

STATE OF NORTH CAROLINA

File No.

20 CVD 668

CHEROKEE County

In The General Court Of Justice
[X] District [ ] Superior Court Division

Name Of Plaintiff
LEO J. PHILLIPS, c/o Rich Cassady, Esquire
Address
Post Office Box 2033
City, State, Zip
Franklin NC 28744-2033

CIVIL SUMMONS
[ ] ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS
Name Of Defendant(s)
KALEB DANIEL WINGATE

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
KALEB DANIEL WINGATE
156 Boundary Street
Waynesville NC 28786

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales.
¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)
Rich Cassady, Esquire
The Law Office of Rich Cassady, P.L.L.C.
Post Office Box 2033
Franklin NC 28744-2033

Date Issued 12-30-20 Time 9:22 AM
Signature [Handwritten Signature]
[ ] Deputy CSC [X] Assistant CSC [ ] Clerk Of Superior Court

[ ] ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time [ ] AM [ ] PM
Signature
[ ] Deputy CSC [ ] Assistant CSC [ ] Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	-------------------------------------------------------------------------------	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA

File No.

20 CVD 668

CHEROKEE County

In The General Court Of Justice
[X] District [ ] Superior Court Division

Name And Address Of Plaintiff 1
LEO J. PHILLIPS, c/o Rich Cassady, Esquire
The Law Office of Rich Cassady, P.L.L.C.
Post Office Box 2033
Franklin NC 28744-2033

Name And Address Of Plaintiff 2

2020 JUN 30 A 9:20
GENERAL
[CIVIL ACTION COVER SHEET]
[X] INITIAL FILING [ ] SUBSEQUENT FILING
Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1
KALEB DANIEL WINGATE
156 Boundary Street
Waynesville NC 28786

Name And Address Of Attorney Or Party, If Not Represented
(complete for initial appearance or change of address)
Rich Cassady, Esquire
The Law Office of Rich Cassady, P.L.L.C.
Post Office Box 2033
Franklin NC 28744-2033

Summons Submitted
[X] Yes [ ] No

Telephone No. (828) 634-4132
Cellular Telephone No.
NC Attorney Bar No. 35821
Attorney Email Address rich@cassadylaw.net

Name And Address Of Defendant 2

[X] Initial Appearance in Case [ ] Change of Address
Name Of Firm The Law Office of Rich Cassady, P.L.L.C.
Fax No. (828) 634-7032

Summons Submitted
[ ] Yes [ ] No

Counsel For
[X] All Plaintiffs [ ] All Defendants [ ] Only: (list party(ies) represented)

[ ] Jury Demanded In Pleading [ ] Complex Litigation [ ] Stipulate to Arbitration

TYPE OF PLEADING

- (check all that apply)
[ ] Amend (AMND)
[ ] Amended Answer/Reply (AMND-Response)
[ ] Amended Complaint (AMND)
[ ] Assess Costs (COST)
[ ] Answer/Reply (ANSW-Response) (see Note)
[ ] Change Venue (CHVN)
[X] Complaint (COMP)
[ ] Confession Of Judgment (CNFJ)
[ ] Consent Order (CONS)
[ ] Consolidate (CNSL)
[ ] Contempt (CNTP)
[ ] Continue (CNTN)
[ ] Compel (CMPL)
[ ] Counterclaim (CTCL) Assess Court Costs
[ ] Crossclaim (list on back) (CRSS) Assess Court Costs
[ ] Dismiss (DISM) Assess Court Costs
[ ] Exempt/Waive Mediation (EXMD)
[ ] Extend Statute Of Limitations, Rule 9 (ESOL)
[ ] Extend Time For Complaint (EXCO)
[ ] Failure To Join Necessary Party (FJNP)

