

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

AMERICAN CIVIL LIBERTIES
UNION OF NORTH CAROLINA
LEGAL FOUNDATION,

Plaintiff,

V.

JAN KENNEDY, in her official
capacity as Clerk of Superior Court
of New Hanover County,

Defendants.

)
)
)
) **COMPLAINT AND ALTERNATIVE**
) **PETITION FOR**
) **WRIT OF MANDAMUS**

INTRODUCTION

1. Plaintiff-Petitioner, the American Civil Liberties Union of North Carolina Legal Foundation (hereinafter “Plaintiff”), brings this action under the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1 *et seq.*, and the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 *et seq.*, to compel disclosure of public records.

2. North Carolina law requires that every court clerk keep a docket listing each criminal defendant who “by reason of mental illness or defect . . . is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his

defense in a rational or reasonable manner.” N.C. Gen. Stat. §§ 15A-1001(a); 15A-1005.

3. These mandated dockets are no mere bureaucratic obligation. The listed “incapacity to proceed defendants” or “ITP defendants” are subject to constitutional and statutory limits on the length of time they can be detained while awaiting or receiving capacity restoration treatment. *See Jackson v. Indiana*, 406 U.S. 715 (1972); N. C. Gen. Stat. §§ 15A-1002; 15A-1008. These mandatory dockets serve as critical safeguards to ensure that individuals whose incapacity renders them incapable of effectively advocating for themselves do not get lost in the system.

4. For over two years, Plaintiff has submitted at least seven public records requests at regular intervals to all North Carolina counties, including New Hanover County, to obtain copies of these public records concerning criminal defendants whose capacity to proceed to trial is in question, and who remain in custody while awaiting forensic evaluation or restoration treatment.

5. Although the vast majority of all other county clerks have responded to Plaintiff’s public records requests, the New Hanover County Clerk of Superior Court (“Defendant”) has not responded to a single one. As described below, Plaintiff seeks an order for relief under the Public Records Act (1) setting this matter for immediate hearing, (2) declaring that the records at issue are in fact public records subject to inspection under the Public Records Act, (3) declaring that the Defendant has denied Plaintiff access to these records, and (4) awarding

costs and reasonable attorney fees. Alternatively, if the Defendant does not possess a docket of criminal defendants who have been found incapable to proceed, Plaintiff seeks issuance of a writ of mandamus compelling the Defendant to create and maintain public records in accordance with N.C. Gen. Stat. § 15A-1005 and produce those records to Plaintiff in accordance with the Public Records Act.

PARTIES

6. **Plaintiff** ACLU-NCLF, a state affiliate of the national American Civil Liberties Union, is a 501(c)(3) non-profit legal organization with its principal office in Durham, North Carolina. ACLU-NCLF's mission is to defend the civil and constitutional rights of all North Carolinians, including North Carolinians who are incarcerated and suffer serious mental illness or other mental or cognitive disabilities. Promoting government transparency and accountability and educating the public are critical aspects of Plaintiff's mission.

7. **Defendant** Jan Kennedy, Clerk of Superior Court of New Hanover County, is responsible for the Court's clerical and record-keeping functions. N.C. Gen. Stat. §§ 7A-109; 7A-180, *et seq.* In particular, the clerk of court in pending criminal proceedings must keep a docket of defendants who have been determined to be incapable of proceeding and must submit the docket to the senior resident superior court judge in the district at least semiannually. N.C. Gen. Stat. § 15A-1005.

JURISDICTION AND VENUE

8. This Court has jurisdiction under N.C. Gen. Stat. § 132-9.

9. Venue is proper under N.C. Gen. Stat. § 1-77(2), as Jan Kennedy, Clerk of Superior Court of New Hanover County, is located in New Hanover County, and the records requested are located in New Hanover County, and Defendant's failure to comply with the Public Records Act occurred in New Hanover County.

FACTUAL ALLEGATIONS

New Hanover County repeatedly fails to respond to Plaintiff's Public Records Act requests.

10. N.C. Gen. Stat. § 15A-1005 requires that every court clerk keep a docket listing each criminal defendant who "by reason of mental illness or defect . . . is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner." N.C. Gen. Stat. §§ 15A-1001(a); 15A-1005. This docket (hereinafter "incapable to proceed docket" or "ITP docket") must be submitted to the senior resident superior court judge at least semiannually. N.C. Gen. Stat. § 15A-1005.

11. These ITP dockets are public records. *See* N.C. Gen. Stat. § 132-1(a); N.C. Gen. Stat. § 7A-109(a).

12. In January 2023, Plaintiff decided to submit Public Records Act requests to eight counties requesting copies of their ITP dockets: New Hanover,

Buncombe, Durham, Guilford-Greensboro, Guilford-High Point, Mecklenburg, Pitt, and Wake.

