

In re Se. Eye Ctr. (Pending Matters); In re Se. Eye Ctr. (Judgments), 2023 NCBC Order 15.

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CVS 1648

IN RE SOUTHEASTERN EYE  
CENTER-PENDING MATTERS

***SUA SPONTE* ORDER ON ABUSIVE  
LANGUAGE, N.C. R. CIV. P. 11, AND  
RULE 12 OF THE GENERAL RULES  
OF PRACTICE**

GUILFORD COUNTY

12 CVS 11322

IN RE SOUTHEASTERN EYE  
CENTER-JUDGMENTS

1. **THIS MATTER** is before the Court *sua sponte* in response to James Mark McDaniel’s Response and Objections to Receiver’s Accounting, (ECF No. 1508) (the “September Objection”), and Intervenor McDaniel’s Objection and Response to the JDPW Trust Receiver’s Accounting, (ECF No. 1532) (the “December Objection”) (together, the “Objections”).

2. In the summer and early autumn of 2022, the Court ordered Gerald Jeutter, the Court-appointed receiver (the “Receiver”) for JDPW Trust (the “Receivership”) to file interim reports on the financial status of the JDPW Trust (the “Trust”) and the Receivership’s Trust-related activities by specified deadlines in September and November 2022.<sup>1</sup> The Receiver timely filed both reports.<sup>2</sup> James Mark McDaniel (“McDaniel”), a contingent debtor depending on the outcome of the

---

<sup>1</sup> (Order Requiring Receiver to File Interim Report (Old Battleground v. CCSEA), ECF No. 1500; Order Requiring Receiver to File Interim Report Concerning JDPW Trust (Old Battleground v. CCSEA), ECF No. 1507.)

<sup>2</sup> (Receiver’s Interim Report Per Order of the Court, April 1, 2020 through June 30, 2022 (All Matters), ECF No. 1505; Receiver’s Report Regarding JDPW Trust, ECF No. 1516.)

Receivership's efforts to collect on certain debts,<sup>3</sup> filed an Objection to each report,<sup>4</sup> which the Court has overruled by separate orders.<sup>5</sup>

3. The Court enters this further order on McDaniel's Objections to address the inflammatory rhetoric contained in the Objections and to put McDaniel on notice that any further similar conduct may result in the imposition of sanctions and/or the initiation of contempt or other proceedings.

4. Even a cursory review of the Objections shows that each is replete with personal vitriol against the Receiver and other parties in this case, *ad hominem* attacks against the Receiver and others, and egregious accusations of misconduct against others with virtually no citations to evidence, the developed record, or to applicable law.

5. For example, the September Objection accuses the Receiver and the Receiver's attorneys of "fabricat[ing]" a claim to sate their "unbridled greed," and of making false statements to the IRS.<sup>6</sup> The Court concluded in its order overruling the

---

<sup>3</sup> (See Order on James Mark McDaniel's Motion to Intervene, ECF No. 1452; Order on James Mark McDaniel's Mot. for Court Approval to Appear as a Necessary Party in the Kay Turner Mots. to Intervene and to Set Aside the \$2.1 Million NFI Judgment and to Oppose the Anticipated NFI and Receiver's Resps. to those Mots. 3–4, ECF No. 1315.)

<sup>4</sup> (James Mark McDaniel's Resp. and Objs. to Receiver's Accounting [hereinafter "September Objection"], ECF No. 1508; Intervenor McDaniel's Obj. and Resp. to the JDPW Trust Receiver's Accounting [hereinafter "December Objection"], ECF No. 1532.)

<sup>5</sup> (Order McDaniel's Resp. Obj. Receiver's Accounting JDPW Trust [hereinafter "September Objection Order"], ECF No. 1540; Order on Objs. Receiver's Interim Report JDPW Trust, ECF No. 1542.)

<sup>6</sup> (See September Objection 4, 5–6.)

September Objection that the former argument was meritless, and neither contention cites to any evidence or to any possibly applicable law.<sup>7</sup>

6. The December Objection contains the following accusations, all made with at most perfunctory citations to the record or to any applicable law:

- a. That the Receiver, the Receiver's attorney, and counsel for the Nivison Parties (defined by McDaniel as the "Trio")<sup>8</sup> committed forgery;<sup>9</sup>
- b. That the Trio have knowingly and willfully made false statements to the Court;<sup>10</sup>
- c. That the Trio have engaged in "illicit activity" to obtain large fees for themselves;<sup>11</sup>
- d. That one member of the Trio has suborned perjury;<sup>12</sup>
- e. That one member of the Trio filed a fraudulent UCC financing statement;<sup>13</sup>

---

<sup>7</sup> (See September Objection 4, 5–6; September Objection Order 4–5.)

