

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN, ET AL.,
Plaintiffs,

v.

DUKE UNIVERSITY, ET AL.,
Defendants.

1:07-CV-953-JAB-JEP

**PLAINTIFFS' RESPONSE TO DEFENDANT LINWOOD
WILSON'S "MOTION TO SHOW CAUSE"**

Defendant Linwood Wilson, who appears in this action *pro se*, has filed a 49-page "motion" seeking sanctions against Plaintiffs and Plaintiffs' counsel in the form of \$3,000,000 in "attorneys' fees." [ECF 367 at 49]. Wilson does not explain how an unrepresented litigant can incur attorneys' fees at all, much less \$3,000,000 in attorneys' fees. Wilson's motion violates nearly every local rule governing motions before this Court; the motion is 49-pages long in violation of LR 7.3(d) limiting briefing to 20-pages; it is not accompanied by a brief in violation of LR 7.3(a); and, to the extent that any part of Wilson's purported "motion" could even be construed as a "brief," it lacks the content LR 7.2 requires of all briefs.

Moreover, Wilson's motion itself violates Rule 11. First, Wilson has presented his "motion" to the Court in violation of Rule 11's safe-harbor provisions. Fed. R. Civ. P. 11(c)(2). Second, Wilson's motion is not warranted by existing law or by any nonfrivolous argument for extending, modifying, or reversing existing law or for establishing

new law, in violation of Fed. R. Civ. P. 11(b). Third, Wilson's factual contentions have no evidentiary support, in violation of Fed. R. Civ. P. 11(b)(3). Fourth, Rule 11 contemplates that sanctions may be imposed *either* upon a motion served and filed pursuant to its safe-harbor provisions or "on the court's initiative" but not both. Fed. R. Civ. P. 11(c)(2)-(3). Nevertheless, Wilson's attempt to have it both ways by filing a "motion" asking the Court to act "on its own initiative" is still another violation of Rule 11; such a motion is not warranted by existing law or any nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

Further, Wilson's motion is largely incomprehensible because he indiscriminately pastes long passages of text from sources he does not identify. For example, page 11 of the motion begins "This Note argues . . ." and proceeds in the following 5 pages by pasting the text of law review note, omitting the section entitled "Arguments for Denying the Award." Wilson repeats this pattern from source to source for 49 pages.

Since filing the motion, Wilson belatedly filed his Answer to Plaintiffs' complaint in which he admits facts that plainly contradict his prior claim that Plaintiffs' claims against him are frivolous. Of the material allegations of fact, Wilson denies only Plaintiffs' contention that he participated in a conspiracy to obstruct justice. But he admits most, if not all, of the material facts of that claim. For example, Wilson admits Plaintiffs' allegation that he "was part of an interview conducted in the DA's office . . . of Nurse Levicy." [ECF 377 at 143 (Answer ¶ 788).] Further, Wilson admits that he "met Nurse

Levicy and Investigator Himan on the evening of January 10, 2007.” [*Id.* at 145 (Answer ¶ 798).] Wilson also admits Plaintiffs’ allegation that, during that January 10 meeting, he, Levicy, and Himan discussed how Levicy would respond to the absence of DNA belonging to any member of the Duke men’s lacrosse team, and that “Nurse Levicy responded to multiple questions about condoms during her interview on January 10, 2007.” [*Id.* at 144 (Answer ¶795).] And, among other things, Wilson admits Plaintiffs’ allegation that, during the January 10, 2007, meeting, “Levicy stated that she ‘wasn’t surprised when [she] heard no DNA was found because rape is not about passion or ejaculation but about power.” [*Id.* at 145 (Answer ¶796).] There is more. But that is enough to show that Wilson’s Answer *admits* the allegations that he claimed to be “frivolous, unreasonable, without foundation, vexatious and groundless” in his motion. [ECF 367 at 1.]

Wilson’s motion should be denied on the grounds that it is contradicted by his own Answer, it lacks legal merit, it lacks factual merit, and it violates virtually every rule governing motions filed in this Court.

Respectfully submitted.

/s/ Robert C. Ekstrand
Robert C. Ekstrand
N.C. State Bar No. 26673
EKSTRAND & EKSTRAND LLP
110 Swift Avenue, Second Floor
Durham, North Carolina 27705
rce@ninthstreetlaw.com
Fax: (919) 416-4591
Tel. (919) 416-4590
Counsel for Plaintiffs

April 22, 2014

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CERTIFICATE OF SERVICE

I certify that on the date stamped below, the foregoing Response was electronically filed with the Court's CM/ECF System, which will issue a Notice of Electronic Filing (NEF) to counsel of record for every party registered to receive NEFs through the Court's CM/ECF System as set out below. I further certify that every party to this action has at least one counsel of record registered to receive NEFs in this action, and that they only unrepresented party, Linwood Wilson, has been permitted to register to receive the NEFs issued by the Court's CM/ECF System in this action.

/s/ Robert C. Ekstrand

Robert C. Ekstrand

N.C. State Bar No. 26673

EKSTRAND & EKSTRAND LLP

110 Swift Avenue, Second Floor

Durham, North Carolina 27705

rce@ninthstreetlaw.com

Fax: (919) 416-4591

Tel. (919) 416-4590

Counsel for Plaintiffs