

In the  
Supreme Court of the United States

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CARL WOMACK,

*Petitioner,*

V.

MERRIMON OXLEY,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
Supreme Court of North Carolina

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**BRIEF IN OPPOSITION**

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## **QUESTIONS PRESENTED**

Whether the North Carolina Court of Appeals erred by dismissing Petitioner's appeal in light of multiple violations of the North Carolina Rules of Appellate Procedure?

Whether the North Carolina Supreme Court erred by dismissing Petitioner's appeal where no appeal of right existed and no Petition for Writ of Certiorari was filed with the North Carolina Supreme Court?

Whether the dismissal of Petitioner's appeal by the North Carolina Court of Appeals and subsequent dismissal of petitioner's Motion for Notice of Appeal raise an adequate federal question upon which this Court may adjudicate?

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## INTRODUCTION

Petitioner Carl Womack (“Petitioner”) has a history of filing vexatious, duplicative and meritless lawsuits and disregarding court rules. His action in the underlying lawsuit resulted in the imposition of a Rule 11 Sanction on November 1, 2019, including a Gatekeeper Order on future filings as to distinct categories of litigation. The trial court’s Order is attached at Appendix page 1.

Petitioner appealed the dismissal of his lawsuit and imposition of the Gatekeeper Order to the North Carolina Court of Appeals. The North Carolina Court of Appeals dismissed the appeal on October 15, 2020 and the Supreme Court of North Carolina denied Petitioner’s Motion for leave to Appeal on October 15, 2020. Those rulings are attached at Appendix pages 16 and 17, respectively.

The present Petition presents no sound basis for granting review.

## STATEMENT OF THE CASE

1. Much of the information in Petitioner's "Statement of the Case" does not concern the underlying lawsuit (19-CVS-804), but instead focuses on conspiracy theories about an alleged cult, the Word of Faith Fellowship, purported prejudices or biases of members of the judiciary and clerks of court, and other state court proceedings filed in other counties that are not on appeal or proceedings that are not contained in the Record below. Pursuant to Rule 15 of the Rules of Supreme Court, the undersigned points out that some of these statements appear to be misstatements, but she cannot assess them as they are not supported by citations to the Record or were not issues before the below courts in the subject litigation.
2. Petitioner is the adult son of Ruth Womack and sibling to decedent Sandra Summey.
3. Respondent is an attorney who was formerly the Guardian of the Estate of Ruth Womack. Petitioner has never been a client of Respondent.

4. Neither the current guardian of the estate nor the guardian of the person of Ruth Womack are parties to this lawsuit. Appendix p 3 (R p 446 at ¶ 8).
5. On July 9, 2019, Petitioner filed the underlying lawsuit (19-CVS-804) against Respondent Merrimon Oxley (“Respondent”) in the Rutherford County Superior Court of North Carolina. (R p 3-14)<sup>1</sup>. In this lawsuit, Petitioner appears to allege that he is entitled to punitive damages due to Respondent’s “neglecting having [sic] cases scheduled” and violating his “rights to sell property.” The lawsuit arises out of or relates to numerous underlying proceedings (the “Underlying Proceedings”), related to the foreclosure and guardianship proceedings. Appendix p 1 (R p 444 at ¶ 1).<sup>2</sup> The underlying Proceedings were delayed and transferred numerous times to other counties due to, *inter alia*, Petitioner’s accusations

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<sup>1</sup> All record cites are to the Record filed with the North Carolina Court of Appeals.

<sup>2</sup> The Underlying Proceedings include the following: 17 SP 51 (Rutherford County); 17 E 274 (Rutherford County); 18 SP 182 (Rutherford County); 18 SP 171 (Cleveland County); 18 E 281 (Cleveland County); 18 SP 284 (Cleveland County); 18 E 278 (Cleveland County); 18 SP 29 (Henderson County); 18 E 96 (Henderson County); 18 E 97 (Henderson County); 19 E 63 (Buncombe County); and 19 SP 20 (Buncombe County). (R p 18, 28-37, 445 at ¶ 1(b)).

that various Clerks of Court and court staff had conflicts of interest or perceived biases, due to the participants' safety concerns based on Petitioner's comments and actions, and Petitioner's alleged perceptions that he is not being treated fairly as a non-attorney despite his membership in the "Illuminati." (R p 18 at ¶ 2, 445 at ¶ 1(c), R p 447 at ¶ 13). In some instances, the Clerks declined the case for other reasons. (R p 28-42, 445 at ¶¶ 1(c), 4). The foreclosure and guardianship proceedings are not on appeal.

6. Other individuals sued by Petitioner with respect to the Underlying Proceedings include: Steve Owens, the Rutherford County Clerk of Court; John Carroll, Director of the Rutherford County Department of Social Services; Adena Widener, a social worker with the Rutherford County Department of Social Services; Carrie Howell, the Cleveland County Assistant Clerk of Court; guardian ad litem Karen Wright; and Johanna Finkelstein, Buncombe County Assistant Clerk of Court. (R p 19 at ¶ 4, R p 446 at ¶ 10).
7. Petitioner filed four other civil lawsuits related to the Underlying Proceedings in the United States District for the Western District



of North Carolina, which were all dismissed. *Carl Womack v. Steve Owens, John Carroll, and Adena Widener*, No. 1:17-CV-00173-MR-DLH, 2017 WL 3083262 (W.D.N.C.) (July 19, 2017) aff'd in part, vacated in part, remanded, 736 F. App'x 356 (4th Cir. 2018); *Carl Womack v. Merrimon Oxley*, No. 1:18-CV-00266-MR-DLH, 2018 WL 4682346 (W.D.N.C.) (September 28, 2018), aff'd 748 F. App'x 566 (4th Cir. 2019); *Carl Womack v. Carrie Howell, Karen Wright, and Shelby Police Department*, No. 1:18-CV-00352-MR-WCM, 2019 WL 148716 (W.D.N.C.) (9 January 2019); *Carl Womack v. Johanna Finkelstein*, No. 1:19-CV-00150-MR-WCM, 2019 WL 2407569, at \*1 (W.D.N.C.) (June 6, 2019). (R p 19 at ¶ 3, 446 at ¶¶ 9, 11). In *Womack v. Howell*, the third civil lawsuit, the Federal District Court explained that Mr. Womack's first three lawsuits had been dismissed for being frivolous, for lack of subject matter jurisdiction or for failing to state a claim and warned him that "future frivolous filings will result in the imposition of a pre-filing review system." (R p 447 at ¶ 16, 264-72). *Womack v. Howell*, No. 1:18-CV-00352-MR-WCM, 2019 WL 148716, at \*3 (W.D.N.C. Jan. 9, 2019)

(emphasis added). In Orders dated 6 June 2019 and 26 June 2019, in *Womack v. Finkelstein*, the fourth civil lawsuit, the Federal District Court summarized the history of frivolous lawsuits filed by Petitioner related to his mother's competency proceedings and imposed a pre-filing review system on future filings by Mr. Womack in the United States District Court for the Western District of North Carolina. (R p 424-34, 447-50 at ¶ 17, 450-51 at ¶ 18); *Womack v. Finkelstein*, No. 1:19-CV-00150-MR-WCM, 2019 WL 2407569, at \*3–4 (W.D.N.C. June 6, 2019) and *Womack v. Finkelstein*, No. 1:19-CV-00150-MR-WCM, Doc. 7 (W.D.N.C. 26 June 2019) (R p 435-36).

