

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:07-CV-00953

RYAN MCFADYEN, et al.,
Plaintiffs,
v.
DUKE UNIVERSITY, et al.,
Defendants.
MOTION FOR ENLARGEMENT
OF TIME FOR CITY DEFENDANTS,
MICHAEL NIFONG, AND LINWOOD
WILSON TO ANSWER PLAINTIFFS'
SECOND AMENDED COMPLAINT
FED. R. CIV. P. 6(b), LR6.1(a), MDNC

Defendant the City of Durham, North Carolina (the "City") respectfully moves the Court, pursuant to FED. R. CIV. P. 6(b) and LR6.1(a), MDNC for a sixty-day (60) day enlargement of time for the City and its former and present personnel who are named as Defendants (collectively, the "City Defendants"), Defendant Michael Nifong, and Defendant Linwood Wilson to answer or otherwise plead or respond to Plaintiffs' Second Amended Complaint (Doc. no. 136), through and including June 14, 2011. In support of this Motion, the City respectfully shows the Court the following:

- 1. Plaintiffs filed their Second Amended Complaint on February 23, 2010. The complaint is 428 pages long, and has 1,388 allegations and 41 causes of action.
2. The City Defendants and other Defendants filed motions to dismiss the Second Amended Complaint. (See Doc. nos. 167, 168, 169, 170, 171, 173, 174, 175, 176, 177, and 179.)

3. The City Defendants are also Defendants in the related *Evans* (1:07-CV-739) and *Carrington* (1:08-CV-119) cases.

4. On March 31, 2011, this Court filed its Memorandum Opinion, (Doc. no. 186), and Order (Doc. no. 187), granting and denying in part the Defendants' various motions to dismiss. As this Court noted in its Opinion, the Court had to take "the time-consuming process of wading through a mass of legally unsupportable claims and extraneous factual allegations." (*See McFadyen v, Duke University*, No. 1:07-CV-953 (M.D.N.C. March 31, 2011) (slip opinion) (Doc. no. 186, p. 221). Similar Orders were entered on the same day in the *Evans* and *Carrington* cases.

5. The City anticipates that the process of answering each allegation will similarly consume a substantial amount of time for each of the City Defendants or group of City Defendants.

6. Applying FED. R. CIV. P. 12(a)(4)(A), Defendants have a current due date of April 14, 2011, to answer Plaintiffs' Second Amended Complaint following this Court's March 31, 2011, Order granting in part and denying in part the various motions to dismiss.

7. The time for originally responding has not expired and this request is not made for the purposes of delay. To the contrary, given: 1) the volume of allegations in the Second Amended Complaint; 2) the need to review the extensive analysis by this Court as to remaining and dismissed claims; 3) the need to evaluate whether an appeal can or should be taken based on the various immunities asserted by the City Defendants;

and 4) the same pending responsive deadlines in the *Evans* and *Carrington* cases, an extension of time would better enable all Defendants to respond appropriately.

8. The undersigned has conferred with counsel for every Defendant and with *pro se* Defendant Linwood Wilson. Counsel for each of the City Defendants, counsel for Defendant Nifong, and Defendant Wilson have authorized and requested the undersigned to make this request on behalf of their clients and him, for the reasons set forth above and for purposes of efficiency by avoiding the need to file multiple motions and thereby reducing the volume of filings (*see* Doc. no. 186, p. 221).

9. Counsel for the City has also conferred with counsel for Plaintiffs and Plaintiffs' counsel has authorized the undersigned to represent to the Court that he consents to the enlargement of time herein requested.

10. Counsel for the remaining Defendants have informed the undersigned that they do not oppose the enlargement of time herein requested. Counsel for these remaining Defendants have indicated that the Duke Defendants intend to answer on or before April 14, 2011, and the DNA Security Defendants intend to move the Court to enlarge the time for their answer by thirty (30) days. Those Defendants, of course, do not have the same pleadings burden faced by the City Defendants, as they are not parties to all three related cases and have fewer claims to defend.

WHEREFORE, Defendant the City of Durham, North Carolina respectfully prays that the Court enter an Order enlarging the time for the City and its former and present personnel who are named as Defendants, Defendant Michael Nifong, and Defendant

Linwood Wilson to answer or otherwise plead or respond to Plaintiffs' Second Amended Complaint by an additional sixty (60) days, through and including **June 14, 2011**.

Respectfully submitted, this the 9th day of April, 2011.

FAISON & GILLESPIE

By: /s/ Reginald B. Gillespie, Jr.

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

The undersigned hereby certifies that, pursuant to Rule 5 of the Federal Rules of Civil Procedure and LR5.3 and LR5.4, MDNC, the foregoing pleading, motion, affidavit, notice, or other document/paper has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send a Notice of Electronic Filing (NEF) to the undersigned filing user and registered users of record, and that the Court's electronic records show that each party to this action is represented by at least one registered user of record (or that the party is a registered user of record), to each of whom the NEF will be transmitted.

This the 9th day of April, 2011.

FAISON & GILLESPIE

By: /s/ Reginald B. Gillespie, Jr.

Reginald B. Gillespie, Jr.

North Carolina State Bar No. 10895