<sup>8</sup> (See December Objection 3.) This recitation of the December Objection's accusations uses the terms under which those accusations were made.

<sup>9</sup> (December Objection 2–3.)

<sup>10</sup> (December Objection 3.)

<sup>11</sup> (December Objection 3.)

<sup>12</sup> (December Objection 3–4.)

<sup>13</sup> (December Objection 4.) McDaniel's right to pursue this particular claim has been rejected by the North Carolina appellate courts. *See generally* *McDaniel v. Saintsing*, 260 N.C. App. 229 (2018).

- f. That the Trio “concoct[ed]” a false claim for their own financial benefit;<sup>14</sup>
- g. That the Trio have committed fraud;<sup>15</sup>
- h. That a particular action by the Trio is a “rank obscenity” designed to provoke “havoc, stress, worry, and pain” in McDaniel;<sup>16</sup>
- i. That the Trio are “slimy”;<sup>17</sup>
- j. That the Trio are fraudulently conspiring to strip an unnamed “someone” of his or her “life’s work”;<sup>18</sup>
- k. That the Trio are improperly attempting to coerce a settlement offer from McDaniel;<sup>19</sup>
- l. That the Trio have acted with “complete disregard for facts” and in a “flippant and cavalier manner”;<sup>20</sup>
- m. That the Trio have committed extortion;<sup>21</sup>

---

<sup>14</sup> (December Objection 5.)

<sup>15</sup> Accusations of fraud without evidentiary support pervade the December Objection. (*See, e.g.,* December Objection 6.)

<sup>16</sup> (December Objection 6.)

<sup>17</sup> (December Objection 6.)

<sup>18</sup> (December Objection 6.)

<sup>19</sup> (December Objection 7.)

<sup>20</sup> (December Objection 9.)

<sup>21</sup> (December Objection 9, 10, 11.)

- n. That one member of the Trio “has no regard for the law [and is willing] to commit outright felonies”;<sup>22</sup>
  - o. That the Trio are willing to “ruin lives with fake evidence” with this Court’s connivance;<sup>23</sup>
  - p. That one member of the Trio is professionally incompetent;<sup>24</sup>
  - q. That one member of the Trio has defrauded the Internal Revenue Service;<sup>25</sup>
  - r. That the Trio have operated a “scam”;<sup>26</sup>
  - s. That the Trio have committed federal bank fraud;<sup>27</sup>
  - t. That the Trio are guilty of “[g]reed and ethical failures.”<sup>28</sup>
7. These accusations are bereft of any substantial evidentiary support and impugn the character and professions of each member of the purported “Trio.”
8. Unsupported and unwarranted personal attacks and vitriol have been a hallmark of McDaniel’s advocacy before this Court, certainly since he was permitted

---

<sup>22</sup> (December Objection 9–10.)

<sup>23</sup> (December Objection 10.)

<sup>24</sup> (*See* December Objection 10–11.)

<sup>25</sup> (December Objection 11.)

<sup>26</sup> (December Objection 11.)

<sup>27</sup> (December Objection 12.)

<sup>28</sup> (December Objection 12.)

to intervene in January 2022.<sup>29</sup> His unsubstantiated and vituperative filings have both impugned the other parties and detracted from the dignity of the courts of this State and the judicial process. McDaniel is free to make factual assertions with evidentiary support and in a measured, professional manner, but the inflammatory language that pervades McDaniel's filings is beyond the bounds of zealous advocacy<sup>30</sup> and constitutes sanctionable abuse. Although the members of the "Trio" have endured these attacks gracefully, this Court's tolerance for McDaniel's conduct has reached its end.

9. It is "well-established" that abusive and invective-based advocacy is improper. *See State v. Sanderson*, 336 N.C. 1, 10–11 (1994); *see also, e.g., State v. Miller*, 271 N.C. 646, 658–59 (1967). The principles of professional courtesy that forbid such language are so crucial to the proper administration of justice that they appear in the North Carolina General Rules of Practice for the Superior and District Courts. *See* N.C. Gen. R. Prac. Super. Dist. Cts. 12 (providing that "abusive language or offensive personal references" are prohibited).

