

STATE OF NORTH CAROLINA

COUNTY OF WAKE

GILBERT BREEDLOVE and THOMAS HOLLAND,)
)
 Plaintiffs,)

v.)

MARION R. WARREN, in his official)
 capacity as Interim Director of the N.C.)
 Administrative Office of the Courts, and the)
 NORTH CAROLINA ADMINISTRATIVE)
 OFFICE OF THE COURTS,)
 Defendants.)

FILED

IN THE GENERAL COURT OF JUSTICE

~~SUPERIOR COURT~~ DIVISION

15 CV 004434

WAKE COUNTY, C.S.C.

BY _____

ORDER

THIS CAUSE came on to be heard before the undersigned Superior Court Judge presiding at the July 15, 2015, session of Civil Superior Court for Wake County, North Carolina, upon Defendants' Motion to Dismiss pursuant to Rules 12(b)(1), (2), (5), and (6) of the North Carolina Rules of Civil Procedure. W. Ellis Boyle of Ellis Boyle Law appeared on behalf of Plaintiffs. Grady L. Balentine, Jr., Special Deputy Attorney General, appeared on behalf of the defendants.

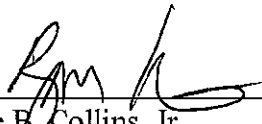
The Court finds and concludes that Plaintiffs' service of process complied with the requirements of Rule 4 of the North Carolina Rules of Civil Procedure and that Defendants' Motion to Dismiss pursuant Rules 12(b)(2) and (5) of the North Carolina Rules of Civil Procedure should, therefore, be denied.

Having considered the pleadings and arguments of the parties, the Court finds and concludes that it lacks subject matter jurisdiction in that there is no actual case or controversy, because the defendants have no power to nominate, appoint, remove, or otherwise control magistrates, nor do the defendants have the power to institute criminal prosecutions against

magistrates for failure to perform their duties. For the foregoing reasons, the plaintiffs have also failed to state a claim upon which relief can be granted, in that the actions of Defendants did not violate either Plaintiff's rights under the North Carolina Constitution. Accordingly, the Court concludes that Defendants' Motion to Dismiss pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss pursuant to Rules 12(b)(2) and (5) of the North Carolina Rules of Civil Procedure is DENIED, and Defendants' Motion to Dismiss pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure is GRANTED.

This the 19th day of ~~July~~ ^{September} 2015.
BC



George B. Collins, Jr.
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

The undersigned Deputy Clerk of Court of Wake County hereby certifies that a copy of the foregoing Order was served on the following parties to this action by:

facsimile hand delivery by depositing a copy of the same in the United States Mail addressed to:

Grady L. Balentine, Jr.
Special Deputy Attorney General
N.C. State Bar No. 10541
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

W. Ellis Boyle
507 N. Blount St.
Raleigh, NC 27604



LaRonda Mays-Soles, Deputy Clerk
Wake County Clerk of Court
P O Box 351
Raleigh NC 27602
919-792-5255
LaRonda.D.Mays-Soles@nccourts.org