- [ ] Failure To State A Claim (FASC)
[ ] Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
[ ] Improper Venue/Division (IMVN)
[ ] Including Attorney's Fees (ATTY)
[ ] Intervene (INTR)
[ ] Interplead (OTHR)
[ ] Lack Of Jurisdiction (Person) (LJPN)
[ ] Lack Of Jurisdiction (Subject Matter) (LJSM)
[ ] Modification Of Child Support In IV-D Actions (MSUP)
[ ] Notice Of Dismissal With Or Without Prejudice (VOLD)
[ ] Petition To Sue As Indigent (OTHR)
[ ] Rule 12 Motion In Lieu Of Answer (MDLA)
[ ] Sanctions (SANC)
[ ] Set Aside (OTHR)
[ ] Show Cause (SHOW)
[ ] Transfer (TRFR)
[ ] Third Party Complaint (list Third Party Defendants on back) (TPCL)
[ ] Vacate/Modify Judgment (VCMD)
[ ] Withdraw As Counsel (WDCN)
[ ] Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

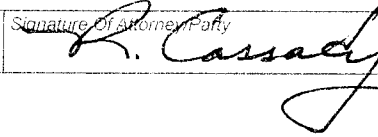
**CLAIMS FOR RELIEF**

- |                                                            |                                                                                      |                                                                                                      |
|------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Administrative Appeal (ADMA)      | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD)                                                    |
| <input type="checkbox"/> Appointment Of Receiver (APRC)    | <input type="checkbox"/> Medical Malpractice (MDML)                                  | <input type="checkbox"/> Real Property (RLPR)                                                        |
| <input type="checkbox"/> Attachment/Garnishment (ATTC)     | <input type="checkbox"/> Minor Settlement (MSTL)                                     | <input type="checkbox"/> Specific Performance (SPPR)                                                 |
| <input type="checkbox"/> Claim And Delivery (CLMD)         | <input type="checkbox"/> Money Owed (MNYO)                                           | <input checked="" type="checkbox"/> Other (specify and list each separately)<br>Declaratory Judgment |
| <input type="checkbox"/> Collection On Account (ACCT)      | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG)                           |                                                                                                      |
| <input type="checkbox"/> Condemnation (CNDM)               | <input type="checkbox"/> Negligence - Other (NEGO)                                   |                                                                                                      |
| <input type="checkbox"/> Contract (CNTR)                   | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN)                  |                                                                                                      |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP)                      |                                                                                                      |
| <input type="checkbox"/> Injunction (INJU)                 |                                                                                      |                                                                                                      |

Date

12/30/2020

Signature Of Attorney/Party



**FEES IN G.S. 7A-308 APPLY**

- Assert Right Of Access (ARAS)  
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
 Supplemental Procedures (SUPR)

**PRO HAC VICE FEES APPLY**

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.  Additional Plaintiff(s)

No.  Additional Defendant(s)       Third Party Defendant(s)

**Summons Submitted**

Yes    No

Yes    No

Yes    No

Yes    No

Yes    No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

**IN THE DISTRICT COURT OF CHEROKEE COUNTY, NORTH CAROLINA**

File No.: 20 CVD 6668

2020 DEC 30 A 9:20

LEO J. PHILLIPS, )  
                                 Plaintiff )  
                                 ) vs. )  
                                 ) KALEB DANIEL WINGATE, )  
                                 Defendant )

*AD*

**COMPLAINT FOR DECLARATORY JUDGMENT**

COMES NOW Plaintiff Leo J. Phillips, Esquire, by and through his attorney of record, Rich Cassady, Esquire, of the Law Office of Rich Cassady, P.L.L.C., pursuant to Rule 57 of the North Carolina Rules of Civil Procedure, and files this, his Complaint for Declaratory Judgment. In support of his Complaint, Plaintiff would show unto the Court the following, to-wit:

**I. PARTIES.**

1. Plaintiff Leo J. Phillips, Esquire, is a licensed practicing attorney in North Carolina and resides in Cherokee County, North Carolina. He has done so for more than six months preceding the filing of this action.
2. Defendant Kaleb Daniel Wingate, Esquire, is a licensed attorney in North Carolina and resides in Haywood County, North Carolina. He has done so for more than six months preceding the filing of this action.

**II. JURISDICTION AND VENUE.**

3. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties.
4. As the acts giving rise to this action occurred primarily in Cherokee County, venue is proper in Cherokee County.

**III. FACTS.**

5. Plaintiff is active in the North Carolina Republican Party ("GOP"). He served as a delegate to the 2016 National Convention where President Donald J. Trump was nominated to run for the office of President of the United States. He has remained active in both national, state, and local GOP affairs.

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.<sup>1</sup>
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."