8. The trial court took judicial notice of the pleadings filed in the related federal court lawsuits, many of which were included in the materials filed by Respondent in support of her Motions. Appendix p 4 (R p 447).
9. On August 20, 2019, Plaintiff was found guilty of communicating a threat to Respondent's spouse. (R p 24, 38 at ¶¶ 45-46, 451 at ¶ 22). During the October 7, 2019 hearing, Petitioner indicated that he was willing to dismiss his case if Respondent would "drop" her case

against him, presumably referring to the criminal proceeding. Appendix p 8 (R p 451 at ¶ 24).

10. On September 9, 2019, Respondent filed a Rule 11 Motion Seeking Imposition of a Gatekeeper Order (the “Rule 11 Motion”) based on Petitioner’s history of filing numerous vexatious, harassing, and/or duplicative or meritless lawsuits and motions in Rutherford County, surrounding counties and in Federal Court and his conduct in those proceedings. (R p 18-42). A detailed timeline of the Underlying Proceedings and related civil lawsuits, appeals and criminal proceeding is found at R p 28-42. Also on September 9, 2019, Respondent filed a Motion to Dismiss pursuant to Rule 12(b)(1) and (b)(6) and Answer (R S p 473-77). The Motions were scheduled for hearing on 7 October 2019. (R S p 478-79).
11. On October 4, 2019, Respondent received a pleading from Petitioner entitled “Notice of Removal from North Carolina Civil Court to US District Court Under Supplemental Jurisdictions,” "Motion for Change of Venue," "Motion for a Jury Trial," and a "Motion to Strike." (R p 392-403, 446 at ¶ 5, 408 at ¶¶ 1-2).

12. By letter dated October 4, 2019 (R p 438), the Clerk of Court for the United States District Court for the Western District of North Carolina returned Petitioner's case opening documents in regard to this lawsuit due to his non-compliance with that court's pre-filing review system imposed in *Carl Womack v. Johanna Finkelstein*, 1:19cv-150-MR-WCM, 2019 WL 2407569 (W.D.N.C.). Appendix p 3 (R p 446 at ¶ 6).
13. Respondent's Motions in the state court proceeding came on for hearing on October 7, 2019 before the Honorable Marvin P. Pope. Appendix pp 3, 8 (R p 446 at ¶ 7, R p 451 at ¶ 23).
14. By Orders filed on November 1, 2019, the trial court granted Respondent's Motion and entered a Sanction Imposing a Gatekeeper Order ("Gatekeeper Order"). (R p 444-55). The trial court also dismissed Petitioner's Complaint and awarded Attorneys' Fees and Costs. The trial court found and concluded:
  - "Plaintiff initiated this action for improper purposes, including to harass Defendant and to increase the cost of litigation." Appendix p 9 (R p 452 at ¶ 26).

- “Defendant has incurred significant and burdensome attorneys’ fees and costs to defend herself in the present action.” *Id.* (R p 452 at ¶ 27).
- “Plaintiff’s Complaint is factually and legally insufficient.” *Id.* (R p 452 at ¶ 28).
- “The claims contained in Plaintiff’s filings and documents are inappropriate, not well grounded, and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.” *Id.* (R p 452 at ¶ 29).
- “Plaintiff has an extensive history of litigation and has filed numerous vexatious, harassing, and/or duplicative lawsuits and motions in this Court, surrounding counties and in Federal Court.” *Id.* (R p 452 at ¶ 30).
- “Plaintiff lacks a good faith basis for the pursuit of this litigation. It appears to be intended to harass Defendant and to increase the cost of litigation.” *Id.* (R p 452 at ¶ 31).
- “Plaintiff’s efforts to undermine the guardianship and estate proceedings have been rejected numerous times. The instant action

is an attempt to re-litigate the foreclosure proceeding, which was completed in August 2018 and has not been appealed.” *Id.* (R p 452 at ¶ 32).

- “Defendant was not the guardian for Plaintiff Carl Womack. Defendant did not represent Plaintiff Womack at any time. Plaintiff has not alleged Defendant owed him a legally recognized duty.” *Id.* (R p 452 at ¶ 33).
- “At no time have Plaintiff’s complaints about these proceedings been deemed meritorious.” *Id.* (R p 452 at ¶ 34).
- “Plaintiff’s prior litigation has been carried out with an intent to harass and intimidate Defendant and others.” *Id.* (R p 452 at ¶ 35).
- “Plaintiff’s actions have burdened the Courts of Rutherford County, McDowell County, Henderson County, Cleveland County, and Buncombe County and the United States District Court for the Western District of North Carolina and the parties involved in the underlying proceedings, including Defendant.” *Id.* (R p 452 at ¶ 36).

- “Plaintiff’s actions have been costly and time consuming to all of the litigants and the various Courts involved in the prior proceedings.” *Id.* (R p 452 at ¶ 37).
- “Plaintiff has made some very serious allegations against Defendant and counsel for Defendant that are not supported by any fact or law.” *Id.* (R p 452 at ¶ 38).<sup>3</sup>
- “Plaintiff has exhibited conduct in this matter that demonstrates a disregard for the rules of law and procedure.” *Id.* (R p 452 at ¶ 39).
- “This Court has the inherent authority, and the obligation, to safeguard the judicial process and to protect: the fairness of the process for all citizens, to prevent abuse, harassment of litigants, court officials, and conduct that creates needless expense.” Appendix p 10 (R p 453 at ¶ 40).
- “A Gatekeeper Order may be entered to preserve the orderly and efficient administration of justice when a lesser remedy is not available or likely to provide adequate protection for litigants and

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<sup>3</sup> As noted above, Appellant’s Complaint fails to state a claim against Appellee. Appellant was not a ward or a client of Appellee.

court officials affected by frivolous and groundless filings.” *Id.* (R p 453 at ¶ 41).

- “The nature of Plaintiff’s conduct and the extraordinary circumstances of this matter require that the Court place special limitations on Plaintiff’s access to the State Courts of Rutherford County, McDowell County, Henderson County, Cleveland County, and/or Buncombe County and enter a Gatekeeper Order.” *Id.* (R p 453 at ¶ 42).
- “Improper documents have been filed by Plaintiff. These documents are also frivolous and groundless, often nonsensical, with no basis in fact or in procedural or substantive law. Said filings obfuscate and confuse the orderly proceedings of the Court.” *Id.* (R p 453 at ¶ 43).
- “Having considered other sanctions and alternatives, the Court in its discretion is of the opinion that a lesser alternative would not be sufficient to prohibit further abuses of the judicial process by Plaintiff.” *Id.* (R p 453 at ¶ 44).



