

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 24-CV-022933-910

CHARITY MAINVILLE,)
)
 Plaintiff,)
)
 vs.)
)
 ANNA DE SANTIS and)
 DE SANTIS RENTALS, LLC,)
)
 Defendants.)

**NOTICE OF EXCEEDING OF
JUDICIAL AUTHORITY AND
PRESERVATION OF RIGHTS**

NOW COMES Plaintiff, Charity Mainville, pro se, and gives notice to preserve the record and protect her constitutional rights in connection with the September 25, 2025 hearing.

1. Objections at Roll Call

At roll call, Plaintiff stated for the record: *“I am not feeling well today, and I appear here under protest. This hearing is proceeding in violation of my rights to due process, equal access, and reasonable accommodation under Title II of the ADA.”*

She further objected that (a) the reconsideration order had never been served in violation of Rule 5(a) of the North Carolina Rules of Civil Procedure, (b) her Motion to Disqualify remained pending, and (c) Defendants’ Motion for Entry of Default was unsigned until 40 minutes before the hearing. Despite these objections, Judge Williams declined to address them.

Plaintiff also requested that her matter be heard first in open session while observers and witnesses were present. Judge Williams nevertheless placed Plaintiff last on the calendar. This was the fourth time Wake County placed Plaintiff last, requiring her to wait approximately two hours for a hearing that was not lawfully permitted to proceed.

2. Exceeding Judicial Authority with Private Actor Under Color of Law

At the outset of the hearing, Judge Williams required Plaintiff—appearing pro se—to be sworn under oath before presenting the legal grounds for her disqualification motion. Opposing counsel, however, was not required to be sworn before making his arguments. Plaintiff was not testifying; she was making legal argument in her capacity as her own counsel, the same as licensed counsel would do. By forcing Plaintiff under oath while permitting opposing counsel to argue freely, the Court implied that her arguments were inherently suspect and subject to a higher standard. Notably, Plaintiff has never been required to swear under oath in any prior hearings.

During the September 25, 2025 hearing, Judge Williams invited Defendants’ counsel to argue against Plaintiff’s motion, even though the motion concerned only Judge Williams’s own authority and impartiality. By doing so, counsel acted in defense of the Judge rather than his clients. Counsel Yopp cited *County of Johnston v. City of Wilson*, 136 N.C. App. 775, and *Love v. Pressley*, 34 N.C. App. 503 (1977), as authority for the proposition that the presiding judge may himself rule on a motion challenging his qualification. Both cases, however, involved motions for recusal based on alleged bias or prejudice. In those contexts, the Court of Appeals held only that adverse rulings are not, by themselves, grounds for disqualification and that affidavits are required to prove bias.

Plaintiff’s motion was not a recusal motion for bias. It was a motion for disqualification grounded in violations of Rule 5(a) (lack of service), Article I, Section 18 of the North Carolina Constitution, Title II of the ADA, and the First and Fourteenth Amendments. These grounds rendered Judge Williams’s continued participation inconsistent with due process and fell under the mandatory disqualification standard articulated in *Ponder v. Davis*, 233 N.C. 699 (1951). In *Ponder*, the North Carolina Supreme Court held that a judge cannot rule on his own qualification

where constitutional rights and impartiality are at issue, emphasizing that “*every litigant is entitled to nothing less than the cold neutrality of an impartial judge.*”

Despite this, Judge Williams adopted defense counsel’s argument based on *Love and County of Johnston*, even though counsel admitted he had not read *Ponder v. Davis*. He then denied Plaintiff’s motion on the basis that she had presented no evidence of personal bias or interest. Plaintiff clarified that her motion was not based on bias but on constitutional violations, including the fact that the reconsideration order had never been served. Judge Williams denied having ruled on that motion, a statement contrary to the record. If, as he claimed, the motion remained unresolved, no hearing should have proceeded at all. Instead, he moved forward to opposing counsel’s arguments without correcting the record, compounding the due process violation.

Judge Williams exceeded his judicial authority by purporting to rule on his own disqualification, thereby depriving Plaintiff of an impartial tribunal. This collaboration between a state actor (Judge Williams) and a private party (Counsel Yopp) to defeat Plaintiff’s constitutional claims constituted action “under color of law” that deprived Plaintiff of her rights to due process and an impartial court.

3. Violation of Article 1, Section 18 of North Carolina Constitution & First Amendment

When Plaintiff raised First Amendment concerns regarding her press request to livestream and record the hearing, Judge Williams stated that it was his “policy” to deny all media requests and that he had “denied every single one of them.” Judge Williams has only recently assumed the bench, so such a statement carries no precedential weight.

