

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID F. EVANS, et al.,

Plaintiffs,

v.

CITY OF DURHAM, N.C., et al.,

Defendants.

Case No. 1:07CV739

**PLAINTIFFS' MOTION TO REOPEN CASE AS TO DEFENDANT NIFONG,
AND TO SET AGREED-UPON DEADLINE FOR HIS RESPONSIVE PLEADING**

Plaintiffs David F. Evans, Collin Finnerty, and Reade Seligmann respectfully move the Court for an order reopening this case as to Defendant Michael B. Nifong and establishing January 15, 2009 as the deadline for Nifong's answer or motion to dismiss. Nifong consents to the January 15, 2009 deadline.

In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs filed their Complaint against Nifong and several other defendants on October 5, 2007. Plaintiffs filed a First Amended Complaint on December 11, 2007, again naming Nifong and others as defendants. Under the Court's Order of November 29, 2007, Nifong's response to the First Amended Complaint was due by January 15, 2008.

2. On January 15, 2008, Nifong filed a voluntary bankruptcy petition in the United States Bankruptcy Court for the Middle District of North Carolina. Nifong did not file a responsive pleading in this action.

3. On January 16, 2008, Nifong filed a Notice of Filing Bankruptcy in this action. On January 28, 2008, the District Court entered an Order stating as follows:

IT APPEARING TO THE COURT that the individual defendant MICHAEL B. NIFONG has filed a voluntary petition in a Bankruptcy Court which may become dispositive of this litigation;

IT IS ORDERED that the Clerk of Court terminate this action administratively in his records as to the individual defendant MICHAEL B. NIFONG and that *any party shall have the right to reopen this case for any purpose on motion and notice to all other parties, without prejudice to the rights of any of the parties*, at any time prior to the 90th day after the final termination of the bankruptcy proceedings.

Docket No. 46 (emphasis added).

4. On May 27, 2008, the Bankruptcy Court entered an Opinion and Order lifting the automatic bankruptcy stay and ruling that Plaintiffs' claims against Nifong shall be tried as part of this action. On December 4, 2008, this Court affirmed the Bankruptcy Court's Opinion and Order. *See Order, In re Nifong*, No. 1:08-cv-441 (Dec. 4, 2008) (Docket No. 14).

5. On December 5, 2008, counsel for Plaintiffs Evans and Finnerty conferred with counsel for Nifong by telephone, and the parties agreed, subject to the Court's approval, that Nifong's answer or motion to dismiss the First Amended Complaint shall be due on or before January 15, 2009.

WHEREFORE, Plaintiffs respectfully request that the Court reopen this case as to Defendant Nifong, and set a January 15, 2009 deadline for his answer or motion to dismiss the First Amended Complaint. A proposed order is attached.

Dated: December 5, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2008, I electronically filed the foregoing **PLAINTIFFS' MOTION TO REOPEN CASE AS TO DEFENDANT NIFONG, AND TO SET AGREED-UPON DEADLINE FOR HIS RESPONSIVE PLEADING** and any attachments with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Reginald B. Gillespie, Jr.
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Pro se

I further certify that I caused the foregoing document to be served by first-class mail,

postage prepaid, to the following non-CM/ECF participant:

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Respectfully submitted,

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