- “Carl Womack is not an attorney. However, if he was admitted to practice, his conduct would be subject to review by this Court and the North Carolina State Bar for potential disciplinary measures.” *Id.* (R p 453 at ¶ 45).
  - “Defendant has incurred significant attorneys' fees from the time of Plaintiff's filing of the Complaint. Plaintiff's claim for punitive damages arises out of the same common nucleus of facts and law as Plaintiff's other claims.” *Id.* (R p 453 at ¶ 46).
15. On March 17, 2020, Petitioner filed his Brief with the North Carolina Court of Appeals.
  16. On June 13, 2020, Respondent filed her Appellee Response with the North Carolina Court of Appeals and a Motion to Dismiss the Appeal due to multiple violations of the North Carolina Rules of Appellate Procedure.
  17. On September 22, 2020, the North Carolina Court of Appeals dismissed the appeal. Appendix p 16.
  18. On October 8, 2020, Petitioner filed a Motion for Notice of Appeal with the Supreme Court of North Carolina; no Petition for Writ of

Certiorari was filed. On October 15, 2020, the Supreme Court of North Carolina dismissed the Motion. Appendix p 17.

19. On January 8, 2021, Petitioner filed the present Petition.

### **REASONS FOR DENYING THE PETITION**

The Petition in this case fails to present any federal question related to the dismissal of either Petitioner's appeal to the North Carolina Court of Appeals or his Motion for Notice of Appeal to the Supreme Court of North Carolina—both of which rest solely upon state procedural grounds. Instead, the petition raises presumptuous questions focusing primarily on the legitimacy of a Gatekeeper Order issued against petitioner by the Honorable Marvin P. Pope of the Superior Court of Rutherford County, North Carolina and alleged erroneous factual findings. Because Petitioner's dismissals from North Carolina's appellate courts result from a failure to comply with the North Carolina Rules of Appellate Procedure, there is no federal question for this Court to adjudicate; therefore, the petition should be denied.

A petition for certiorari will only be granted for compelling reasons. U.S. Sup. Ct. R. 10. The Rules of the Supreme Court indicate that a

compelling reason may arise from a decision made by a state court or United States Court of Appeals over an important question of federal law that should be settled by this Court. *Id.* at (c).

In the present case, Petitioner appealed to the North Carolina Court of Appeals following a Superior Court decision enjoining him from filing any further motion, pleading, or document relating to certain topics absent satisfaction of pre-filing requirements. (R p 454). Subsequently, the North Carolina Court of Appeals granted Respondent's Motion to Dismiss the Appeal on the basis that Petitioner failed to comply with, *inter alia*, Rule 28 of the North Carolina Rules of Appellate Procedure, which requires all appellate briefs to contain both “the applicable standard(s) of review for each issue” and a “non-argumentative summary of all material facts ... supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits....” N.C. R. App. P. 28(b)(5)-(6) (2019). Both the Rules of Appellate Procedure and North Carolina law permitted the North Carolina Court of Appeals to dismiss the case based upon petitioner's substantial noncompliance. N.C. R. App. P. 34 (a)-(b). *See State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 304

(2019); *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 193, 657 S.E.2d 361, 362 (2008).

Following his unsuccessful appeal to the North Carolina Court of Appeals, Petitioner turned to the Supreme Court of North Carolina. While North Carolina law provides a right to appeal to the Supreme Court of North Carolina under circumstances where there is "a substantial question arising under the Constitution of the United States or of this State," there is no right to appeal a dismissal based upon procedural grounds alone. *See* N.C. R. App. P. 14; *see* N.C. Gen. Stat. § 7A-30. Moreover, a party seeking to review a decision that does not warrant a right to appeal must file a Petition for Discretionary Review with the Supreme Court of North Carolina. N.C. R. App. P. 15; N.C. Gen. Stat. § 7A-31. Following his first dismissal, petitioner did not file a Petition for Discretionary Review; rather, he filed a Motion for Notice of Appeal. The Supreme Court of North Carolina appropriately dismissed Petitioner's Motion.

Petitioner again appeals a decision based entirely on his own failure to comply with state appellate procedural rules. Due to his recurring

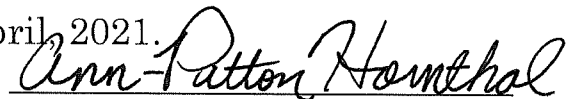
noncompliance, neither the North Carolina Court of Appeals nor the Supreme Court of North Carolina reached the merits of his appeal. Likewise, neither court adjudicated a federal issue that this Court could review by granting a petition for certiorari. Because there is no important question of federal law raised by either of North Carolina's appellate courts in this case, Petitioner has given this Court no compelling reason to grant the petition.

### CONCLUSION

The petition should be denied.

Respectfully Submitted,

This the 30<sup>th</sup> day of April, 2021.



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## APPENDIX

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<i>Sanction Imposing a Gatekeeper Order and Dismissal of Plaintiff's Complaint.....</i>	Appendix 1
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<i>Order of the North Carolina Court of Appeals Dismissing Petitioner's Appeal.....</i>	Appendix 16
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<i>Order of the Supreme Court of North Carolina Dismissing Petitioner's Motion for Notice of Appeal.....</i>	Appendix 17
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STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF RUTHERFORD

2019 NOV - 1 P 1: 56

FILE NO. 19 CVS 804

CARL WOMACK,  
Plaintiff,

v.

MERRIMON OXLEY,  
Defendant.

RUTHERFORD CO., C.S.C.

BY *Bm*

**SANCTION IMPOSING  
A GATEKEEPER ORDER AND  
DISMISSAL OF  
PLAINTIFF'S COMPLAINT**

THIS MATTER CAME ON FOR HEARING by the undersigned Presiding Judge on October 7, 2019 pursuant to Defendant's Rule 11 Motion Seeking Imposition of a Gatekeeper Order and Motion for Sanctions and Defendant's Motion to Dismiss. The Court, having reviewed the court file, North Carolina General Statutes, the Constitution of the United States of America, relevant case law, arguments and statements of counsel for the Defendant and by the Plaintiff, Carl Womack, appearing *pro se*, finds as follows:

