican office-holders and Republican candidates for office on his radio show. The primary purpose of this radio show is to advertise Plaintiff's law practice. The secondary purpose of this radio show is to allow Republican office-holders and candidates for office a forum by which to reach his listening audience. Plaintiff also, during election contests, may permit Democrat office seekers access to this forum.
12. On December 3, 2020, at a meeting of the Cherokee County GOP Executive Committee, chaired by McKinnon, a resolution of party disloyalty was passed, finding Plaintiff guilty of disloyalty to the GOP. The three grounds were listed as:
 - a) Plaintiff did, in his own front yard, place one of Greene's political signs in the yard of his residence;
 - b) Plaintiff did, on his private Facebook page, advertise two non-partisan endorsements of Greene.
 - c) Plaintiff did, on or about October 14, 2020, enter the local GOP headquarters and converse with a volunteer. During that conversation Plaintiff disparaged Defendant, stating that he was not qualified for the office of district court judge and that Greene had more experience than did Defendant.
13. Plaintiff was first made aware that these allegations were brewing when, on October 21, 2020, he received an email from Woodard expressing dismay that

Plaintiff was reportedly supporting Greene and not Defendant. Woodard's email gave no specifics.

14. Defendant responded to Woodard's email expressing frustration and requesting specifics of what he was being accused. Woodard responded the next day, October 22, 2020, again by email, providing more detail. Those details were a picture of one of Greene's signs in the yard of Plaintiff's home (surrounded by signs of other, GOP office-seekers), and screenshots of Plaintiff's private Facebook page which were of Greene being endorsed by a non-partisan group and by retired Superior Court Judge (and democrat) JUD Downs.
15. Plaintiff responded to Woodard, and copied Defendant on his email, explaining that the Greene sign was placed there by Faasse, who was an undivided, one-half owner of Plaintiff's residence.
16. Further, Plaintiff responded that he himself had not endorsed Greene, and that he had also placed on his private Facebook page that he would be interviewing Greene on October 17, 2020.
17. Plaintiff had also extended an invitation to Defendant for this particular broadcast; however, that invitation was declined.
18. The purpose of posting the two endorsements Greene had received was in the hopes of driving listeners to his radio show.
19. While it is assumed Defendant was made aware of these proceedings before Woodard's October 21, 2020, email to Plaintiff, if that assumption is incorrect, on October 22, 2020, Defendant was fully apprised both of Woodard's allegations and Plaintiff's response when he was copied on Plaintiff's responding email to Woodard.
20. At this time, October 22, 2020, Plaintiff had not been apprised of the third allegation regarding his purported conversation with the volunteer at the local GOP headquarters.
21. On or about December 2, 2020, Plaintiff first learned that he was being accused "saying disparaging things" about Defendant. He did not receive a copy of the "evidence" against him until the evening of December 3, 2020, when the Executive Committee found him to have committed acts of disloyalty.¹
22. On November 9, 2020, Defendant evinced an intimate knowledge of these proceedings when he sent an email to Woodard endorsing McKinnon's resolution, "to protect future candidates."

¹ "Evidence" is placed in quotations because the volunteer's identity was not revealed until that evening when an unsigned, typed statement was provided to Plaintiff. The volunteer was also not in attendance or subjected to any questioning regarding these allegations.

23. Defendant never deigned to respond to Plaintiff's multiple emails regarding these proceedings.
24. Defendant did not deign to respond to Plaintiff's inquiry as to whether or not he had written a letter in support of these proceedings and how he could not have to recuse himself from all of Plaintiff's cases.
25. Defendant did not deign to respond to the undersigned's email to McKinnon and copied to Defendant, sent before the December 3, 2020, meeting, requesting clarification of the proceedings to be used and the evidence to be presented.
26. Defendant did not deign to attend the December 3, 2020, executive committee meeting at which they presented their resolution on behalf of, and with the approval of, Defendant.
27. In the December 9, 2020, edition of *The Cherokee Scout*, a front page story ran detailing the December 3, 2020, proceedings, and in particular, that Plaintiff was not afforded the opportunity to face his accuser regarding the alleged incident of October 14, 2020, involving the local volunteer.
28. To date, Defendant has done nothing to distance himself from the actions of Woodard, McKinnon, the Cherokee County GOP, or himself.

