

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

RYAN McFADYEN, et al.,
Plaintiffs,

v.

DUKE UNIVERSITY, et al.,
Defendants.

Case No. 1:07-cv-953

**JOINT MOTION TO EXTEND PAGE LIMITATIONS
AND TO ESTABLISH A RULE 12 BRIEFING SCHEDULE**

Counsel for the Parties identified herein respectfully move this Court for leave to exceed the page limitations set forth in Local Rule 7.3, and to establish a briefing schedule for Defendants' anticipated motions to dismiss. In support of this Motion, the parties state as follows:

1. On December 17, 2007, Plaintiffs filed their Complaint in the above-captioned matter. The Complaint is 391 pages in length (excluding introductory tables and attachments), consists of over 1,000 paragraphs, and alleges 35 causes of action.

2. As of March 3, 2008, the following Defendants or Defendant-groups had retained separate counsel to represent them in this matter:

- a. Duke University, Duke University Police Department, Aaron Graves, Robert Dean, Leila Humphries, Phyllis Cooper, William F. Garber, II, James Schwab, Joseph Fleming, Jeffrey O. Best, Gary N. Smith, Greg Stotsenberg, Robert K. Steel, Richard H. Brodhead, Ph.D., Peter Lange, Ph.D., Tallman Trask, III, Ph.D., John Burness, Larry Moneta, Ed.D, Victor J. Dzau, M.D., Allison Haltom, Kemel Dawkins, Suzanne Waisolek, Stephen Bryan, and Matthew Drummond (collectively, the “Duke University Defendants”);
- b. Duke University Health Systems, Inc., Private Diagnostic Clinic, PLLC, Julie Manly, M.D., Theresa Arico, R.N., and Tara Levicy (collectively, the “Duke SANE Defendants”);
- c. The City of Durham, North Carolina and Edward Sarvis;
- d. Patrick Baker, Steven Chalmers, Ronald Hodge, Lee Russ, Stephen Mihaich, Beverly Council, Jeff Lamb, Michael Ripberger, and Laird Evans (collectively, the “Durham Police Supervising Defendants”);
- e. Kammie Michael, David W. Addison, James T. Soukup, and Richard Clayton (collectively, the “Durham Police Defendants”);
- f. Mark Gottlieb;
- g. Benjamin W. Himan;
- h. DNA Security, Inc. and Richard Clark;
- i. Brian Meehan; and

j. Michael B. Nifong¹

3. As of March 3, 2008, Defendant Linwood Wilson had not retained counsel, and has not yet been served. It is anticipated that Defendant Wilson will appear in this matter *pro se*, as he has in 01:07-cv-739 (*Evans, et al. v. Nifong, et al.*).

4. On February 13th, 2008, the parties' counsel conferred by telephone. During this conference, Defendants' counsel stated their intention to file motions to dismiss on behalf of their respective clients ("Motions").

5. Due to the length of the Complaint and the number of causes of action alleged therein, the parties have agreed, subject to the Court's approval, that each Defendant or Defendant-group enumerated below may have up to 75 pages to brief their respective Motions, and up to 25 pages to brief their respective reply memoranda ("Replies"):

- a. Duke University Defendants;
- b. Duke SANE Defendants;

¹ On January 15, 2008, Michael Nifong filed a voluntary petition for bankruptcy. Due to the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362(a), and consistent with this Court's Order in 01:07-cv-739 (*Evans et al. v. Nifong, et al.*), the parties agree, subject to the Court's approval, that all proceedings in this matter are currently stayed as to Defendant Nifong, and that no response to the Complaint from Defendant Nifong in the instant action is required or should be expected, absent an order from the bankruptcy court providing relief from the automatic stay, *see* 11 U.S.C. § 362(d), which, to date, no party has sought.

- c. The City of Durham, NC;
- d. The Durham Police Supervising Defendants;
- e. Durham Police Defendants;
- f. Edward Sarvis
- g. Ronald Hodge;
- h. Mark Gottlieb;
- i. Benjamin W. Himan;
- j. Linwood Wilson
- k. DNA Security, Inc. and Richard Clark; and
- l. Brian Meehan.

6. The parties have agreed, subject to the Court's approval, that, as applied to the Duke University Defendants and Duke SANE Defendants, the foregoing page limitations applicable to the Duke University Defendants and the Duke SANE Defendants may be aggregated to a combined total limit of 150 pages for their Motions and a combined total limit of 50 pages for their Replies.

7. In return, the parties have agreed, subject to the Court's approval, that the Plaintiffs may have up to 75 pages to respond to each Motion. Further, to the extent Plaintiffs wish to address common issues raised by multiple Defendants and/or Defendant-groups, the parties have also agreed, subject to the Court's approval, that Plaintiffs may file a consolidated brief that responds to common issues raised in multiple motions, so long as the total pages contained in all of Plaintiffs' opposition briefs together do not exceed the total pages allocated to the Defendants' motions herein.

8. To accommodate the number and length of Defendants' anticipated Motions, the parties have agreed, subject to the Court's approval, to the following Rule 12 briefing schedule:

- a. Motions or answers due: April 25, 2008;
- b. Opposition(s) due: 90 days after filing of Motions; and
- c. Replies due: 30 days after filing of Opposition(s).

WHEREFORE, undersigned counsel respectfully request that the Court approve the proposed page limitations and briefing schedule. A proposed order is attached.

Dated: March 3, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 3, 2008, I electronically filed the foregoing **JOINT MOTION TO EXTEND PAGE LIMITATIONS AND TO ESTABLISH A RULE 12 BRIEFING SCHEDULE** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel:

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