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<sup>1</sup> "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.
29. Upon information and belief, Defendant has purportedly sent a letter to Plaintiff indicating his intention to recuse himself from Plaintiff's cases for the next six months.

#### IV. LAW.

30. 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.
31. 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...



32. 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.

33. 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.**

34. 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.

35. 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.<sup>2</sup> This is so because he was copied on Plaintiff's email response to Woodard.

36. Therefore, by October 22, 2020, Defendant knew or had reason to know that Plaintiff was in a long-term relationship with Faasse.
37. 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.
38. 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.
39. Defendant knew of the radio show of October 17, 2020, because he was invited to speak and declined the invitation.
40. 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.
41. 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.
42. 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.
43. 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.
44. 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.
45. Defendant made this decision to endorse Woodard's, McKinnon's, and the Cherokee County GOP's resolution despite clear knowledge that Plaintiff owned

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<sup>2</sup> 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.

the radio show he hosted and used it to primary promote his law practice, and that there was nothing illegal, immoral, or disloyal in his so doing.

46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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.
54. 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.

55. 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.

56. 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.**

57. 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.

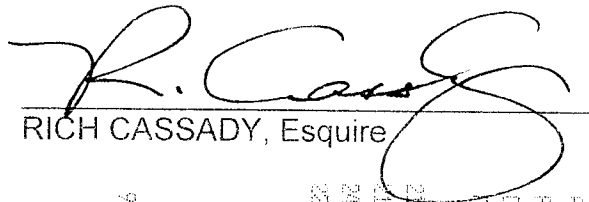
WHEREFORE, PREMISES CONSIDERED, Plaintiff moves this Court for a Declaratory Judgment Ordering Defendant to recuse himself from ever hearing cases where a litigant is represented by the undersigned attorney.

RESPECTFULLY SUBMITTED this, the 30<sup>th</sup> day of December 2020.

LEO J. PHILLIPS, Esquire, Plaintiff

BY: THE LAW OFFICE OF RICH CASSADY

BY:

  
RICH CASSADY, Esquire

RICH CASSADY, Esquire (NCB #35821)  
The Law Office of Rich Cassady, P.L.L.C.  
672 Highlands Road  
Post Office Box 2033  
Franklin, North Carolina 28744-2033  
(828) 634-4132  
(828) 634-7032 (fax)

9277 TO CHARGE

TOTAL PAID 150.00  
CA TEMPERES 200.00  
CHARGE 50.00

2720 NC CIVIL FEES 129.00  
1220 NC CIVIL LIA FEE 9.00  
2400 JUD TERM & SEAL 4.00  
2220 CO FWD FEE 1.00 16.00

LEO J. PHILLIPS, LEO  
RICH CASSADY, RICH CASSADY  
CASE NO. 2020-00010-0001-0001  
IT/DAK

10/27/20 12/30/20 10:43:59

CHEROKEE COUNTY CLERK OF COURT

STATE OF NORTH CAROLINA

File No.

20 CVD 668

CHEROKEE County

In The General Court Of Justice

Name And Address Of Plaintiff  
LEO J. PHILLIPS

FILED

SERVICEMEMBERS CIVIL RELIEF ACT  
AFFIDAVIT

VERSUS

2020 DEC 31 3:56

Name And Address Of Defendant  
KALEB DANIEL WINGATE

CHEROKEE CO., C.S.C.

G.S. Ch. 127B, Art. 4; 50 U.S.C. 3901 to 4043

NOTE: Though this form may be used in a Chapter 45 Foreclosure action, it is not a substitute for the certification that may be required by G.S. 45-21.12A.

AFFIDAVIT

I, the undersigned Affiant, under penalty of perjury declare the following to be true:

- As of the current date: (check one of the following)
  - a. I have personal knowledge that the defendant named above is in military service.\*
  - b. I have personal knowledge that the defendant named above is **not** in military service.\*
  - c. I am unable to determine whether the defendant named above is in military service.\*
- As of the current date, I  have  have not received a copy of a military order from the defendant named above relating to State active duty as a member of the North Carolina National Guard or service similar to State active duty as a member of the National Guard of another state. See G.S. 127B-27 and G.S. 127B-28(b).
- I  used  did not use the Servicemembers Civil Relief Act Website (<https://scra.dmdc.osd.mil/>) to determine the defendant's federal military service.
 