IV. LAW.

29. Rule 57 of the North Carolina Rules of Civil Procedure permits Plaintiff to seek such non-monetary relief such as the judgment he seeks. It also permits the Court to set such matters for expedited hearing, if warranted.
30. Canon 2 of the North Carolina Code of Judicial Conduct reads, in pertinent part:

A judge should avoid impropriety in all the judge's activities.

A. A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. The judge should not lend the prestige of the judge's office to advance the private interest of others except as permitted by this Code...
31. Canon 3 of the North Carolina Code of Judicial Conduct reads, in pertinent part:

A judge should perform the duties of the judge's office impartially and diligently.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office

prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

C. Disqualification.

(1) On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where:

(a) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

D. Remittal of Disqualification.

Nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative.

32. Canon 7 reads, "A judge may engage in political activity consistent with the judge's status as a public official." Neither subsections A, B, nor C of Canon 7 specifically address the situation presented here.

V. **COUNT ONE- DEMAND FOR DECLARATORY JUDGMENT ORDERING DEFENDANT TO RECUSE HIMSELF FROM EVER HEARING CASES WHERE A LITIGANT IS REPRESENTED BY PLAINTIFF.**

33. While it is suspected Defendant knew of these proceedings much sooner, by no later than October 22, 2020, Defendant had been apprised of Woodard's, McKinnon's, and the Cherokee County GOP's accusations against Plaintiff.

34. By October 22, 2020, Defendant had been fully apprised of all the allegations Woodard, McKinnon, and the Cherokee County GOP chose to disclose to Plaintiff and Plaintiff's responses to the allegations of which he was informed.² This is so because he was copied on Plaintiff's email response to Woodard.

35. Therefore, by October 22, 2020, Defendant knew or had reason to know that Plaintiff was in a long-term relationship with Faasse.

² The distinction being drawn is that Plaintiff was not informed of the third allegation of October 14, 2020, until just before the December 3, 2020, meeting of the executive committee.

36. Therefore, by October 22, 2020, Defendant knew or had reason to know that Faasse was co-owner with an undivided one-half interest in the residence in which he and Plaintiff lived.
37. Therefore, by October 22, 2020, Defendant knew or had reason to know that Plaintiff had not personally endorsed Greene, but rather had listed two of Greene's endorsements along with advertising that Greene would be appearing on his radio show on October 17, 2020.
38. Defendant knew of the radio show of October 17, 2020, because he was invited to speak and declined the invitation.
39. Defendant knew, or had reason to know, that Plaintiff paid for the radio show himself and further knew or had reason to know that Plaintiff was advertising upcoming interviews to his radio show to draw in listeners.
40. Upon information and belief, Defendant did nothing to satisfy any doubts he had in his mind to those representations. Just one simple example would have been a computer search of Cherokee County Register of Deeds to verify Plaintiff's assertion that Faasse was an undivided one-half owner of their shared residence.
41. Nevertheless, and despite winning over sixty-five (65%) of the popular vote in the November 3, 2020, general election, on November 9, 2020, Defendant, with clear prior knowledge of Woodard's, McKinnon's, and the Cherokee County GOP's actions, endorsed those actions, which were taken on his behalf, in the form of their resolution to find Defendant guilty of committing party disloyalty.
42. Defendant made this decision to endorse Woodard's, McKinnon's, and the Cherokee County GOP's resolution against Plaintiff despite clear evidence from Plaintiff that there was nothing illegal, immoral, or disloyal in his partner placing a Green for District Court Judge sign in their shared yard.
43. Defendant made this decision to endorse Woodard's, McKinnon's, and the Cherokee County GOP's resolution despite clear knowledge of Plaintiff's and Faasse's long-term relationship.
44. Defendant made this decision to endorse Woodard's, McKinnon's, and the Cherokee County GOP's resolution despite clear knowledge that Plaintiff owned the radio show he hosted and used it to primarily promote his law practice, and that there was nothing illegal, immoral, or disloyal in his so doing.
45. Upon information and belief, Defendant made this decision to endorse Woodard's, McKinnon's, and the Cherokee County GOP's resolution despite the fact that Plaintiff was neither informed of the October 14, 2020, allegation nor presented with it until the start of the executive committee meeting of December 3, 2020.