10. It is improper for counsel to attack the personal integrity of opposing counsel instead of arguing the facts and the law, and "it is elementary that conduct

---

<sup>29</sup> (*See generally, e.g.,* McDaniel's Resp. in Opp'n to Receiver's Mot. for an Order for Doug Harris to Account, ECF No. 1481 (accusing the Trio of "contempt" for the law and fraud); James Mark McDaniel, Jr.'s Resp. in Opp'n to Receiver's Mot. Amend and Br. Regarding Exercise of Power of Sale to [sic] including Citation to N.C. Gen. Stat. Section 1-507.4, ECF No. 1471 (accusing the Receiver of "utter disregard" for this Court's rules); James Mark McDaniel, Jr.'s Reply to Receiver's Obj. to Claim, ECF No. 1453 (accusing the Receiver of violating federal tax laws, defrauding this Court, and demonstrating "the height of contempt" for the law).)

<sup>30</sup> McDaniel appears pro se.

of an attorney which is improper . . . lessens the dignity of the [C]ourt[.]” *Tarrant v. State*, 537 So. 2d 150, 152 (Fla. Dist. Ct. App. 1989). Courts can adjudicate disputes “only when the parties present reasoned arguments rather than invective-laden diatribes.” *Koehl v. Greene*, 424 F. App’x 61, 62 (2d Cir. 2011).

11. McDaniel’s pro se status does not protect him from the rules of conduct that bind attorneys, see *Burgess v. Am. Express Co.*, 2007 NCBC LEXIS 22, at \*18 (N.C. Super. Ct. June 29, 2007), and courts “will not allow . . . pro se practice to be a vehicle for abusive documents.” *Therriault v. Silber*, 579 F.2d 302, 303 (5th Cir. 1978). In particular, Rule 11 forbids a party from filing documents for an improper purpose, such as to harass, N.C. R. Civ. P. 11, and abusive language is considered a form of harassment under Rule 11. See, e.g., *Coats v. Pierre*, 890 F.2d 728, 734 (5th Cir. 1989); *Spears v. Williamsburg*, No. 5:16-671-TMC, 2016 U.S. Dist. LEXIS 66432, at \*2–3 (D.S.C. May 20, 2016); *Pigford v. Veneman*, 215 F.R.D. 2, 4 (D.D.C. 2003).<sup>31</sup>

12. Moreover, abusive language in written filings, not merely abusive language spoken aloud in the courtroom, may serve as grounds for sanctions. See, e.g., *Azzarmi v. 55 Fulton Market*, 20-CV-6835, 2022 U.S. Dist. LEXIS 160688, at \*5–6 (S.D.N.Y. Aug. 30, 2022) (warning party of possibility of sanctions for documents filled with “name-calling and other *ad hominem* attacks on opposing counsel”); *White v. United States*, No. 17-cv-00683-JPG, 2021 U.S. Dist. LEXIS 183954, at \*16–17 (S.D. Ill. Sept. 27, 2021) (sanctioning a party for filing submissions which contained

---

<sup>31</sup> The North Carolina and federal versions of Rule 11 are substantially the same on this point: both forbid filings made for an improper purpose, such as to harass. N.C. R. Civ. P. 11; Fed. R. Civ. P. 11.

“inappropriate *ad hominem* attacks on [opposing counsel]” and accused the court of fraud and incompetence); *Ramos v. Nichols*, 505 P.3d 312, 316–17 (Ariz. Ct. App. 2022) (sanctioning a party for filing documents that labelled opposing counsel as “punks” and “rats” and contained other inappropriate comments).

13. Thus, courts frequently levy sanctions for precisely the type of misconduct that McDaniel has engaged in here. *See, e.g., Dunhill Holdings, LLC v. Lindberg*, 282 N.C. App. 36, 50, 101 (2022) (affirming sanctions imposed in part for “making personal attacks on [opposing] counsel” at a deposition); *Lipin v. Wisehart*, 760 F. App’x 626, 637 (10th Cir. 2019) (sanctioning a party for “unsupported and often irrelevant accusations” that the other parties had engaged in various misdeeds); *In re First City Bancorporation*, 282 F.3d 864, 866 (5th Cir. 2002) (sanctioning an attorney for accusing other parties of incompetence and crimes without evidentiary support); *Bros. of the Wheel MC Exec. Council, Inc. v. Mollohan (In re Mollohan)*, No. 21-bk-20130, 2021 Bankr. LEXIS 3041, at \*18–20 (Bankr. S.D.W. Va. Nov. 3, 2021) (sanctioning a party for “egregious, defamatory allegations of fraud, criminal conduct, and other bad acts [by the other parties] without evidentiary support”).