**PROCEDURAL HISTORY**

1. On July 9, 2019, Plaintiff filed the instant lawsuit. It arises out of or relates to numerous underlying proceedings (the "Underlying Proceedings").
  - a. 18 SP 76 (Rutherford County) is a foreclosure file. The Court takes judicial notice of the following in regards to the foreclosure proceeding:
    1. On April 29, 2010, John Summey and Sandra Summey, husband and wife, executed a Promissory Note and Deed of Trust to secure the Promissory Note, which was recorded at Book 1072, Pages 130-149 of the Rutherford County Register of Deeds. The property encumbered by the Deed of Trust is located at 381 Green Street, Rutherfordton, NC 28139 (the "Green Street Property").
    2. Having been preceded in death by her husband, Sandra Summey died intestate on January 4, 2017. Ruth Womack was her heir and would have inherited the Green Street Property.
    3. On March 27, 2017, Ruth C. Womack signed a purported Renunciation and Qualified Disclaimer as to her interest in the Estate of Sandra Ruth Womack Summey (the "Purported Renunciation"). Under the Purported Renunciation, Plaintiff and his sister would have become owners of the Green Street Property.
    4. There has been no deed recorded conveying the Green Street Property from Ruth Womack to Carl Womack or his sister.
    5. In July 2017, Defendant Merrimon Oxley qualified as the guardian of the Estate of Ruth Womack. Defendant petitioned the Rutherford County Clerk to set aside the Purported Renunciation on the basis that Ruth Womack was not competent at the time she signed it.
    6. In 2018, foreclosure proceedings were instituted as to the Green Street Property. Rutherford County 18 SP 076. A guardian ad litem was appointed to represent

- the Known Heirs and Unknown Heirs of Sandra Summey. The Petition filed by the guardian ad litem listed the following known heirs: Ruth Cole Womack, Carl D. Womack, and June Sims.
7. Plaintiff was aware of the foreclosure proceedings but never intervened or took steps to prevent the foreclosure.
  8. On August 14, 2018, the Mortgagee-Trustee filed the Report of Foreclosure Sale / Resale in the foreclosure proceeding.
  9. On September 13, 2018, the Assistant Clerk of Court filed the Final Report and Account of Foreclosure Sale.
  10. Plaintiff did not appeal the Report of the Foreclosure Sale.
  11. Following the foreclosure on the Green Street Property, Defendant dismissed the Petition to Set Aside the Renunciation without prejudice on September 17, 2018.
- b. The following proceedings involve the administration of the estate of Plaintiff's deceased sister and the guardianship of Plaintiff's mother: 17 SP 51 (Rutherford County); 17 E 274 (Rutherford County); 18 SP 182 (Rutherford County); 18 SP 171 (Cleveland County); 18 E 281 (Cleveland County); 18 SP 284 (Cleveland County); 18 E 278 (Cleveland County); 18 SP 29 (Henderson County); 18 E 96 (Henderson County); 18 E 97 (Henderson County); 19 E 63 (Buncombe County); and 19 SP 20 (Buncombe County).
- c. The Underlying Proceedings have been delayed and transferred numerous times due to, *inter alia*, Plaintiff's accusations that various Clerks of Court and court staff have conflicts of interest or perceived biases, due to the participants' safety concerns based on Plaintiff's comments and actions, and Plaintiff's alleged perceptions that he is not being treated fairly as a non-attorney despite his membership in the "Illuminati."
- Specifics and additional examples are set forth in detail in Defendant's Rule 11 Motion and materials filed in support of that motion, which include pleadings and orders in the Underlying Proceedings.
2. On May 16, 2019, Defendant Oxley was allowed to withdraw as guardian of the Estate of Ruth Womack by Order of the Buncombe County Assistant Clerk of Court.
  3. The subject lawsuit was filed on July 9, 2019. It also relates to a purported Renunciation and Qualified Disclaimer as to Ruth C. Womack's interest in the Estate of Sandra Ruth Womack Summey and the Green Street Property.
  4. On September 9, 2019, Defendant Oxley moved pursuant to N.C. Gen. Stat. § 1A-1, Rule 11, for the issuance of a pre-filing injunction and other relief. Defendant also moved to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rules 12(b)(1) and (6). Defendant also moved for attorneys' fees under N.C. Gen. Stat. § 1D-45. Included with Defendant's filing are copies of various pleadings from the Underlying Proceedings and related litigation with Appendix materials pages 001-382.



5. Before the hearing, Plaintiff served Defendant with a "Notice of Removal from North Carolina Civil Court to US District Court Under Supplemental Jurisdictions," "Motion for Change of Venue," "Motion for a Jury Trial," and a "Motion to Strike."
6. Citing an Order entered in *Carl Womack v. Johanna Finkelstein*, 1:19cv-150-MR-WCM, 2019 WL 2407569 (W.D.N.C.), imposing a pre-filing review system on all documents submitted by Plaintiff in federal court, Frank G. Johns, Clerk of Court for the United States District Court for the Western District of North Carolina, returned Plaintiff's case opening documents in regard to this lawsuit by letter dated October 4, 2019.
7. Defendant's Motions came on for hearing on October 7, 2019 following proper notice. All parties were present for the hearing.
8. Neither the current guardian of the estate nor the guardian of the person of Ruth Womack are parties to this lawsuit.

#### RELATED PROCEEDINGS

9. This is the fifth civil lawsuit filed by Carl Womack related to the Underlying Proceedings. Plaintiff appears to allege that he is entitled to punitive damages due to Defendant's "neglecting having [sic] cases scheduled" and violating his "rights to sell property."
10. Other individuals sued by Plaintiff with respect to the Underlying Proceedings include: Steve Owens, the Rutherford County Clerk of Court; John Carroll, Director of the Rutherford County Department of Social Services; Adena Widener, a social worker with the Rutherford County Department of Social Services; Carrie Howell, the Cleveland County Assistant Clerk of Court; guardian ad litem Karen Wright; the Shelby Police Department; and Johanna Finkelstein, Buncombe County Assistant Clerk of Court.
11. These are the first four related lawsuits:
  - a. *Carl Womack v. Steve Owens, John Carroll, and Adena Widener*, No. 1:17-CV-00173-MR-DLH, 2017 WL 3083262 (W.D.N.C.). By Order dated July 19, 2017, the District Court dismissed this lawsuit. Plaintiff appealed. The District Court Order was affirmed in part, vacated in part, remanded, 736 F. App'x 356 (4th Cir. 2018).
  - b. *Carl Womack v. Merrimon Oxley*, No. 1:18-CV-00266-MR-DLH, 2018 WL 4682346 (W.D.N.C.). By Order dated September 28, 2018, the District Court dismissed this lawsuit. Plaintiff appealed. The District Court Order was affirmed as modified. 748 F. App'x 566 (4th Cir. 2019).
  - c. *Carl Womack v. Carrie Howell, Karen Wright, and Shelby Police Department*, No. 1:18-CV-00352-MR-WCM, 2019 WL 148716 (W.D.N.C.). By Order dated January 9, 2019, the District Court dismissed this lawsuit.
  - d. *Carl Womack v. Johanna Finkelstein*, No. 1:19-CV-00150-MR-WCM, 2019 WL 2407569, at \*1 (W.D.N.C.). By Order dated June 6, 2019, the District Court dismissed this lawsuit. Plaintiff's appeal to the Fourth Circuit is pending.

*Womack v. Finkelstein*, No. 1:19-CV-00150-MR-WCM, 2019 WL 2407569, at \*1 (W.D.N.C. June 6, 2019).