When pressed for the legal basis, Judge Williams admitted he had no authority beyond his personal “policy.” Plaintiff objected that “policy does not trump constitutional rights” and

requested that the Court cite the law supporting the restriction. No such authority was provided. Instead, Judge Williams remarked that other cases “had a lot more relevance to this community than this case.” This was not a legal justification but a personal value judgment, demonstrating arbitrariness after denying the motion for disqualification.

Courts are presumptively open under both the First Amendment, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), and Article I, Section 18 of the North Carolina Constitution. Restrictions on press access must rest on specific legal authority and findings, not on a judge’s personal policy.

It should be noted that this case , which is currently pending in federal court and alleges collusion between judicial officers and private parties, raising issues of undue influence, is of undeniable public importance and directly relevant to the community.

4. Violation of Title II of the ADA

During the September 25, 2025 hearing, Plaintiff invoked Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, and its implementing regulations (28 C.F.R. §§ 35.130, 35.160), which require state courts to make “reasonable modifications” to ensure equal access for individuals with disabilities. Judge Williams dismissed Plaintiff’s requests by asserting that the “availability of WebEx” constituted reasonable accommodation.

Plaintiff objected that her disabilities—generalized anxiety disorder and complex PTSD—were exacerbated by being repeatedly placed last on the calendar and forced to wait hours for unlawful hearings. These practices caused significant psychological distress and financial burden. Instead of engaging in the interactive process required under the ADA.

The Court’s response ‘*It is your case, ma’am. You are the one that initiated the case*’ is irrelevant to the ADA inquiry. A litigant’s initiation of a case does not strip her of the right to

reasonable accommodation, impartial adjudication, or freedom from harassment. Plaintiff is entitled to the same protections under Title II of the ADA and the Constitution as any other party, regardless of case posture. She also clarified she did not initiate the motion hearing.

By belittling her request and disregarding her documented requests, Judge Williams not only failed to provide reasonable accommodation but actively retaliated against Plaintiff for asserting her rights.

These actions violate the ADA's requirement that accommodations be individualized and responsive to the actual limitations of the person. Simply offering WebEx access does not address impairments related to trauma, anxiety, or ADHD, nor does it cure procedural inequities such as being consistently placed last on the docket. The Court's refusal to consider less-burdensome alternatives, combined with stigmatizing remarks and threats of contempt, constitutes unlawful discrimination under Title II of the ADA and denial of due process under the Fourteenth Amendment.

5. Harassment by Counsel and Bias Shown by the Court

At the start of the hearing, instead of following the Court's instructions, Defendants' counsel attempted to discredit Plaintiff by complaining about the number of filings on the docket. This has been a recurring tactic by counsel to portray Plaintiff's filings as frivolous, despite the fact that each filing has been made to preserve the record and address ongoing procedural violations. Because of counsel's repeated attempts to argue the case through improper channels, Plaintiff has been forced to file multiple notices to correct the record.

When Plaintiff objected to counsel's mischaracterizations, counsel responded by stating "this isn't a trial," implying that Plaintiff was not permitted to object. Judge Williams then muted

Plaintiff, describing her previous argument as a “rant” and admonishing her to remain silent while defense counsel spoke.

The Court’s management of the hearing further compounded this bias. Judge Williams announced that only one hour would be allotted to hear the four motions pending, citing a crowded docket. Yet the hearing should not have required such extended time at all had the Court addressed the dispositive procedural defects. Instead, the Court’s decision to entertain irrelevant argument and allow mischaracterizations created confusion, prolonged the hearing, and forced Plaintiff to sit through repeated distortions of the record without meaningful opportunity to object. When Plaintiff continued to object to irrelevant or improper arguments, the Court threatened that “other orders” would be issued—implicitly threatening contempt.

By requiring Plaintiff to remain silent while defense counsel was permitted to misrepresent the record, and by characterizing her objections as disruptive rather than legitimate, the Court deprived Plaintiff of equal footing in the adversarial process. This treatment also exacerbated Plaintiff’s ADA-recognized disabilities. From the outset of the hearing, Plaintiff explained that harassment and abusive litigation had caused severe anxiety and stress. If the Court had meaningfully engaged in the interactive process and provided the requested accommodation—such as structuring the hearing, following the law, and addressing motions in logical order—Plaintiff would not have been forced into repeated interjections. Instead, the Court dismissed her condition and worsened the very impairments for which she sought accommodation.