13. On January 4, 2023, Plaintiff called the office of the New Hanover Clerk of Superior Court, Defendant, to inquire about the appropriate address to submit a public records request. Defendant's office informed Plaintiff that they would call back to provide an address, but they never did. (*See* Attach. A, Aff. of Lauren Robbins).

14. On February 27, 2023, Plaintiff sent a Public Records Act request via certified mail to the Honorable J.H. Corpening, II, Chief District Court Judge in New Hanover County. (Attach. A); (Attach. B, Feb. 27 Public Records Request).

15. Plaintiff was then advised by Judge Corpening's office to mail a letter to the New Hanover Clerk of Superior Court. (*See* Attach. A).

16. On May 15, 2023, Plaintiff sent a second Public Records Act request via certified mail to Defendant. (Attach. A); (Attach. C, May 15 Public Records Request).

17. Defendant did not respond to or acknowledge the request.

18. On July 28, 2023, Plaintiff sent a letter via email to New Hanover County Attorney K. Jordan Smith requesting New Hanover County's compliance with the Public Records Act request. (Attach. D, Letter to County Attorney).

19. On August 1, 2023, New Hanover County Attorney Smith emailed Plaintiff, stating that New Hanover County "has neither oversight nor control" over

Superior Court judges or the Clerk of Superior Court. (Attach. E, Letter from County Attorney).

20. On October 26, 2023, Plaintiff sent, via certified mail, a letter to Defendant detailing the violation of the Public Records Act and stating that if Defendant did not comply, Plaintiff would take legal action (“Demand Letter”). Defendant did not respond. (See Attach. F, Aff. of Mary Robbins); (Attach. G, Demand Letter).

21. On November 9, 2023, Corrine L. Lusic, Deputy Legal Counsel for the Administrative Office of the Courts, corresponded with Plaintiff via email regarding Plaintiff’s Demand Letter to Defendant and Defendant’s failure to provide Plaintiff with the requested ITP docket. (Attach. H, Email from Corrine Lusic).

22. Ms. Lusic was able to send Plaintiff the ITP docket Plaintiff had requested from Defendant as a courtesy, but informed Plaintiff she does not maintain the docket.

23. On January 23, 2024, pursuant to N.C. Gen. Stat, § 15A-1005’s semiannual mandate and in order to ensure Defendant’s compliance with the Public Records Act, Plaintiff submitted a renewed public records request to Defendant via email. (Attach. I, Jan. 23 Public Records Request). That same day Plaintiff received an automated message confirming receipt of the request.

24. On February 22, 2024, Plaintiff submitted a follow up to the public records request to Defendant via email. (Attach. J, Email Follow Up).

25. On March 12, 2024, Ms. Lusic informed Plaintiff that Defendant had informed her they did not have any information to add to the previously sent November ITP docket. But Defendant never responded directly to Plaintiff's Public Records Act request. (Attach. K, Corrina Lusic Email).

26. On December 12, 2024, pursuant to the semiannual mandate within N.C. Gen. Stat, § 15A-1005, Plaintiff submitted a renewed public records request to Defendant via email. (Attach. L, Dec. 12 Public Records Request).

27. On January 28, 2025, Plaintiff submitted a follow up public record request to Defendant via email. (Attach. M, Jan. 28 Public Records Request).

28. On May 20, 2025, Plaintiff sent a letter to Defendant via email and United States Postal Service regarding Defendant's failure to respond to the public record request (Attach. N, May 20 Public Records Request). That same day Plaintiff received an automated email response confirming receipt of the letter.

29. On June 26, 2025, Plaintiff called Defendant's office. Plaintiff was transferred to Heather James, assistant clerk, and left a voicemail inquiring about the status of the January 2025 Public Records Act request. (*See* Attach. F).

30. As of this filing, Defendant has not responded to any of Plaintiff's requests, follow ups, or voicemails.

31. As of this filing, no one has provided the requested New Hanover County ITP docket in compliance with the Public Records Act.

32. To date, all other counties have responded to Plaintiffs' Public Records Act requests for their respective ITP dockets. (*See* Attach. F).

Reasons the Alternative Writ of Mandamus Should Issue

33. Defendant has a clear legal duty to produce the ITP docket in response to Plaintiff's public record request. If Defendant has failed to respond because she has not been maintaining the docket as required by law, a writ of mandamus is appropriate to compel her to perform her statutory duty. This Court should order the that Defendant create and maintain a docket of ITP individuals pursuant to N.C. Gen. Stat. § 15A-1005, by issuing a writ of mandamus.

34. Writs of mandamus are "employed to compel inferior tribunals, officers, or administrative boards to perform duties imposed upon them by law." *Wilson Realty Co. v. City & City Planning Bd.*, 243 N.C. 648, 655 (1956).

35. Mandamus provides "swift enforcement of a party's already established legal rights," *In re T.H.T.*, 362 N.C. 446, 456 (2008).

36. Mandamus will issue where a party has (1) a clear right to the act requested; (2) the defendant has a legal duty to perform the act; (3) the act is mandatory; and (4) the defendant has neglected or refused to perform the act. *Id.* 362 N.C. at 453–54. All four requirements are met here.

Required Elements

37. Plaintiff has a clear right to inspect the public records requested, New Hanover County's ITP docket. *See* N.C. Gen. Stat. § 132-1(a); N.C. Gen. Stat. § 7A-109(a) ("Each clerk shall maintain such records, files, dockets and indexes as are

prescribed by rules of the Administrative Office of the Courts . . . these records shall be open to the inspection of the public.”).

38. Defendant has a statutory duty to maintain the requested ITP docket. “The clerk of court *must* keep a docket of defendants who have been determined to be incapable of proceeding.” N.C. Gen. Stat. § 15A-1005 (emphasis added).

39. Maintaining a docket of individuals determined to be incapable of proceeding, is mandatory. N.C. Gen. Stat. § 15A-1005.

40. Upon information and belief, Defendant has neglected or refused to maintain a docket of individuals determined to be incapable to proceed to trial since November, 2023.

CAUSES OF ACTION

COUNT I

Denial of Access to Public Records under N.C. Gen. Stat. § 132-9

41. The North Carolina Public Records Act “strongly favors the release of public records to increase transparency in government.” *State Employees Ass’n of N. Carolina, Inc. v. N. Carolina Dep’t of State Treasurer*, 364 N.C. 205, 214 (2010).

42. Once a public official receives a request under the Public Records Act, they must fulfill the request “as promptly as possible[.]” N.C. Gen. Stat. § 132-6(a).

43. Any clerk of a court in which criminal proceedings are pending “must keep a docket of defendants who have been determined to be incapable of proceeding” and send this list semiannually to the clerk of the superior court for that county. N.C. Gen. Stat. § 15A-1005.

44. Plaintiff has submitted seven requests to Defendant for the purpose of inspection and examination of public records over the course of two years.

45. Defendant has not provided any responsive records or even disclosed whether they are keeping such records as required by law.

46. Defendant has not asserted that any responsive documents are exempt from inspection.

47. Therefore, Defendant has denied Plaintiff access to public records.

COUNT II
Petition for Writ of Mandamus for compliance with the Public
Records Act and creation of public records in compliance with N.C.
Gen. Stat. § 15A-1005

48. When records are public and therefore subject to disclosure, a Superior Court may appropriately issue a writ of mandamus compelling their disclosure. *Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council*, 181 N.C. App. 1 (2007).

49. Plaintiff has a statutory right to access public records under N.C. Gen. Stat. § 132-1, *et seq.*

50. Defendant has a concomitant statutory duty to produce the records on request to meet their obligations under N.C. Gen. Stat. § 132-9(a).

51. Defendant has failed to carry out their duty to produce the requested records.

52. Defendant has a statutory duty to create and maintain a docket of criminal defendants who have been found incapable to proceed under N.C. Gen. Stat. § 15A-1005.

53. If Defendant has not created or maintained such a docket, they have failed to fulfill their statutory duty under N.C. Gen. Stat. § 15A-1005.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court grant the following relief:

a) Set this matter for “immediate hearing” and accord it priority as required by N.C. Gen. Stat. § 132-9(a).

b) Declare that documents responsive to Plaintiff’s request are public records.

c) Declare that the Defendant has denied Plaintiff access to public records in violation of the Public Records Act.

d) Issue a writ of mandamus ordering Defendant to immediately produce to Plaintiff all public records responsive to its request.

e) Issue a writ of mandamus ordering Defendant to compile a docket of criminal defendants in compliance with N.C. Gen. Stat. § 15A-1005.

f) Maintain jurisdiction over this matter until the Court is satisfied that the violations of the Public Records Act and N.C. Gen. Stat. § 15A-1005 have been remedied.

g) Award Plaintiff costs and reasonable attorneys’ fees as required by N.C. Gen. Stat. § 132-9(c).

h) Order any other relief the Court finds just and proper.

Respectfully submitted, this the ____ day of September, 2025.

/s/ Ivy A. Johnson

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