

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Case No. 1:23-CV-734

ANITA S. EARLS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NORTH CAROLINA JUDICIAL )  
 STANDARDS COMMISSION; )  
 THE HONORABLE CHRIS )  
 DILLON, in his official capacity )  
 as Chair of the North Carolina Judicial )  
 Standards Commission; THE HONORABLE )  
 JEFFERY K. CARPENTER, in his official )  
 capacity as Vice Chair of the North Carolina )  
 Judicial Standards Commission; and the )  
 following Members of the North Carolina )  
 Judicial Standards Commission, each in his )  
 or her official capacity: THE HONORABLE )  
 JEFFERY B. FOSTER; THE HONORABLE )  
 DAWN M. LAYTON; THE HONORABLE )  
 JAMES H. FAISON III; THE HONORABLE )  
 TERESA VINCENT; MICHAEL CROWELL; )  
 MICHAEL T. GRACE; ALLISON MULLINS; )  
 LONNIE M. PLAYER JR.; JOHN M. CHECK; )  
 TALECE Y. HUNTER; DONALD L. )  
 PORTER; and RONALD L. SMITH, )  
 )  
 Defendants. )

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**DECLARATION OF ANITA S. EARLS**

ANITA S. EARLS, declares as follows:

1. I am a member of the North Carolina State Bar and an Associate Justice of the North Carolina Supreme Court. I am competent to make this Declaration.

2. The testimony contained in this Declaration is tendered by me in conformity with Rule of Professional Conduct 3.7(a)(1), and is believed by me to relate solely to uncontested facts. It is based on my personal knowledge.

3. I am a citizen and resident of Durham, North Carolina. In 2018, I was elected to the position of Associate Justice of the North Carolina Supreme Court. In that election, I received the votes of over 1.8 million North Carolinians, nearly one-third more than the votes received by the next-highest vote getter, the incumbent who was running for re-election.

4. I duly received a certificate of election from the State Board of Elections, a commission from the Attorney General as provided by law, and was sworn into office in January 2019 for a term of eight years – through December 2026 – as established by Art. IV, § 16 of the North Carolina Constitution. I am currently a candidate for reelection, having filed a letter in November 2022 declaring my intention to seek reelection to the office I currently hold.

5. On August 15, 2023, I was provided with a Notice Letter (the “Notice”) from the Judicial Standards Commission (the “Commission”) stating that the Commission had “reopened” a formal investigation into my speech “based on an interview” given “to the media in which you appear to allege that your Supreme Court colleagues are acting out of racial, gender, and/or political bias in some of their decision making.” (A true and complete copy of the Notice is attached to the Complaint filed by me Exhibit A.)

6. The interview referenced in the Commission’s Notice arose out of a May 17, 2023 article by North Carolina Solicitor General Ryan Park and two co-authors published in the magazine of the North Carolina Bar Association, *North Carolina Lawyer*, titled “Diversity and the North Carolina Supreme Court: A Look at the Advocates.”

7. Following up on the issues raised in that article, in June 2023, *Law360*, an on-line publication directed to the legal profession, sought an interview with me, the only non-white female serving on the North Carolina Supreme, which it published on June 20, 2023, under the title “North Carolina Justice Anita Earls Opens Up About Diversity” (the “Interview”). (A true and complete copy of the Interview is attached to the Complaint filed by me as Exhibit B.)

8. In that Interview, I answered various questions concerning diversity in the North Carolina courts.

9. The investigation of my comments during the Interview is actually the second investigation this year by the Commission into my speech.

10. Earlier this year, on March 20, 2023, the Commission issued a Notice to me indicating that “a written complaint [had been] filed with the Commission” and that it was initiating a formal investigation – dubbed “Inquiry No. 23-081” – concerning comments made by me regarding “matters being currently deliberated in conference by the Supreme Court” and discussed by her at “two public events,” and subsequently in a media inquiry. (A true and complete copy of the March 20, 2023 letter initiating the investigation (“Notice No. 1”) is attached to the Complaint filed by me as Exhibit C.) I

understood the gravamen of that notice to be that I had improperly disclosed confidential information.

11. As a result of the institution of that earlier investigation, I was required to retain a lawyer, to submit to a lengthy and probing interview by Commission staff, and to devote a substantial amount of time to defending myself, taking away time from the role to which I have been elected.

