

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

**1:07cv953**

<p><b>RYAN MCFADYEN, <i>et al.</i>,</b> <b>Plaintiffs,</b></p> <p><b>v.</b></p> <p><b>DUKE UNIVERSITY, <i>et al.</i>,</b> <b>Defendants,</b></p>
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**RESPONSE TO  
PLAINTIFF’S MOTION  
[238] IN OPPOSITION TO  
[232] MOTION TO  
CONSOLIDATE  
DISCOVERY**

Defendant Linwood Wilson responds pursuant to Plaintiff’s response [238] in opposition to [232] Motion to consolidate discovery filed by Duke Defendants. Plaintiffs’ state in their response motion [238], beginning on page 3, paragraph 2, line 6 continuing through page 4, line 8. “On June 9, 2011, the Court granted the City Defendants’ Motion to Stay Proceedings, and stayed the proceedings with respect to Plaintiffs’ claims against the City Defendants: that is, Counts 1, 2, 5, 12, 13, 14, 18, 25, 26, 32, 35, and 41. Additionally, Judge Beaty ordered that discovery for Counts 1, 2, 12, 13, 14, and 18 as to Duke Defendants, Defendant Wilson, DNA Security, Inc., Richard Clark, and Brian Meehan (the “DSI” Defendants”) be stayed as to these Defendants in addition to the City Defendants because “these claims...are so intertwined with the claims against the City Defendants, that it would be almost impossible to proceed to discovery...without overstepping into the claims...presently on appeal...and as a practical matter, these claims could not realistically proceed independent of the claims on appeal.” Order 7 (June 9, 2011).”

Plaintiff's have incorrectly stated "Additionally, Judge Beaty ordered that discovery for Counts 1, 2, 12, 13, 14, and 18 as to Duke Defendants, Defendant Wilson, DNA Security, Inc., Richard Clark, and Brian Meehan (the "DSI" Defendants") be stayed as to these Defendants in addition to the City Defendants....." Judge Beaty's order to stay [218] page specifically states...

"The Court further notes that the remaining claims against Defendant Levicy in Counts 1 and 2, against Defendant Smith in Count 2, and against Defendant Wilson in Count 5, are all claims that are also asserted against at least some of the City Defendants, including the City and the City Supervisors as set out in Counts 12, 13, and 14.<sup>4</sup> Having considered these issues, the Court concludes that these claims against Defendants Levicy, Wilson, and Smith are so intertwined with the claims against the City Defendants that it would be almost impossible to proceed to discovery on those claims without overstepping into the claims against the City Defendants presently on appeal. Similarly, the claims in Count 18 are asserted against Defendant Levicy, Defendant Duke, Duke Health, and other Duke employees (referred to collectively as the "Duke Defendants"), as well as Defendant Wilson and the DSI Defendants, but those claims are inextricably intertwined with the claims in Count 18 asserted against the City Defendants.<sup>5</sup> Thus, in the present case, the Court finds that, as a practical matter, these claims could not realistically proceed independent of the claims on appeal. Moreover, the Court further Gottlieb, Hodge and Addison, and that claim also forms the basis of the claims asserted against the City in Counts 12 and 14 and the City Supervisors in Count 13."

<sup>4</sup> Specifically, Counts 1 and 2 are asserted against Defendant Levicy and City Defendants Gottlieb and Himan based on their joint conduct, and Count 2 is asserted against Defendant Smith as a bystander to the alleged conduct by City Defendants Gottlieb and Himan. In addition, those claims in Counts 1 and 2 form the basis of the claims asserted against the City in Counts 12 and 14 and against the City Supervisors (Defendants Baker, Chalmers, Hodge, Russ, Council, Lamb, and Ripberger) in Count 13. Likewise, Count 5 is asserted against Defendant Wilson and against City Defendants

<sup>5</sup> The state law obstruction of justice claim in Count 18 is asserted against Defendant Wilson, the DSI Defendants, and Duke Defendants Levicy, Steel, Brodhead, Dzau, Burness, Duke, and Duke Health, and is also asserted against the City and City Defendants Gottlieb, Himan, and Lamb, all based on related conduct in the alleged falsification of evidence and reports. The claims in Count 18 also form the basis for the claim of negligent supervision against Duke and Duke Health in Count 32 and against DSI in Count 35.

The Plaintiff's response should state "Additionally, Judge Beaty ordered that discovery for Counts 1, 2, 5, 12, 13, 14, and 18 as to Defendant Wilson,..... be stayed as to these Defendants in addition to the City Defendants."

### **CONCLUSION**

Whereby stated in Defendant Wilson's Response, as referenced above, Plaintiffs' response should be corrected to include Count 5 being stayed against Defendant Wilson in Judge Beaty's order [218] of June 9, 2011.

Respectfully submitted, this the 25<sup>th</sup> day of August, 2011.

By: /s/ Linwood E. Wilson  
Linwood E. Wilson  
*Pro Se*

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 25th day of August, 2011.

By: /s/ Linwood E. Wilson  
Linwood E. Wilson  
*Pro Se*