46. It is not unreasonable for an individual of reasonable intelligence to presume of Defendant that he appreciates a nearly 20-year, long-term relationship between Plaintiff and Faasse and the difficulties that it would cause that relationship for Plaintiff to demand of his partner to silence his own political speech and remove the Green for District Court Judge sign from a yard he owns.
47. It is not unreasonable for an individual of reasonable intelligence to presume of Defendant that he understands basic property law such that an individual with an undivided one-half interest in a residence may put up any political sign on that property he chooses to place. That is to say that Defendant understood Faasse had every right to express his political speech by placing a Greene for District Court Judge sign in the yard of his residence he shared with Plaintiff.
48. It is not unreasonable for an individual of reasonable intelligence to presume of Defendant that he understands basic capitalism in that Plaintiff pays for and promotes a weekly radio show to promote his law practice.
49. It is not unreasonable for an individual of reasonable intelligence to presume of Defendant that he understands basic advertising for the purpose of drawing listeners to Plaintiff's radio show.
50. It is not unreasonable for an individual of reasonable intelligence to presume of Defendant he could read the Facebook posts Plaintiff posted to advertise his interview of Greene and realize that Plaintiff himself was not endorsing Greene.
51. It is not unreasonable for an individual of reasonable intelligence to presume of Defendant, and in particular a licensed attorney, that Plaintiff should have been permitted to face his accuser as it regards the alleged incident of October 14, 2020.
52. Presuming all of these things, it is also not unreasonable for an individual of reasonable intelligence to presume Defendant has acted out of prejudice and bias against Plaintiff.
53. Presuming all of these things, it is also not unreasonable for an individual of reasonable intelligence to presume Defendant has acted out of an intent to warn all other GOP members that may oppose his candidacy in future elections. According to his own email of November 9, 2020, he endorsed Woodard's, McKinnon's, and the Cherokee County GOP's resolution to protect future candidates; most importantly, himself.
54. Presuming all of these things, it is also not unreasonable for an individual of reasonable intelligence to presume that Defendant has violated the Canon's of the North Carolina Judicial Code listed above.
55. For all the foregoing reasons, Plaintiff moves this Court to enter a Declaratory Judgment ordering Defendant to recuse himself from all future litigation where

Plaintiff represents one of the parties and prohibiting Defendant from presiding over the same.

VI. COUNT TWO- DEMAND FOR DECLARATORY JUDGMENT ORDERING DEFENDANT TO RECUSE HIMSELF FROM EVER HEARING CASES WHERE A LITIGANT IS REPRESENTED BY THE UNDERSIGNED ATTORNEY.

56. For obvious reasons, Plaintiff and the undersigned move the Court for a similar such order regarding any case in which the undersigned represents a party.

WHEREFORE, PREMISES CONSIDERED, Plaintiff moves this Court for a Declaratory Judgment Ordering Defendant to recuse himself from ever hearing cases where a litigant is represented by Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff moves this Court for a Declaratory Judgment Ordering Defendant to recuse himself from ever hearing cases where a litigant is represented by the undersigned attorney.

RESPECTFULLY SUBMITTED this, the 30th day of December 2020.

LEO J. PHILLIPS, Esquire, Plaintiff

BY: THE LAW OFFICE OF RICH CASSADY

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