12. In all five civil lawsuits, *Carl* has proceeded *pro se*.
13. The underlying estate and guardianship proceedings have been delayed and transferred numerous times as discussed above.
14. The extensive pleadings in the related cases demonstrate that Ruth Womack's liabilities exceed her assets. She resides in a healthcare facility.
15. This Court takes judicial notice of the pleadings filed in the related federal court lawsuits, many of which were included in the materials filed by Defendant in support of her motion.
16. In *Womack v. Howell*, the third civil lawsuit, the Federal District Court explained:

As noted above, this is the third civil action that Mr. Womack has filed attempting to challenge the state court competency proceedings involving his mother. All these actions have now been dismissed for being frivolous, for lack of subject matter jurisdiction or for failing to state a claim. Litigants do not have an absolute and unconditional right of access to the courts in order to prosecute frivolous, successive, abusive or vexatious actions. *See Demos v. Keating*, 33 F. App'x 918, 920 (10th Cir. 2002); *Tinker v. Hanks*, 255 F.3d 444, 445 (7th Cir. 2002); *In re Vincent*, 105 F.3d 943, 945 (4th Cir. 1997). District Courts have inherent power to control the judicial process and to redress conduct which abuses that process. *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001).

The Plaintiff is hereby informed that **future frivolous filings will result in the imposition of a pre-filing review system**. *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004); *Vestal v. Clinton*, 106 F.3d 553, 555 (4th Cir. 1997). If such a system is placed in effect, pleadings presented to the Court which are not made in good faith and which do not contain substance, will be summarily dismissed as frivolous. *See Foley v. Fix*, 106 F. 3d 556, 558 (4th Cir. 1997). Thereafter, if such writings persist, the pre-filing system may be modified to include an injunction from filings. *In re Martin-Trigona*, 737 F.2d 1254, 1262 (2d Cir. 1984).

*Womack v. Howell*, No. 1:18-CV-00352-MR-WCM, 2019 WL 148716, at \*3 (W.D.N.C. Jan. 9, 2019) (emphasis added).

17. In an Order dated June 6, 2019, in *Womack v. Finkelstein*, the fourth civil lawsuit, the Federal District found and ordered as follows:

This is the fourth lawsuit brought by the Plaintiff Carl Womack related to state court proceedings in which his mother, Ruth Womack, was placed in protective custody with the Rutherford County Department of Social Services and ultimately declared to be incompetent. In the first action, the Plaintiff and Ruth Womack asserted claims under 42 U.S.C. § 1983 and other federal civil rights statutes against the Rutherford County Clerk of

Court and employees of the Rutherford County Department of Social Services. [Civil Case No. 1:17-cv-00173-MR-DLH, Doc. 1]. The Court dismissed the Plaintiff's claims asserted in that action on the grounds of lack of subject matter jurisdiction, and the Fourth Circuit Court of Appeals affirmed. [Id. at Docs. 3, 8].

In the second action, the Plaintiff asserted claims under 42 U.S.C. § 1983 and 18 U.S.C. § 242 against the guardian of his mother's estate, Merrimon Oxley. [Civil Case No. 1:18-cv-00266-MR-DLH, Doc. 1]. The Court dismissed the Plaintiff's claims as frivolous. [Id. at Doc. 3].

In the third action, the Plaintiff asserted claims against the Cleveland County Clerk of Court, Carrie Howell; guardian ad litem Karen Wright; and the Shelby Police Department under 42 U.S.C. § 1983, 18 U.S.C. § 241, and 42 U.S.C. § 1985. [Civil Case No. 1:18-cv-00352-MR-WCM, Doc. 1]. The Court dismissed this action for failing to state a claim and for lack of subject matter jurisdiction. [Id. at Doc. 4]. The Court further warned the Plaintiff that future frivolous filings would result in the imposition of a pre-filing system. [Id.].

The Plaintiff now returns to this Court, asserting claims under 42 U.S.C. § 1983 against the Assistant Clerk of Court for the Superior Court for Buncombe County, Johanna Finkelstein. Specifically, the Plaintiff alleges that the Defendant violated his First Amendment right to petition the Government for a redress of grievances and committed obstruction of justice by failing to schedule a hearing on a motion filed by the Plaintiff for the removal of his mother's guardian. [Doc. 1 at 4, 6-7]. The Plaintiff further alleges that the Defendant violated his constitutional rights by denying a number of his motions during proceedings related to the restoration of his mother's competency. [Id. at 7]. Finally, while conceding that such does not constitute a violation of his civil rights, the Plaintiff alleges that the Defendant conspired with his mother's guardian and others to commit Medicaid fraud. [Id. at 4]. The Plaintiff alleges that he was discriminated against on the basis of his class, as the Defendant and others involved in the restoration proceeding were lawyers. [Id. at 7-8].

In addition to his Complaint, the Plaintiff also has filed a Petition seeking release of his mother from the nursing home where she resides as well as an award of damages. [Doc. 3]. In this Petition, the Plaintiff notes that he has appealed the State Court rulings that have been made against him to the North Carolina Court of Appeals. [Id. at 10].

\*\*\*

As noted above, this is the fourth civil action that Mr. Womack has filed attempting to challenge the State Court competency proceedings involving his mother. **All these actions have now been dismissed for being**

**frivolous, for lack of subject matter jurisdiction or for failing to state a claim.**

In dismissing the Plaintiff's last action, the Court warned the Plaintiff that future frivolous filings would result in the imposition of a pre-filing review system. [Civil Case No. 1:18-cv-00352-MR-WCM, Doc. 4]. A pre-filing review system is not a sanction which is imposed lightly. The Court "should not in any way limit a litigant's access to the courts absent exigent circumstances, such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions." *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004) (internal quotation marks and citation omitted). In determining whether to impose a limitation on a litigant's access to the courts, the following factors should be considered: "(1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions." *Id.* "Ultimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties." *Vandyke v. Francis*, No. 1:12-CV-128-RJC, 2012 WL 2576746, at \*2 (W.D.N.C. July 3, 2012) (quoting *Black v. New Jersey*, No. 7:10-CV-57-F, 2011 WL 102727, at \*1 (E.D.N.C. Jan. 11, 2011)).

Applying these factors to the present case, **the Court concludes that the imposition of a pre-filing review is warranted.** The Plaintiff has made a series of repetitive, frivolous filings challenging the State Court proceedings regarding the competency of his mother. Despite three prior Orders clearly explaining the baselessness of the Plaintiff's filings, the Plaintiff continues to file his meritless pleadings. These filings are burdensome on the Court, as they have caused the Court to expend considerable time and resources in addressing them. In light of these circumstances, the Court concludes that the Plaintiff will continue his abusive behavior if he is not subjected to a pre-filing review system.