Furthermore, by permitting defense counsel to take liberties with the record while simultaneously silencing Plaintiff, Judge Williams acted in coordination with a private actor under color of law. This collaboration not only magnified the discriminatory impact on Plaintiff’s

disabilities but also reinforced the appearance that the Court and opposing counsel were working together to deny her constitutional and statutory rights.

6. Irregular Procedure in Handling Motions

- a.** This hearing imposed undue burden on the Court, financial hardship on Plaintiff, and wasted resources for Defendants as counsel charges by the hour.
- b.** Four motions were pending: (a) Motion to Strike, (b) Motion to Dismiss, (c) Motion for Entry of Default, and (d) Motion for Sanctions.
- c.** Judge Williams improperly asked Defendants' counsel to decide the order of motions rather than applying logical sequencing required by law.
- d.** The Court entertained the Motion for Entry of Default even though it was unsigned when originally filed. Plaintiff pointed out that under Rule 11, an unsigned motion is null unless promptly corrected. Defense counsel admitted he had only added a corrected signature the night before the hearing, two months after the filing. The Court denied the motion without prejudice but improperly stating Defendants could request a new hearing, rather than recognizing that the motion could not be heard until the Motion to Dismiss was resolved.
- e.** The Court then attempted to move to Plaintiff's Motion for Sanctions, even though Plaintiff explained it depended on a finding that Defendants' Motion to Dismiss was duplicative and frivolous. Instead of following logical order, the Court flip-flopped between motions and allowed Defendants to argue that the sanctions motion was not properly noticed, despite the fact that Plaintiff's notice was filed promptly after learning of the hearing date only through her own inquiries and failure to serve the order for reconsideration. The failure was the

Court's—not Plaintiff's. The Court nevertheless denied the sanctions motion, stating it could be “reheard later.”

- f. Lastly, The Court further mishandled the close of the hearing by attempting to elicit Plaintiff's “consent” to additional briefing. Judge Williams asked Plaintiff if she would “be okay with” Defendants filing something further. Believing he was referring to whether Defendants could explain why they thought their Rule 12(b)(6) motion was not duplicative. At no point did Plaintiff consent to Defendants re-arguing the merits of dismissal. Despite this, Judge Williams declared that Plaintiff had “said it was okay” and authorized briefing. It was improper for Judge Williams to ask Plaintiff whether Defendants should be allowed to file additional briefing. That question was not Plaintiff's to decide. The validity of a motion turns on law, not on the opposing party's consent. By shifting the responsibility onto Plaintiff, the Court created confusion, distorted the record to suggest she agreed, and improperly excused Defendants from procedural rules. Judicial authority cannot be delegated to one litigant, nor can consent override clear rules of civil procedure. The Court's actions therefore compounded the due process violations already present.

7. Improper Re-Argument of Motion to Dismiss

Defendants' Rule 12(b)(6) motion had already been denied by written order entered February 17, 2025, which expressly states the “motion to strike/dismiss” is denied and directs Defendants to answer by March 14, 2025. Under Rule 58, the written order controls once reduced to writing, signed, and filed; oral remarks at the hearing do not supersede the filed order. If Defendants believed the written order misstated what was said in court or failed to address

some part of their motion, their remedy was a timely motion under Rule 59(e), a motion to reconsider, or a proper Rule 60 motion—not a duplicative 12(b)(6) motion a month later, argued six months afterward.

Counsel Yopp has repeatedly manipulated procedure as though the rules do not apply to him. He claimed Plaintiff's motion lacked affidavits for bias, even though it was not a bias-based motion. He recounted an entire hearing without official transcript or affidavit, ignoring the fact that hearing itself was conducted during an automatic stay. His manipulation convinced Judge Davidian—acting jointly “under color of law”—to deprive Plaintiff of statutory rights under N.C. Gen. Stat. § 1-294, which provides that an interlocutory appeal automatically stays further proceedings. If counsel truly believed no stay applied, he could have moved within 30 days when he claimed Plaintiff was in default. Instead, he waited six months, filing only after Plaintiff opposed his improper 12(b)(6) motion in federal court in clear retaliation.

Rule 12(g) requires consolidation of defenses and bars successive Rule 12 motions. While Rule 12(h)(2) preserves a failure-to-state-a-claim defense, it may only be raised in an answer, by judgment on the pleadings, or at trial—not by filing a second Rule 12(b)(6) motion. Defendants' attempt to re-argue dismissal through a successive 12(b)(6) motion violates Rule 12(g), evades finality, and undermines the directive that they file an answer.

