



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

July 3, 2023

VIA FIRST-CLASS MAIL

Chief Judge Greenlee
Gaston County Court
325 N Marietta St
Gastonia, NC 28052

Re: Misconduct Complaint against Magistrate Oakes

Dear Chief Judge Greenlee,

We write to submit a complaint and request disciplinary action regarding unethical and prejudicial misconduct committed by Magistrate Mark Oakes. Magistrate Oakes publicly posted inflammatory and improper comments to social media about an ongoing criminal case over which he had presided. *See* Mead Affidavit, Exhibit A. His comments demonstrate a lack of judicial temperament, diminish confidence in the judiciary, and violate the North Carolina Rules of Conduct for Magistrates, which prohibit, among other things, making “public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law.” Rule 3(B)(7).

The prejudicial comments arose out of a criminal case brought in October 2021 against Joshua Rohrer, a then-homeless veteran who was accused of panhandling and resisting arrest. In the course of the arrest, which was captured on video, the police officers used force against Mr. Rohrer and his service dog. After being tased by the police, Mr. Rohrer’s service dog ran away and was subsequently hit by a car and killed. Following the arrest, Magistrate Oakes presided over Mr. Rohrer’s initial presentment, at which time Magistrate Oakes imposed a \$3,000 bail. Mr. Rohrer’s family secured Mr. Rohrer’s release by paying the required amount.

All charges against Mr. Rohrer relating to this incident were dismissed on July 6, 2022. This incident is now the subject of a federal civil rights lawsuit, *Rohrer v. Gastonia*, 3:23-cv-00396.

On October 29, 2021, a few weeks after presiding over Mr. Rohrer’s first appearance and while the case remained pending, Magistrate Oakes posted comments on the Gastonia Police Department’s public Facebook page using his public Facebook account¹ about the incident giving rise to the arrest and Mr. Rohrer’s criminal case. *See* Mead Affidavit, Exhibit A. Those posts remain available on Facebook to this day, and can be seen at:
<https://www.facebook.com/GastoniaPoliceDepartment/posts/pfbid092ALbxjtywxCqXnWgdXJ2gVETZATjn3RcSb42A9q1vwzDUNeRfZ4qYnG8pEAoPChl>.

¹ This appears to be Magistrate Oakes’s account. It describes him as a North Carolina state employee and has a picture of himself with what appears to be the seal of the court in the background. *See* Mead Affidavit, Exhibit B.

In his posts, Magistrate Oakes publicly commented about the substance of Mr. Rohrer’s case, stating that he “knows more about this case” than other members of the public, accusing critics of the officers’ actions of being “sheep” and “low information loud mouths,” and implying that Mr. Rohrer had violated the law, even though Mr. Rohrer was presumed innocent and no finding of guilt had been made by any tribunal. The following images show comments posted by Magistrate Oakes:



See Mead Affidavit, Exhibit A.

These comments were about an ongoing criminal proceeding over which Magistrate Oakes had presided in Gaston County Court. Magistrate Oakes had already issued one ruling in the case against Mr. Rohrer. Nevertheless, he publicly insinuated that Mr. Rohrer was guilty, suggested he had non-public information about the case, and insulted members of the public who expressed differing opinions about the incident.

This conduct falls far outside the bounds of what is appropriate for a judicial officer and reveals a lack of judgment, impartiality, and judicial temperament. It also violates the Rules of Conduct for Magistrates in N.C. Gen. Stat. § 7A-171.3.

First, Rule 3(B)(7) provides that “[a] magistrate should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law.” Magistrate Oakes did exactly that: He commented about the merits of an ongoing criminal proceeding arising in North Carolina and implicating state law.

Second, Rule 3(B)(5) states: “Except as authorized by law, the magistrate should neither knowingly initiate nor knowingly consider ex parte or other communications concerning the matters involved in a pending proceeding.” Rule 3(B)(5). Again, Magistrate Oakes did exactly what the rules prohibit and “initiated . . . communications” concerning Mr. Rohrer’s pending case in a public forum.

This misconduct is particularly concerning because Magistrate Oakes’s public comments were about a pending proceeding over which he himself presided. Accordingly, Magistrate Oakes’s comments also violated the principles set forth in Rules 3(B)(2) and (3), which compel a Magistrate to be “unswayed by . . . public clamor or fear of criticism” and to be “patient, dignified, and courteous” to litigants and others. They further fail Rule 1’s command to “personally observe appropriate standards of conduct to ensure that the integrity of the office is protected and preserved.” Whatever Magistrate Oakes’s intention in making public posts calling members of the public “sheep” and “low information loud mouths” and telling them to “go change [their] diaper,” he acted improperly by engaging in actions that “would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the judicial office.” *In re Edens*, 290 N.C. 299, 305 (1976).

These rules of conduct are crucial to public confidence in the judiciary. They flow from the foundational premise that the courts are, and must continue to be, a fair and impartial system of justice where cases are resolved according to law, without prejudice or bias, following full and fair opportunities for the parties to be heard. As the United States Supreme Court has long recognized, public perception of judicial integrity is “a state interest of the highest order,” *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009), and “justice must satisfy the appearance of justice,” *Offutt v. United States*, 348 U.S. 11 (1954). Given the power wielded by magistrates, the lack of other mechanisms for accountability, and the role they play in administering justice, the State rightfully insists that magistrates’ “conduct should be consistent with that expected of an impartial member of the judiciary.” *Id.* Commentary [5]. When judicial officials make public, inflammatory comments demonstrating partiality in a pending matter over which they have presided, public confidence suffers. Because “[t]he judiciary’s authority . . . depends in large measure on the public’s willingness to respect and follow its decisions,” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 445 (2015), the State should discipline Magistrate Oakes for his grossly inappropriate conduct in this matter.

In sum, Magistrate Oakes’s comments violate the Rules of Conduct for Magistrates. Worse, they reveal a lack of judicial temperament and threaten the judiciary’s appearance of impartiality and public confidence in this State’s judiciary. The inflammatory and insulting nature of the comments, coupled with the close nexus between the comments and Magistrate Oakes’s adjudicatory obligations with respect to a then-pending criminal case, reflect “conduct

prejudicial to the administration of justice that brings the judicial office into disrepute.” *In re Mobley*, 204 N.C. App. 369, 696 S.E.2d 202 (2010); *see also* N.C. Gen. Stat. § 7A-173 (allowing for suspension and removal of magistrates).

We therefore request that you take appropriate disciplinary action against Magistrate Oakes.

Respectfully submitted,

/s/ Joseph Mead
Joseph Mead
Elizabeth R. Cruikshank
INSTITUTE FOR CONSTITUTIONAL
ADVOCACY AND PROTECTION
Georgetown University Law Center
600 New Jersey Ave., N.W.
Washington, D.C. 20001
(202) 661-6728
jm3468@georgetown.edu