Before imposing a pre-filing limitation, the Court must offer a litigant the opportunity to explain why the Court should not impose such a pre-filing review system upon all future filings from him. *See Vandyke*, 2012 WL 2576746, at \*3. In the event that the Plaintiff fails to articulate a reason why such a system should not be imposed, the Court will enter an Order directing that all documents submitted by the Plaintiff in the future will be pre-screened by the Court for content. Any proposed filings that are not made in good faith or which lack substance or merit will be returned to the Plaintiff without further explanation. Such a review system "will allow Plaintiff to have access to the Courts for his legitimate concerns, but will

prevent him from usurping the Court's resources with his baseless submissions." Id. at \*3.

IT IS, THEREFORE, ORDERED that the Plaintiff's Application to Proceed without Prepayment of Fees and Affidavit [Doc. 2] is hereby GRANTED, and the Plaintiff's Complaint [Doc. 1], and "Petition for Enforcement of Olmstead Act, and Community Based Health Care" [Doc. 3] are DISMISSED pursuant to 28 U.S.C. § 1915(e).

IT IS FURTHER ORDERED that, within fourteen (14) days of the entry of this Order, the Plaintiff shall file a single document, not to exceed more than three (3) pages, succinctly explaining why he believes the Court should not impose the above-described pre-filing review system. The Plaintiff is expressly warned that his failure to fully comply with this directive will result in the Court's imposition of the subject pre-filing review system.

*Womack v. Finkelstein*, No. 1:19-CV-00150-MR-WCM, 2019 WL 2407569, at \*3-4 (W.D.N.C. June 6, 2019).

18. On June 26, 2019, the Federal District Court entered an additional Order in *Womack v. Finkelstein*:

On June 6, 2019, the Court entered an Order dismissing this action as frivolous and directing the Plaintiff to show cause why a pre-filing review system should not be imposed. [Doc. 4]. The Plaintiff responded to the Court's Order on June 21, 2019. [Doc. 6].

Upon review of the Plaintiff's response, the Court finds that the Plaintiff has failed to articulate a reason why a pre-filing review system should not be imposed. Indeed, instead of addressing the propriety of imposing a pre-filing review system, the Plaintiff accuses the undersigned of misconduct and obstruction of justice in having dismissed this case. He then proceeds to re-argue his view of the merits of his claim while completely ignoring the jurisdictional and factual basis for the dismissal. [Doc. 6].

Accordingly, for all the reasons set forth in the Court's prior Order [Doc. 4], **the Court will direct that all documents submitted by the Plaintiff in the future will be pre-screened by the Court for content. Any proposed filings that are not made in good faith or which lack substance or merit will be returned to the Plaintiff without further explanation.** Such a review system "will allow Plaintiff to have access to the Courts for his legitimate concerns, but will prevent him from usurping the Court's resources with his baseless submissions." *Vandyke v. Francis*, No. 1:12-CV-128-RJC, 2012 WL 2576747, at \*3 (W.D.N.C. July 3, 2012).

IT IS, THEREFORE, ORDERED that a pre-filing review system is hereby imposed, and all documents submitted by the Plaintiff Carl Womack in the future, whether in this case or in any other action filed in this District, will

be pre-screened by the Court for content. Any proposed filings that are not made in good faith or which lack substance or merit will be returned to the Plaintiff without further explanation.

IT IS SO ORDERED.

*Id.* (emphasis added).

19. Plaintiff has also pursued complaints with the North Carolina State Bar, the American Bar Association, the State Board of Elections and Ethics Enforcement, the U.S. Department of Civil Rights, and other “government agencies” in regard to these proceedings. The North Carolina State Bar dismissed Plaintiff’s complaints against Defendant.
20. Plaintiff filed a Petition for Writ of Supersedeas and Motion for Temporary Stay with the North Carolina Court of Appeals, *In the Matter of R.W.*, COA No. P-19-259. It was dismissed by the Court of Appeals on June 10, 2019.
21. Carl Womack filed another appeal related to the underlying matters at *In the Matter of R.W.*, COA No. 19-731.
22. Plaintiff threatened Defendant's spouse, James Oxley, on April 17, 2019, as detailed by his arrest warrant: "The threat was communicated to James Oxley by saying to James Oxley: 'Get out that car and I will whip your ass!... Get out of that car and I will show you!... You are doomed!' and the threat was made in a manner and under circumstances which would cause a reasonable person to believe that the threat was likely to be carried out..." Plaintiff also communicated a threat to James Oxley regarding Defendant: "Your wife is doomed!... Your wife is doomed and I will get her." On August 20, 2019, Plaintiff was found guilty of communicating a threat.
23. The undersigned presided over the hearing in this matter on October 7, 2019, and heard both parties’ arguments. The Court finds that Plaintiff was given a full and fair opportunity to present materials and make arguments in support of his position and consistent with his constitutional and other legal rights.
24. During the October 7, 2019 hearing, Plaintiff indicated that he was willing to dismiss his case if Defendant would “drop” her case against him, presumably referring to the criminal proceeding.

Based upon the Foregoing FINDINGS OF FACT the COURT CONCLUDES AS A MATTER OF LAW:

25. The Court has subject matter jurisdiction over this matter and personal jurisdiction over all parties.

26. Plaintiff initiated this action for improper purposes, including to harass Defendant and to increase the cost of litigation.
27. Defendant has incurred significant and burdensome attorneys' fees and costs to defend herself in the present action.
28. Plaintiff's Complaint is factually and legally insufficient.
29. The claims contained in Plaintiff's filings and documents are inappropriate, not well grounded, and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.
30. Plaintiff has an extensive history of litigation and has filed numerous vexatious, harassing, and/or duplicative lawsuits and motions in this Court, surrounding counties and in Federal Court.
31. Plaintiff lacks a good faith basis for the pursuit of this litigation. It appears to be intended to harass Defendant and to increase the cost of litigation.
32. Plaintiff's efforts to undermine the guardianship and estate proceedings have been rejected numerous times. The instant action is an attempt to re-litigate the foreclosure proceeding, which was completed in August 2018 and has not been not appealed.
33. Defendant was not the guardian for Plaintiff Carol Womack. Defendant did not represent Plaintiff Womack at any time. Plaintiff has not alleged Defendant owed him a legally recognized duty.
34. At no time have Plaintiff's complaints about these proceedings been deemed meritorious.
35. Plaintiff's prior litigation has been carried out with an intent to harass and intimidate Defendant and others.
36. Plaintiff's actions have burdened the Courts of Rutherford County, McDowell County, Henderson County, Cleveland County, and Buncombe County and the United States District Court for the Western District of North Carolina and the parties involved in the underlying proceedings, including Defendant.
37. Plaintiff's actions have been costly and time consuming to all of the litigants and the various Courts involved in the prior proceedings.
38. Plaintiff has made some very serious allegations against Defendant and counsel for Defendant that are not supported by any fact or law.
39. Plaintiff has exhibited conduct in this matter that demonstrates a disregard for the rules of law and procedure.