Plaintiff stated she could provide at least multiple cases confirming this bar providing *Massey v. Hoffman*, 647 S.E.2d 457 (2007), *Evangelistic Outreach v. General Steel*, 640 S.E.2d 840 (2007), *Four Seasons Homeowners Ass'n v. Sellers*, 302 S.E.2d 848 (1983), *Stancil v. Bruce Stancil Refrigeration*, 344 S.E.2d 789 (1986), and *State Farm Fire & Casualty Co. v. DuraPro*, 713 S.E.2d 1 (2011). Defense counsel cited none. Instead, he repeated arguments, claimed unfairness, and blamed Plaintiff's objections for interrupting his presentation. The Court ignored

the plain order, toggled between unrelated motions, and ultimately ordered further briefing on an issue already decided. For a judge to demand briefs rather than rule on the threshold validity of the motion demonstrates either (1) incapacity or incompetence to apply the rules, or (2) collusion with defense counsel to create a procedural trap under the color of law to deprive Plaintiff's constitutional rights when he had no authority to do so.

The written order entered by Judge Davidian was binding. He had three days between oral ruling and entry of the written order, during which time he would have reviewed the record along with amended complaint, and expressly denied the "motion to strike/dismiss." He directed Defendants to answer, not to re-file motions. Defendants have already had 90 days on a trial de novo to answer. There is no logical reason for a new round of briefing. Ordering it not only contravenes Rule 12(g) but provides Defendants with an improper toll against default, exposing Plaintiff to another round of unlawful proceedings—a pattern already subject of federal litigation for due process violations.

Ordering merits briefing on a motion that is procedurally foreclosed exceeds the Court's role at this stage and prejudices Plaintiff to re-litigate what the written order already resolved. Respectfully, Plaintiff files any response only to comply with the Court's directive and expressly does not consent to re-argument of a motion already adjudicated and barred by Rule 12(g).

NOTICE TO WAKE COUNTY DISTRICT COURT

The handling of this hearing prior and during not only violated due process protections guaranteed by the Fourteenth Amendment but reflected an attempt to intimidate and manipulate procedure in order to force Plaintiff into an improper proceeding. As reflected in the record and the multiple notices Plaintiff has been forced to file, Defendants' counsel has repeatedly sought to manipulate procedure and litigate through improper channels, and this Court has enabled those

efforts—effectively allowing counsel to act under color of law and strengthening Plaintiff’s federal claim.

It is disappointing that Plaintiff must now expand her pending federal § 1983 complaint to include additional state actors solely due to counsel Yopp’s repeated procedural misconduct. It is beyond rational for this Court to act in such a manner. If its intent was to paint Plaintiff as vexatious or frivolous, it has failed. As she has already explained in her federal case, Plaintiff does not question the merits of her claims. She does not care how many filings are required, nor how many defendants must be named. She cares only about the preservation of justice and ensuring that no citizen in this district or state is forced to endure such systemic disregard of the rule of law.

This is not about dissatisfaction with a single order. It is about repeated, systemic violations of due process. It is about a judiciary that has acted as though it is above the law. Judicial immunity does not extend to acts taken in clear absence of jurisdiction or authority. If this Court believes it is protected by association, it is mistaken. Plaintiff will pursue these violations at every level available to her—district, appellate, supreme, and, if necessary, in the court of public opinion.

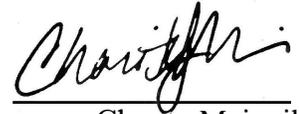
Plaintiff will not be intimidated, silenced, or deterred. She will continue until justice is served as it is meant to be. One does not need a J.D. to understand the law. If this Court continues to underestimate Plaintiff’s abilities, it only highlights the incompetency of those entrusted to uphold it.

Lastly, Plaintiff makes this statement as a matter of fact, not aggression. It is not intended to threaten or to appear combative. Defendants have repeatedly attempted to mischaracterize Plaintiff’s advocacy as hostile or frivolous. In reality, Plaintiff’s tone is shaped by her disabilities

and cognitive processing style, which are literal and matter of fact. Any inference of hostility lies with the reader, not with the substance of Plaintiff's filings.

Respectfully submitted this the 28th day of September, 2025.

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A handwritten signature in black ink, appearing to read "Charity Mainville". The signature is written in a cursive style with a horizontal line underneath it.

Charity Mainville
Plaintiff, Pro Se