12. In response to that earlier investigation, my counsel submitted a substantial letter explaining why my conduct not only did not violate any of the Canons of the Code of Judicial Conduct (the “Code”), but was actually consistent with the endorsement of Canon 4(A) of the Code of judges engaging in activities “concerning the legal. . .or governmental system or the administration of justice.” (A true and complete copy of my counsel’s response letter Notice No 1 is attached to the Complaint filed by me as Exhibit D.)

13. In addition to the response letter, I also submitted statements to the Commission supporting my position from four retired Supreme Court Justices and a member of the North Carolina General Assembly.

14. On May 16, 2023, counsel for the Commission reported to my counsel that a Commission Panel had met on May 12, 2023 and voted to dismiss the complaint against me without any further action.

15. Later, on June 12, 2023, through counsel, I informed Commission Counsel that I was waiving my right to confidentiality regarding the investigation pursuant to Commission Rule 6(b)(2).<sup>1</sup>

16. Despite the dismissal, Commission Counsel informed my counsel that she wanted to “remind” me of the “language in Canon 2(A), that 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.”

17. I took that “reminder” as a caution to be certain that my public comments did not reveal any confidential matters, as that is what is required to comply with the law; and to carry out my duties to uphold the fair and equitable administration of justice, as that is what the Code contemplates will promote public confidence in the judiciary. I did not, at that time, take it as a warning that if I continued to speak out on issues of public concern, I would again be subject to investigation and discipline for exercising my First Amendment rights.

18. It now appears to me, however, that the warning was also intended to stop me from speaking on issues of public concern more broadly.

19. The Commission’s continuing efforts to investigate and potentially discipline me are a blatant attempt to chill my First Amendment rights to freedom of speech. The actions of the Commission discourage both me and other judges and candidates from making statements critical of the judicial system. In my view, the statements made by me in the Interview are core political speech protected by the First

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<sup>1</sup> On August 28, 2023, I also waived confidentiality with respect to the new investigation.

Amendment, appropriate for judges, consistent with prior statements made publicly by other North Carolina judges, and intended to contribute to the improvement of our legal system.

20. The series of investigations into me has led to a chilling of those First Amendment rights. As a result of the actions of the Commission, I turned down an invitation to write an article for a national publication, and decided not discuss the issue of the racial and gender composition of state courts in response to a request to contribute an essay to the *Yale Law Review* forum about state courts because of concerns that it could lead to further investigation by the Commission.

21. In addition, I refrained from speaking publicly at a meeting of the Equal Access to Justice Commission concerning a proposal to extend a court rule that broadens the pool of advocates available to indigent litigants for fear that I could not speak on the subject without running the risk of discipline from the Commission. I also declined to provide my personal views on the merits of the proposal when directly asked to do so in a private conversation with a person with a professional stake in the issue. I have further considered whether any statement I make in the judicial opinions I issue might also subject me to discipline.

22. The effects of the Commission's investigations have not only chilled my free-speech rights but have also interrupted my ability to do my work as a Justice of the North Carolina Supreme Court. Those effects have also taken a substantial emotional toll as I try to negotiate what I perceive as the Commission's capricious line on what judges can and cannot say about important public issues affecting the justice system.

23. I have substantial concerns that discipline in any form from the Commission has the potential to derail me from seeking or being considered for any future professional opportunities. Those concerns have caused me considerable stress and anxiety.

24. In my current role as both a judge and a judicial candidate (as well as in my role as a citizen), I intend to continue to engage in the core political speech of the type described in this Declaration in a manner that potentially subjects me to further investigations by the Commission backed by the additional threat of other discipline under the Code.

25. I believe that the First Amendment provides me and every American the right to free speech and to bring to light imperfections and unfairness in our political and judicial systems. I believe that public confidence in the judiciary is best promoted by honestly looking at the facts, not by sweeping the truth under the rug or silencing dissenters.

26. For those reasons, I am seeking to enjoin the Commission from purporting to reopen its earlier-dismissed investigation and its investigation of my statements on matters of public concern generally, including statements made by me in the Interview.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th of August, 2023, at Durham, North Carolina.

  
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Anita S. Earls