40. This Court has the inherent authority, and the obligation, to safeguard the judicial process and to protect: the fairness of the process for all citizens, to prevent abuse, harassment of litigants, court officials, and conduct that creates needless expense.
41. A Gatekeeper Order may be entered to preserve the orderly and efficient administration of justice when a lesser remedy is not available or likely to provide adequate protection for litigants and court officials affected by frivolous and groundless filings.
42. The nature of Plaintiff's conduct and the extraordinary circumstances of this matter require that the Court place special limitations on Plaintiff's access to the State Courts of Rutherford County, McDowell County, Henderson County, Cleveland County, and/or Buncombe County and enter a Gatekeeper Order.
43. Improper documents have been filed by Plaintiff. These documents are also frivolous and groundless, often nonsensical, with no basis in fact or in procedural or substantive law. Said filings obfuscate and confuse the orderly proceedings of the Court.
44. Having considered other sanctions and alternatives, the Court in its discretion is of the opinion that a lesser alternative would not be sufficient to prohibit further abuses of the judicial process by Plaintiff.
45. Carl Womack is not an attorney. However, if he was admitted to practice, his conduct would be subject to review by this Court and the North Carolina State Bar for potential disciplinary measures.
46. Defendant has incurred significant attorneys' fees from the time of Plaintiff's filing of the Complaint. Plaintiff's claim for punitive damages arises out of the same common nucleus of facts and law as Plaintiff's other claims.



THEREFORE, IT IS ORDERED, ADJUDGED and DECREED:

47. The Court grants Defendant's Motion for Sanctions by imposing a **GATEKEEPER ORDER**.

The Court hereby enjoins Carl Womack from filing any further motion, pleading or document related to the Matters (defined below) in the Restricted Area (defined below) without the prior approval of the Court, as described below.

Carl Womack may submit a proposed motion, pleading or document to a lawyer licensed to practice and in good standing in the State of North Carolina. If the lawyer certifies, in writing, that the lawyer has read and is familiar with THIS ORDER, that the lawyer has reviewed the document proposed for filing by Mr. Womack, that the lawyer certifies that there is a legitimate lawful basis for the filing, and that the filing is not frivolous, then the Clerk may accept such filing. In that circumstance, the Clerk shall file the lawyer's certification with the document filed by Mr. Womack.

The "Restricted Area" shall include the State Courts of Rutherford County, McDowell County, Henderson County, Cleveland County, and Buncombe County.


The "Matters" shall include the following:

- a. Lawsuits against Merrimon Oxley;
- b. The actions or inactions of Merrimon Oxley in regards to matters asserted in the estate and guardianship proceedings related to Ruth C. Womack or the Estate of Sandra Summey, including 17 SP 51 (Rutherford County); 17 E 274 (Rutherford County); 18 SP 182 (Rutherford County); 18 SP 171 (Cleveland County); 18 E 281 (Cleveland County); 18 SP 284 (Cleveland County); 18 E 278 (Cleveland County); 18 SP 29 (Henderson County); 18 E 96 (Henderson County); 18 E 97 (Henderson County); 19 E 63 (Buncombe County); and 19 SP 20 (Buncombe County);
- c. The foreclosure proceeding: 18 SP 76 (Rutherford County);
- d. Matters asserted in *Womack v. Owens, et al*, No. 17-cv-00173-MR-DLH; *Womack v. Oxley*, No. 1:18-cv-00266-MR-DLH; *Womack v. Howell, et al*, No. 1:18-cv-00352-MR-WCM; and *Carl Womack v. Johanna Finkelstein*, 1:19cv-150-MR-WCM;
- e. The guardianship of the Estate of Ruth C. Womack;
- f. The guardianship of the person of Ruth C. Womack;
- g. The administration of the Estate of Ruth C. Womack;
- h. The administration of the Estate of Sandra Summey; and
- i. Matters asserted in *Womack v. Oxley* (Rutherford County 19 CVS 804).

A failure to comply with the Gatekeeper Order shall result in the dismissal or striking of the pleading or document and the denial of the motion or motions. Additionally, violation of the Gatekeeper Order by Carl Womack or anyone on his behalf shall be considered in contempt and may be sanctioned accordingly.

48. Carl Womack is to attempt no further *ex parte* communications with the Superior Court of Rutherford County, except as to written notification to the Senior Resident Superior Court Judge in regards to filing, in accordance with the process described above.
49. THIS GATEKEEPER ORDER shall remain in effect until vacated by the Court.
50. A copy of THIS ORDER shall be delivered to the Clerk of Court of Rutherford County, McDowell County, Henderson County, Cleveland County, and/or Buncombe County.
51. A copy shall be delivered to every litigant in any pending matter involving Carl Womack.
52. The Sheriff of County shall serve THIS ORDER on Carl Womack by personal delivery and shall submit a return of service to the Court.
53. Defendant's Motions to Dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rules 12(b)(1) and (b)(6) are granted and this case is dismissed.
54. Defendant's Motions for Attorney Fees pursuant to N.C. Gen. Stat. § 1D-45 is granted in the Court's discretion. An award of attorneys' fees against Plaintiff is also warranted under N.C. Gen. Stat. § 1A-1, Rule 11. Plaintiff shall pay all reasonable attorneys' fees and costs incurred by Defendant in the defense of Plaintiff's lawsuit and motions in this proceeding. The Court orders that counsel for Defendant submit an affidavit setting forth the amount of such fees and costs incurred by Defendant. The Court orders that counsel for Defendant shall serve the affidavit of fees and costs upon Plaintiff, and that Plaintiff shall be allowed twenty (20) days after service to submit written objections to the affidavit to the Court and to counsel for Defendant. The Court will enter a subsequent Order regarding the amount of fees and costs to be taxed against the Plaintiff.
55. The sole exception to the Gatekeeper Order will be to allow Plaintiff, within ten (10) days of the service of Defendant's affidavit of fees, to submit written objections to the Court stating any objections to the affidavit. The Court orders that Plaintiff serve any written objections upon counsel for the Defendant by mail at the time Plaintiff submits any objections to the Court.
56. The Court has the authority to award Defendant legal fees incurred after the entry of this Court's judgment, inclusive of fees incurred on appeal.
57. Plaintiff's "Notice of Removal from North Carolina Civil Court to US District Court Under Supplemental Jurisdictions," "Motion for Change of Venue," "Motion for a Jury Trial," and "Motion to Strike," are denied as futile.

THIS the 1st day of November, 2019.

  
\_\_\_\_\_  
The Honorable Marvin P. Pope,  
Superior Court Judge Presiding

STATE OF NORTH CAROLINA

COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO. 19 CVS 804

CARL WOMACK,  
Plaintiff,

v.

MERRIMON OXLEY,  
Defendant.

**RETURN OF SERVICE OF  
SANCTION IMPOSING  
A GATEKEEPER ORDER AND  
DISMISSAL OF  
PLAINTIFF'S COMPLAINT**

I certify that the **SANCTION IMPOSING A GATEKEEPER ORDER AND  
DISMISSAL OF PLAINTIFF'S COMPLAINT** received on the \_\_\_\_ day of \_\_\_\_\_, 2019,  
was served personally on Carl Womack on the \_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_  
\_\_\_\_.m., or was posted in a conspicuous place and manner at the following property: **141 Parmer  
Street, Forest City, NC 28043.**

This the \_\_\_\_ day of \_\_\_\_\_, 2019.