The results from my use of that website are attached.  
(NOTE: The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. Members of the North Carolina National Guard under an order of the Governor of this State and members of the National Guard of another state under an order of the governor of that state will not appear in the SCRA Website database.)
- The following facts support my statement as to the defendant's military service: (State how you know the defendant is or is not in the military. Be specific.)

I HAVE KNOWN DEFENDANT FOR OVER  
5 YEARS

\*NOTE: The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2). The term "military service" also includes the following: State active duty as a member of the North Carolina National Guard under an order of the Governor pursuant to Chapter 127A of the General Statutes, for a period of more than 30 consecutive days; service as a member of the National Guard of another state who resides in North Carolina and is under an order of the governor of that state that is similar to State active duty, for a period of more than 30 consecutive days. G.S. 127B-27(3) and G.S. 127B-27(4).

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date 12-31-20

Date 12-31-2020

Signature Of Affiant

Signature Of Person Authorized To Administer Oaths  
Kasean Tarkenton

Name Of Affiant (type or print)  
LEO J. PHILLIPS

Deputy CSC  Assistant CSC  Clerk Of Superior Court  Magistrate

Date My Commission Expires  
8-5-2024

NOTE TO COURT: Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

(Over)

# Information About Servicemembers Civil Relief Act Affidavits

## 1. Plaintiff to file affidavit

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

## 2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2).

State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

## 3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

## 4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

## 5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).

IN THE DISTRICT COURT OF CHEROKEE COUNTY, NORTH CAROLINA

File No.: 20 CVD 1668

2020 FEB 30 A 9:22

LEO J. PHILLIPS, )  
Plaintiff )  
vs. )  
KALEB DANIEL WINGATE, )  
Defendant )

2020 FEB 30 A 9:22  
11:00  
11:00

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**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS**

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COMES NOW Plaintiff, by and through undersigned counsel, pursuant to Rule 26, *et seq.* of the North Carolina Rules of Civil Procedure, and files this, his First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Provide your answers on separate paper.

**INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify all individuals assisting in the answering of these Interrogatories by full name.

**Answer:**

**INTERROGATORY NO. 2:** Identify all individuals and/or organizations by name, address, telephone number, email, Facebook profile, or other similar identifier to whom you communicated by any means regarding the Cherokee County GOP's planning and ultimate action *via* resolution of party disloyalty against Plaintiff. This should include all persons identified by you in the following interrogatories.

**Answer:**

**INTERROGATORY NO. 3:** Identify the date of the first time you were informed of the Cherokee County GOP's disapproval of the Greene for District Court Judge sign in the yard of Plaintiff's residence.

**Answer:**

**INTERROGATORY NO. 4:** Identify the name(s) of the individual(s) that informed you of the question of Interrogatory No. 3.

**Answer:**

**INTERROGATORY NO. 5:** Identify the date of the first time you were informed of the Cherokee County GOP's disapproval of Plaintiff's posting on his private Facebook page of Justin Greene's endorsements for District Court Judge.

**Answer:**

**INTERROGATORY NO. 6:** Identify the name(s) of the individual(s) that informed you of the question of Interrogatory No. 5.

**Answer:**

**INTERROGATORY NO. 7:** Identify the name(s) of the individual(s) that informed you of the October 14, 2020, alleged incident of Plaintiff questioning your qualifications for District Court Judge to the local GOP volunteer.

**Answer:**

**INTERROGATORY NO. 8:** Identify the name(s) of the individual(s) that informed you of the question of Interrogatory No. 7.

**Answer:**

**INTERROGATORY NO. 9:** Identify the date when you first received a copy of the draft of the Cherokee County GOP's resolution to find Plaintiff committed acts of party disloyalty.

**Answer:**

**INTERROGATORY NO. 10:** Identify the name(s) of the individual(s) that informed you of the question of Interrogatory No. 9.

**Answer:**

**INTERROGATORY NO. 11:** Identify all persons with whom you consulted regarding your decision to write your email of November 9, 2020, endorsing the Cherokee County GOP's resolution to find Plaintiff committed acts of party disloyalty.