14. Indeed, pro se parties are not immunized from sanctions under Rule 11 for abusive filings like those McDaniel has submitted in these proceedings. *See, e.g., Piña v. United States*, 20-CV-1371, 2022 U.S. Dist. LEXIS 8102, at \*3–4 (S.D.N.Y. Jan. 14, 2022) (sanctioning pro se party for accusing opposing counsel of coercive tactics and the court of corruption); *Johnson v. EEOC Charlotte Dist. Office*, 3:15-cv-00148, 2016 U.S. Dist. LEXIS 83059, at \*9–10, \*14–20 (W.D.N.C. June 27, 2016)

(sanctioning pro se party's unsupported accusations against opposing counsel of improper bias and unethical conduct); *Collura v. City of Philadelphia*, No. 2:12-cv-4398, 2012 U.S. Dist. LEXIS 180830, at \*7–8, \*23–24 (E.D. Pa. Dec. 20, 2012) (warning a pro se party of the possibility of sanctions for calling opposing counsel and parties “slime,” “scumbags,” “creep[s],” and other epithets, and granting motion to strike this language).<sup>32</sup>

15. Finally, this Court has the authority to consider and impose sanctions *sua sponte*. *Bandy v. A Perfect Fit for You*, 379 N.C. 1, 8 (2021). And the Court retains the “inherent power” to do “all things that are reasonably necessary for the proper administration of justice[.]” *Beard v. N.C. State Bar*, 320 N.C. 126, 129 (1987), including initiating criminal<sup>33</sup> or civil<sup>34</sup> contempt proceedings where appropriate.

16. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

---

<sup>32</sup> See also *Collura v. White*, No. 12-4398, 2013 U.S. Dist. LEXIS 162236, at \*23–27 (E.D. Pa. Nov. 14, 2013) (dismissing this same plaintiff's amended complaint with prejudice *sua sponte* as a sanction for failure to obey court orders, including to refrain from abusive language), *aff'd*, 590 F. App'x 180 (3d Cir. 2014).

<sup>33</sup> N.C.G.S. § 5A-11; *id.* § 5A-13; see, e.g., *State v. Reaves*, No. COA14-1055, 2015 N.C. App. LEXIS 469, at \*3–6 (N.C. Ct. App. June 16, 2015) (noting the imposition of criminal contempt based on a pro se party's abusive language); *United States v. Marshall*, 371 F.3d 42, 44–45, 48 (2d Cir. 2004) (affirming imposition of criminal contempt for a party's obscene courtroom language); *State v. Axel*, 2013 Minn. App. Unpub. LEXIS 939, A12-1565, at \*2–3, \*7 (Minn. Ct. App. Oct. 15, 2013) (to similar effect).

<sup>34</sup> N.C.G.S. § 5A-21; *id.* § 5A-23(a); see, e.g., *In re Nettles*, No. 05-06101-DD, 2008 Bankr. LEXIS 1293, at \*14–22 (Bankr. D.S.C. May 2, 2008) (finding a pro se party in civil contempt for violating orders to act in a “civil and appropriate manner”).

- a. McDaniel shall cease and desist further abusive and invective-based advocacy, either in writings filed with the Court or in oral presentations before the Court; and
- b. McDaniel shall adhere to Business Court Rule 7.5, which provides, in relevant part, that “[w]hen a motion or brief refers to any supporting material, the motion or brief *must* include a pinpoint citation to the relevant page of the supporting material whenever possible.” BCR 7.5 (emphasis added).

17. The Court shall not exercise its discretion at this time to order McDaniel to show cause why he should not be sanctioned for the abusive and invective-based advocacy contained in the Objections, but the Court reserves its right to address this conduct, either in conjunction with a future violation of this Order or without, in its discretion.

18. The Court retains all authority under applicable law to address any violation of this Order.

**SO ORDERED**, this the 9th day of March, 2023.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge