

No. 283A22-2

NINTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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IN THE MATTER OF:

From Franklin County

PATRICIA BURNETTE CHASTAIN

\*\*\*\*\*

**RESPONSE TO PETITION FOR DISCRETIONARY REVIEW AND  
REQUEST TO CERTIFY ADDITIONAL ISSUES FOR REVIEW  
UNDER APPELLATE RULE 15**

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Appellant Patricia Burnette Chastain is a former Franklin County Clerk of Court. Ms. Chastain was removed from office after a trial demonstrated her long history of using the clerk’s office to undermine the judicial officials, law enforcement agents, attorneys, and citizens she was supposed to be serving.

The removal action was precipitated by a shocking body-worn camera video involving Ms. Chastain and Appellee Jeffery Thompson’s clients. That video showed Ms. Chastain intimidating Mr. Thompson’s clients, making false, misleading, and threatening statements to the clients about her authority, undermining a restraining order entered by a Franklin County

judge to protect Mr. Thompson's clients, and advising the clients to hire another lawyer.

Based on the video and several other incidents, Mr. Thompson instituted an action seeking Ms. Chastain's removal as Franklin County Clerk of Court. Ms. Chastain obtained an order disqualifying all of Franklin County's resident superior court judges from hearing the matter. In response, the Chief Justice appointed the Honorable Thomas H. Lock to hear and determine the removal action against Ms. Chastain.

After two appeals and two separate Court of Appeal opinions,<sup>1</sup> the Court of Appeals recently affirmed Judge Lock's determination that Ms. Chastain engaged in willful misconduct warranting her permanent removal from office ("*Chastain II*"). Because of a dissenting opinion in *Chastain II*, Ms. Chastain seeks this Court's review of certain aspects of the removal decision.

To be clear, no judge has ever said that Ms. Chastain did *not* engage in misconduct. Even Judge April Wood's dissenting opinion in *Chastain II* "join[ed] with the trial court's reprimand of Ms. Chastain," noting that "it is not the place of a Clerk of Superior Court to interject herself into the legal

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<sup>1</sup> Ms. Chastain's petition for discretionary review inaccurately states (at 34) that "this Court" has previously found that Ms. Chastain's due process rights were violated and that "[t]his Court" vacated the trial court's original removal order. Not so. This appeal will be this Court's first occasion to address the merits of this case.

dispute of two neighbors and make false statements.” (Slip. Op. at 16, Woods, J., dissenting). The disagreements between the majority and dissenting opinions are (1) whether the factfinder or the appellate courts decide if a clerk’s conduct is egregious *enough*, and (2) whether cumulative acts of misconduct by a clerk can support removal or disqualification.

But on a more basic level, significant uncertainty exists surrounding the proper legal standards and procedures for removing or disqualifying a clerk of court under the North Carolina Constitution and General Statutes. For example, the majority opinion in *Chastain II* devoted several pages to criticizing the standard for removal adopted by the earlier panel (“*Chastain I*”).

Thus, for this Court to decide whether the Court of Appeals properly affirmed the trial court’s decision, it must first establish the standards and procedures that govern a clerk’s removal or disqualification. And because there are additional grounds for review that would support the removal or disqualification of Ms. Chastain from office, Appellee asks this Court to certify the issues listed at the end of this filing for review. With these additional issues before it, this Court will have at its disposal more diverse tools for affirming the judgment below.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In December 2019, Ms. Chastain (then Franklin County Clerk of Court) was caught on camera trying to circumvent a restraining order entered by a

Franklin County judge. (See R pp 6-7; *see also* body-worn camera footage filed electronically with the Court of Appeals). As shown during the trial that followed, this was not the first time Ms. Chastain had used her position to engage in misconduct, including seeking to control a magistrate, disparaging judicial officials, interfering with sensitive and ongoing judicial proceedings, mishandling funds, and filing a deed she had surreptitiously modified. Although not relevant at this stage of the proceedings,<sup>2</sup> the details of those multiple acts of misconduct will be the subject of the forthcoming briefing.

#### **A. Trial and First Removal Order**

On 13 July 2020, Mr. Thompson filed an affidavit and complaint asserting that Ms. Chastain had committed numerous incidents of willful misconduct while serving as clerk of court. (R pp 3-11). The affidavit was filed under N.C. Gen. Stat. § 7A-105, which authorizes suspension or removal of a clerk of superior court “for willful misconduct or mental or physical incapacity.”

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<sup>2</sup> Ms. Chastain’s petition for discretionary review fabricates an imaginary plot to oust her from office, supposedly motivated by partisan politics. The petition ignores the trial court’s detailed findings regarding Ms. Chastain’s numerous acts of misconduct, true motives, and credibility. Because Ms. Chastain lost at trial, the evidence is not viewed in her favor. As far as partisan politics, nothing could be further from the truth. Ms. Chastain’s removal from office was supported by a bi-partisan group of witnesses. What’s more, Ms. Chastain’s party selected another candidate to run for Franklin County Clerk of Court after Ms. Chastain’s machinations were revealed. In an effort to circumvent her own party, Ms. Chastain switched party affiliation during the first appeal. Those efforts failed, with Franklin County’s voters rejecting Ms. Chastain’s bid for Clerk of Court during the 2022 general election.

Ms. Chastain was suspended by order entered the same day the affidavit was filed. (R pp 43-51).

From the start, Ms. Chastain insisted that she could not receive a fair trial from Franklin County's resident superior court judges. On Ms. Chastain's motion, (R pp 54-58), all of Franklin County's resident superior court judges were disqualified and recused from hearing the case, (R pp 71-72). As a result, the Chief Justice commissioned Judge Lock to hear and decide the removal action against Ms. Chastain. (R pp 77, 150).

In September 2020, Judge Lock conducted a three-day trial. A group of varied and bi-partisan witnesses—including Franklin County's chief district court judge, chief magistrate, district attorney, sheriff and one of his deputies, as well as a local attorney and members of the public—testified and presented evidence supporting Ms. Chastain's removal from office. Although Ms. Chastain testified during the affiant's case-in-chief, she presented no witnesses or evidence on her own behalf. (*See generally* 28-30 Sept T).

On 16 October 2020, Judge Lock entered an 11-page order finding that Ms. Chastain had engaged in willful misconduct and exhibited disregard for the high standards of the office of clerk that warranted "her permanent removal from the office." (R pp 76-86).



## B. Ms. Chastain’s First Appeal

Ms. Chastain appealed her removal. (R p 89). In *Chastain I*, Judge Dillon, writing for the panel, *sua sponte* announced that Article IV of the North Carolina Constitution requires Franklin County’s senior resident superior court judge (in this case, Judge Dunlow) to hear all *removal* proceedings against a clerk of court—even if his recusal would otherwise be warranted.<sup>3</sup>

At the same time, *Chastain I* adopted an alternative legal ground to support Judge Lock’s decision: if Ms. Chastain was guilty of corruption or malpractice, then she could be permanently disqualified from serving as clerk under Article VI of the Constitution. Although everyone on the panel agreed that “there was evidence in the record that could support [Judge Lock’s initial] decision,” the *Chastain I* panel remanded the case “for [Judge Lock’s] reconsideration in accordance with this opinion.” *In re Chastain*, 281 N.C. App. 520, 521, 869 S.E.2d 738, 740 (2022).

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<sup>3</sup> *Chastain I*’s characterization of Judge Dunlow’s role in these removal proceedings as a mandatory, jurisdictional requirement is in tension with the Chief Justice’s prior orders (1) appointing an out-of-county judge to decide Ms. Chastain’s request to bar Judge Dunlow from hearing the removal proceedings, and (2) appointing Judge Lock to preside over the removal trial.

### **C. Second Removal Order**

On remand, Judge Lock determined that Ms. Chastain's conduct was egregious enough to warrant her permanent disqualification from office under Article VI. (R pp 149-60). Judge Lock made detailed findings of fact confirming that (1) Ms. Chastain's conduct rose to the level of corruption or malpractice in office required by *Chastain I*'s interpretation of Article VI of the Constitution, and (2) Ms. Chastain should be "permanently disqualified from serving in the Office of Clerk of Superior Court of Franklin County." (R p 160).

### **D. Ms. Chastain's Second Appeal**

Ms. Chastain appealed again. (R p 163). In a published opinion filed 20 June 2023, the Court of Appeals in *Chastain II* held that the trial court "properly disqualified Respondent from office as her conduct in office amounted to nothing less than corruption or malpractice." (Slip Op. at 2). However, *Chastain II* flagged "discrepancies" with *Chastain I*'s analysis of the appropriate legal standard. (*Id.* at 31). Specifically, the majority opinion in *Chastain II* concluded that *Chastain I*'s "application of the standard as to removal . . . was in error." (*Id.* at 36).

The dissenting opinion in *Chastain II* acknowledged that Ms. Chastain had engaged in misconduct. (Slip Op. at 16, Wood, J., dissenting). However, the dissent did not consider Ms. Chastain's misconduct to be "so *egregious* as to warrant permanent disqualification from office." (*Id.* at 1).

Based on Judge Wood’s dissent in *Chastain II*, Ms. Chastain noticed an appeal to this Court on 25 July 2023. She filed a petition for discretionary review the same day. The petition seeks discretionary review of a single issue.

**REASONS WHY THIS COURT SHOULD CERTIFY APPELLEE’S  
ADDITIONAL ISSUES FOR REVIEW**

The opinions in *Chastain I* and *II* show the disagreement and uncertainty surrounding the proper standards and procedures for removing a clerk of court from office. That disagreement and uncertainty satisfies the criteria for discretionary review under section 7A-31(c). *See State v. Lawrence*, 365 N.C. 506, 511, 723 S.E.2d 326, 330 (2012) (“It is the institutional role of this Court to provide guidance and clarification when the law is unclear or applied inconsistently.”).

Because of Ms. Chastain’s appeal under Appellate Rule 14, this Court will be asked “to determine whether there is error of law in the decision of the Court of Appeals.” N.C. R. App. P. 16(a). On the other hand, an appeal based on a dissent is generally limited to “the issue or issues which are the basis of the dissenting opinion.” N.C. R. App. P. 14(b)(1); *see also* N.C. R. App. P. 16(b). The dissenting opinion here, however, does not address all the pertinent issues. For example, what is the correct standard for removing or permanently disqualifying a clerk of court? Is a county’s senior resident superior court judge

jurisdictionally *required* to preside over removal proceedings under Article IV? These questions, and others, were not addressed by the dissent below.<sup>4</sup>

To be sure, appellees generally are allowed to present alternative bases in law that could support a trial court's decision without having to notice an appeal or petition for discretionary review. *See* N.C. R. App. P. 15(d), 28(c). But due to the uncertainty in this case, and to ensure that all appropriate issues needed to affirm the judgment are before this Court, Appellee requests that the issues listed below be certified for discretionary review as well.

#### **ADDITIONAL ISSUES TO BE BRIEFED**

Mr. Thompson intends to present the following additional issues to support the trial court's judgment in his new appellee's brief:

1) What are the governing legal and procedural standards for removing or disqualifying a clerk of court from office?

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<sup>4</sup> The seven issues listed in Ms. Chastain's notice of appeal go far beyond the two issues that were the basis for the dissenting opinion. The dissenting opinion was limited to whether Ms. Chastain's conduct was sufficiently egregious to warrant her disqualification and whether Ms. Chastain's cumulative misconduct could support disqualification under Article VI. (Slip. Op. at 2, 24, Woods, J., dissenting). As Ms. Chastain's petition for discretionary review is limited to a single issue, the remaining listed issues beyond the dissent are not before this Court. *Cryan v. Nat'l Council of YMCAs of the U.S.*, --- N.C. ---, 887 S.E.2d 848, 852-53 (2023) (explaining that to create a right to Supreme Court review under N.C. Gen. Stat. § 7A-30(2), each issue raised by the appellant's brief must have been specifically addressed by the dissenting opinion's reasoning).

2) What acts and evidence may a judge consider when deciding whether to remove or disqualify a clerk of court from office?

3) Does the Chief Justice have the authority to appoint out-of-county judges to decide a removal proceeding when the accused clerk obtains an order preventing the county's resident superior court judges from hearing the case?

4) Who may remove or disqualify a clerk of court from office?

5) Did the trial court appropriately remove or disqualify Ms. Chastain from office based on numerous acts of misconduct?

Respectfully submitted this 4th day of August, 2023.

FOX ROTHSCHILD LLP

Electronically submitted

Kip D. Nelson

N.C. State Bar No. 43848

knelson@foxrothschild.com

230 N. Elm Street, Suite 1200

Greensboro, NC 27401

Telephone: (336) 378-5200

Facsimile: (336) 378-5400

N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

Elizabeth Brooks Scherer

N.C. State Bar No. 27526

bscherer@foxrothschild.com

434 Fayetteville Street, Suite 2800

Raleigh, NC 27601

Telephone: (919) 755-8758

Facsimile: (919) 755-8800

DAVIS, STURGES & TOMLINSON, PLLC

Conrad B. Sturges, III

N.C. State Bar No. 22342

bsturges@dstattys.com

P.O. Drawer 708

Louisburg, NC 27549

Telephone: (919) 496-2137

Facsimile: (919) 496-6291

*Attorneys for Appellee Jeffrey Thompson*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this **Response to Petition for Discretionary Review and Request to Certify Additional Issues for Review under Appellate Rule 15** was e-filed and served by electronic mail on the opposing party as follows, this 4th day of August, 2023:

Matthew D. Ballew  
Robert E. Zaytoun  
Zaytoun Ballew & Taylor, PLLC  
[mballew@zaytounlaw.com](mailto:mballew@zaytounlaw.com)  
[rzaytoun@zaytounlaw.com](mailto:rzaytoun@zaytounlaw.com)

/s/ Kip D. Nelson \_\_\_\_\_  
Kip D. Nelson