**Answer:**

**INTERROGATORY NO. 12:** Identify any other persons and/or lawyers who you discussed with either Aubrey Woodard or officers of the local GOP's of the seven counties making up this district.

**Answer:**



## REQUESTS FOR PRODUCTION OF DOCUMENTS

**REQUEST FOR PRODUCTION NO. 1:** Produce copies of all communications in whatever platform (i.e., email, text, social media, private messaging, etc.) between yourself and Aubrey Woodard from March 3, 2020, to December 30, 2020.

**REQUEST FOR PRODUCTION NO. 2:** Produce copies of all communications in whatever platform (i.e., email, text, social media, private messaging, etc.) between yourself and Bennie Jo McKinnon from March 3, 2020, to December 30, 2020.

**REQUEST FOR PRODUCTION NO. 3:** Produce all copies of all communications in whatever form or platform (i.e., email, text, social media, private messaging, etc.) responsive to Interrogatories No. 3 and 4.

**REQUEST FOR PRODUCTION NO. 4:** Produce all copies of all communications in whatever form or platform (i.e., email, text, social media, private messaging, etc.) responsive to Interrogatories No. 5 and 6.

**REQUEST FOR PRODUCTION NO. 5:** Produce all copies of all communications in whatever form or platform (i.e., email, text, social media, private messaging, etc.) responsive to Interrogatories No. 7 and 8.

**REQUEST FOR PRODUCTION NO. 6:** Produce all copies of all communications in whatever form or platform (i.e., email, text, social media, private messaging, etc.) responsive to Interrogatories No. 9 and 10.

**REQUEST FOR PRODUCTION NO. 7:** Produce all copies of all communications in whatever form or platform (i.e., email, text, social media, private messaging, etc.) between yourself and all local chairpersons of Clay, Graham, Haywood, Jackson, Macon, and Swain Counties from March 3, 2020, and December 30, 2020.

## REQUESTS FOR ADMISSIONS

**REQUEST FOR ADMISSION NO. 1:** Admit you sent an email to Aubrey Woodard on or about November 9, 2020, endorsing the actions of the Cherokee County GOP in its resolution to find Plaintiff guilty of committing acts of party disloyalty.

**REQUEST FOR ADMISSION NO. 2:** Admit you sent the email of RQA No. 1 after the November 3, 2020, general election.

**REQUEST FOR ADMISSION NO. 3:** Admit you sent the email of RQA No. 1 after having received over sixty-five (65%) of the popular vote.

**REQUEST FOR ADMISSION NO. 4:** Admit you endorsed the actions of the Cherokee County GOP against Plaintiff to protect future candidates.

**REQUEST FOR ADMISSION NO. 5:** Admit you intend to be a future candidate for either District Court Judge or some other elected position in the future.

**Answer:**

**REQUEST FOR ADMISSION NO. 6:** Admit you are a future candidate.

**Answer:**

**REQUEST FOR ADMISSION NO. 7:** Admit you have known of Plaintiff's long-term relationship with Jim Faasse for years.

**Answer:**

**REQUEST FOR ADMISSION NO. 8:** Admit you received Plaintiff's email of October 22, 2020, to Aubrey Woodard and which Plaintiff copied to you.

**Answer:**

**REQUEST FOR ADMISSION NO. 9:** Admit you know by no later than October 22, 2020, that Jim Faasse had an undivided one-half interest in the residence he shares with Plaintiff.

**Answer:**

**REQUEST FOR ADMISSION NO. 10:** Admit you have the ability and knowledge to conduct a simple internet title search of the Cherokee County Register of Deeds.

**Answer:**

**REQUEST FOR ADMISSION NO. 11:** Admit that Jim Faasse had every legal right to place a Justin Greene for District Court Judge sign in the yard of the residence he co-owned with Plaintiff.

**Answer:**

**REQUEST FOR ADMISSION NO. 12:** Admit you knew Jim Faasse had every legal right to place a Justin Greene for District Court Judge sign in the yard of the residence he co-owned with Plaintiff.

**Answer:**

**REQUEST FOR ADMISSION NO. 13:** Admit you know Plaintiff hosts and pays for a weekly radio show.

**Answer:**

**REQUEST FOR ADMISSION NO. 14:** Admit you know Plaintiff invited you to speak on his radio show for the October 17, 2020, broadcast.