SHERIFF OF RUTHERFORD COUNTY  
NORTH CAROLINA

By: \_\_\_\_\_, Deputy

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF RUTHERFORD

FILE NO. 19 CVS 804

2019 NOV -1 P 1:56

CARL WOMACK,  
Plaintiff,

RUTHERFORD CO., C.S.C.

v.

BY

bm

**ORDER AWARDING  
ATTORNEYS' FEES AND COSTS**

MERRIMON OXLEY,  
Defendant.


THIS MATTER CAME ON FOR CONSIDERATION by the undersigned Presiding Judge at the October 7, 2019 term of court pursuant to Defendant's Motion for Sanctions, including imposition of a Gatekeeper Order, Motion for Attorneys' Fees, and Motion to Dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rules 11, 12(b)(1), 12(b)(6) and § 1D-45. Pursuant to this Court's prior Order on those motions, Defendant presented the Affidavit of Counsel in support of Defendant's claim for attorneys' fees. The Court, having reviewed the Affidavit, finds as follows and concludes as follows:

1. At the hearing on October 7, 2019, the undersigned requested counsel for Defendant submit an Affidavit of Counsel setting forth attorney's fees and costs expended in this matter.
2. The Court adopts and incorporates herein by reference the findings of fact and conclusions of law set forth in the Order granting Defendant's Motion for Sanctions, including imposition of a Gatekeeper Order, Motion to Dismiss, and Motion for Attorneys' Fees.
3. The undersigned has reviewed Defendant's Affidavit of Counsel.
4. Defendant has incurred recoverable costs in defending this action totaling \$2,500.00, as specifically set forth in accompanying Affidavit of Counsel.
5. The legal fees consist of work performed by attorney at an hourly rate of \$215.00 per hour.
6. The Court finds, based upon the matters of record and the Court's experience, that the fees charged are customary for similar work, with consideration given to the skill required to perform the services rendered and the experience and ability of the Defendant's attorneys.
7. The undersigned finds the fees charged and costs incurred to be reasonable and to have been necessarily incurred in the defense of this action.
8. Plaintiffs claim for punitive damages arises out of the same common nucleus of facts and law as Plaintiff's other claims. The fees and expenses associated with the defense of Plaintiff's claims for punitive damages and Rule 11 Motion are intertwined.

9. The Court determines, in its discretion, that Defendant should be entitled to recover all attorneys' fees reasonably incurred in the defense of this action in its entirety.
10. The Court has authority to award Defendant legal fees incurred after the entry of this Court's judgment, inclusive of fees incurred on appeal.
11. Based upon the foregoing, the Court determines that Defendant is entitled to recover from Plaintiff attorneys' fees in the amount of \$2,500.00.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant shall have and recover of and from Plaintiff the sum of \$2,500.00 as costs, payable within thirty (30) days of the entry of this Order.

THIS the 1st day of November, 2019.

A handwritten signature in black ink, appearing to read 'M. Pope', written over a horizontal line.

The Honorable Marvin P. Pope,  
Superior Court Judge Presiding



## North Carolina Court of Appeals

Fax: (919) 831-3615  
Web: <https://www.nccourts.gov>

DANIEL M. HORNE JR., Clerk

Court of Appeals Building  
One West Morgan Street  
Raleigh, NC 27601  
(919) 831-3600

From Rutherford  
( 19CVS804 )

Mailing Address:  
P. O. Box 2779  
Raleigh, NC 27602

No. 20-136

CARL WOMACK,  
Plaintiff,

v.

MERRIMON OXLEY,  
Defendant.

### ORDER

The following order was entered:

The motion filed in this cause on the 13th of June 2020 and designated 'Defendant-Appellee's Motion to Dismiss Appeal' is allowed. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that the Appellant, Carl Womack, do pay the costs of the appeal in this Court incurred, to wit, the sum of Nine Dollars and 00/100 (\$9.00), and execution issue therefor.

By order of the Court this the 22nd of September 2020.

WITNESS my hand and official seal this the 22nd day of September 2020.

Daniel M. Horne Jr.  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Carl Womack, For Womack, Carl  
Ms. Ann-Patton Hornthal, Attorney at Law, For Oxley, Merrimon  
Hon. Steve H. Owens, Clerk of Superior Court



## Supreme Court of North Carolina

AMY L. FUNDERBURK, Clerk  
Justice Building, 2 E. Morgan Street  
Raleigh, NC 27601  
(919) 831-5700

Fax: (919) 831-5720  
Web: <https://www.nccourts.gov>

Mailing Address:  
P. O Box 2170  
Raleigh, NC 27602

From N.C. Court of Appeals  
( 20-136 )  
From Rutherford  
( 19CVS804 )

15 October 2020

Mr. Carl Womack  
Pro Se  
141 Parmer Street  
Forest City, NC 28043

**RE: Womack v Oxley - 427P20-1**

Dear Mr. Womack:

The following order has been entered on the motion filed on the 8th of October 2020 by Plaintiff for Notice of Appeal:

"Motion Dismissed by order of the Court in conference, this the 15th of October 2020."

**s/ Davis, J.  
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 15th day of October 2020.

Amy L. Funderburk  
Clerk, Supreme Court of North Carolina

A handwritten signature in black ink, appearing to read "M. C. Hackney".

M. C. Hackney  
Assistant Clerk, Supreme Court Of North Carolina

Copy to:  
North Carolina Court of Appeals  
Mr. Carl Womack, For Womack, Carl  
Ms. Ann-Patton Hornthal, Attorney at Law, For Oxley, Merrimon - (By Email)  
West Publishing - (By Email)  
Lexis-Nexis - (By Email)

No. 20-7613

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*In the Supreme Court of the United States*

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CARL WOMACK,

*Petitioner,*

V.

MERRIMON OXLEY,

*Respondent.*

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**CERTIFICATE OF SERVICE**

---

I, Ann-Patton Hornthal, being a member of the Bar of the Supreme Court of the United States, pursuant to Rule 29.5(b), Rules of the Supreme Court, do hereby certify that a copy of the foregoing Brief in Opposition and Certificate of Service were forwarded by FedEx and electronic service to the following:

Carl Womack

141 Parmer Street

Forest City, NC 28043

*Pro Se Petitioner*

Carl Womack

1429 West Floyd Baker Blvd  
Suite 103

Gaffney, SC 29341

*Pro Se Petitioner*



I further certify that all parties required to be served have been served.

Respectfully submitted this 30<sup>th</sup> day of April, 2021.



---

Ann-Patton Hornthal  
Roberts & Stevens, P.A.  
PO Box 7647  
Asheville, NC 28802  
(828) 210-6815  
aphornthal@roberts-  
stevens.com

*Counsel for Respondent*