**Answer:**

**REQUEST FOR ADMISSION NO. 15:** Admit you declined this invitation.

**Answer:**

**REQUEST FOR ADMISSION NO. 16:** Admit Plaintiff's private Facebook posts informing the reader of Greene's two endorsements were not Plaintiff's personal endorsement of Greene.

**Answer:**

**REQUEST FOR ADMISSION NO. 17:** Admit Plaintiff did not publicly endorse Greene for District Court Judge.

**Answer:**

**REQUEST FOR ADMISSION NO. 18:** Admit that Plaintiff uses his radio show to advertise his law practice.

**Answer:**

**REQUEST FOR ADMISSION NO. 19:** Admit Plaintiff posted his private Facebook posts regarding Greene's endorsements along with another post inviting listeners to tune in on October 17, 2020.

**Answer:**

**REQUEST FOR ADMISSION NO. 20:** Admit you received Plaintiff's emails to Aubrey Woodard in which he copied you.

**Answer:**

**REQUEST FOR ADMISSION NO. 21:** Admit you received the undersigned's email to Bennie Jo McKinnon upon which you were copied.

**Answer:**

**REQUEST FOR ADMISSION NO. 22:** Admit you chose not to respond to emails from Plaintiff or the undersigned attorney.

**Answer:**

**REQUEST FOR ADMISSION NO. 23:** Admit you do not intend to recuse yourself from cases in which Plaintiff is an attorney for one of the litigants.

**Answer:**


**REQUEST FOR ADMISSION NO. 24:** Admit you do not intend to recuse yourself from cases in which the undersigned attorney is an attorney for one of the litigants.

**Answer:**

RESPECTFULLY SUBMITTED this, the 30<sup>th</sup> day of December 2020.

LEO J. PHILLIPS, Esquire, Plaintiff

BY: THE LAW OFFICE OF RICH CASSADY

BY:   
RICH CASSADY, Esquire

CERTIFICATE OF SERVICE

I, RICH CASSADY, Esquire, do hereby certify that the above and foregoing was served upon Defendant with the Complaint for Declaratory Judgment.

RICH CASSADY, Esquire (NCB #35821)  
The Law Office of Rich Cassady, P.L.L.C.  
672 Highlands Road  
Post Office Box 2033  
Franklin, North Carolina 28744-2033  
(828) 634-4132  
(828) 634-7032 (fax)

IN THE DISTRICT COURT OF CHEROKEE COUNTY, NORTH CAROLINA

File No.: 20 CVD 1668

LEO J. PHILLIPS, )  
Plaintiff )  
vs. )  
KALEB DANIEL WINGATE, )  
Defendant )

2020 DEC 30 A 9:22

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**NOTICE OF DEPOSITION**

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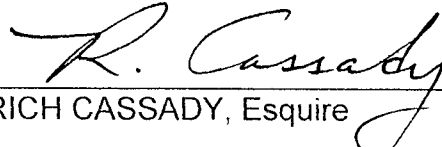
TO: Kaleb Daniel Wingate  
156 Boundary Street  
Waynesville, North Carolina 28786

PLEASE TAKE NOTICE that the undersigned will conduct the deposition of Defendant Kaleb Daniel Wingate on **April 27, 2021**, at **9:30 a.m.** at The Law Office of Rich Cassady, P.L.L.C., 672 Highlands Road, Franklin, North Carolina 28734.

RESPECTFULLY SUBMITTED this, the 30<sup>th</sup> day of December 2020.

LEO J. PHILLIPS, Plaintiff

BY: THE LAW OFFICE OF RICH CASSADY

BY:   
RICH CASSADY, Esquire

**CERTIFICATE OF SERVICE**

I, RICH CASSADY, Esquire, do hereby certify that I have served a copy of the above and foregoing Notice of Deposition upon Defendant with service of the Complaint.

RICH CASSADY, Esquire (NCB #35821)  
The Law Office of Rich Cassady, P.L.L.C.  
672 Highlands Road  
Post Office Box 2033  
Franklin, North Carolina 28744-2033  
(828) 634-4132  
(828) 634-7032 (fax)  
[rich@cassadyvlaw.net](mailto:rich@cassadyvlaw.net)

