

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NUMBER 1:07-CV-00953

RYAN McFADYEN, et al.,

Plaintiffs,

v.

DUKE UNIVERSITY, et al.,

Defendants.

LR 16(c) Initial Pretrial Order

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and LR 16(c), and after reviewing the filings submitted by the parties, the undersigned held an Initial Pretrial Conference in this matter on August 31, 2011, and hereby issues the following order:

1. Pre-Discovery Disclosures. The parties are to exchange the information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure ten days after the entry of this Order. Consistent with the Court's Order of June 9, 2011 [DE 218], such disclosures shall be limited to information relevant to Counts 21 and 24 of the Second Amended Complaint.
2. Discovery Plan.
 - a. Pursuant to the Court's Order of June 9, 2011 [DE 218], all proceedings in this case with respect to Counts 1, 2, 5, 12, 13, 14, 18, 25, 26, 32, 35 and 41 of the Second Amended Complaint, including discovery, are stayed pending the resolution of the interlocutory appeal in this case. Pursuant to that same Order, discovery is proceeding only with respect to Counts 21 and 24. Accordingly, except where expressly stated to the contrary, this Order

relates only to the Plaintiffs and to Defendants Duke University, Matthew Drummond, Aaron Graves, Robert Dean, and Gary N. Smith (the “Duke Defendants”).

b. Discovery shall be placed on the exceptional case-management track established in LR 26.1. Modifications to that case management track are as follows:

- (1) Fact discovery on Counts 21 and 24 shall be completed within twelve months from the date of entry of this Initial Pretrial Order.
- (2) All discovery requests, including notices of depositions, shall be served on everyone who remains a party in this case after the Court’s Order of March 31, 2011, regardless of whether discovery on the claims involving those parties has been stayed by the Court’s Order of June 9, 2011. Further, all discovery requests, including notices of depositions, shall be served on everyone who remains a party in Carrington v. Duke University, Case No. 1-08-cv-119 after the Court’s Order of March 31, 2011 in Carrington, regardless of whether discovery on the claims involving those parties has been stayed by the Court’s Order of June 9, 2011 in Carrington.
- (3) Interrogatories (including subparts) are limited such that each side, whether acting individually or collectively, shall be allowed to serve a maximum of 30 interrogatories, including subparts, upon each

named party, such that no more than 30 interrogatories are served on any single Plaintiff or any single Duke Defendant. (For example, if plaintiff A submits 25 interrogatories to a particular defendant, neither plaintiff A nor any other individual plaintiff nor any group of plaintiffs may submit more than five additional interrogatories to that particular defendant.)

- (4) Requests for admission are limited such that each side, whether acting individually or collectively, shall be allowed to serve a maximum of 45 requests for admission upon each named party, such that no more than 45 requests for admission are served on any single Plaintiff or any single Duke Defendant. (For example, if plaintiff A submits 25 requests for admission to a particular defendant, neither plaintiff A nor any other individual plaintiff nor any group of plaintiffs may submit more than 20 additional requests for admission to that particular defendant.)
- (5) Depositions shall be limited to 30 depositions by the Plaintiffs and 30 depositions by the Duke Defendants. Depositions shall be noticed at least 30 days before the date of the deposition.
- (6) No individual or corporate defendant may be deposed more than once regarding Counts 21 and 24 in this case and regarding Counts 8, 11, and 19 in Carrington. To effectuate this limit, the following

procedure shall be used: If a person is being deposed in Carrington who either the Plaintiffs or the Duke Defendants in this case also wish to depose, then a notice to that effect shall be issued within four business days of the notice of the deposition being issued in Carrington. The deposition shall then proceed under the caption of both the McFadyen and Carrington cases. That deposition shall count against the total number of depositions allowed by the side who issues the notice in McFadyen, just as if the deposition were originally noticed in this case. If no such notice is issued within four business days of the notice of deposition in Carrington, then only counsel for the parties in Carrington may participate in the deposition. No individual or corporate defendant may be deposed in this case if they have already been deposed in Carrington.

- (7) Any notice submitted by any party to other parties in the following form shall be deemed to provide the receiving party with notice of the deposition sufficient to effectuate the provisions of paragraph 2.b.6.: “NOTICE OF DEPOSITION: You are hereby notified, pursuant to the provisions of Paragraph 2.b.6 of the Local Rule 16(c) Initial Pretrial Order entered on [date] in this action, that according to the Notice of Deposition provided in the case of Carrington v. Duke University, Case No. 1-08-cv-119, the deposition of [name]

will occur at [place] at [date and time]. The deposition shall be transcribed by a court reporter [and shall be videotaped]. The above named party is issuing this notice to inform you that [he, she, it] intends to participate in the deposition. This Notice shall be deemed a notice of said deposition as provided in the aforesaid paragraph 2.b.6.

- (8) Depositions of all individual witnesses, whether noticed just in McFadyen or whether noticed in both McFadyen and Carrington, shall be limited to seven hours as set forth in Rule 30(d)(2), unless the parties agree otherwise or the Court allows additional time.
 - (9) For purposes of determining how many depositions have been taken, each Rule 30(b)(6) deposition shall be counted as a single deposition, without regard to the number of witnesses who are designated to testify on behalf of the corporation.
 - (10) All objections to deposition questions or testimony based on the question or response exceeding the scope of permissible discovery, per Judge Beaty's Order of June 9, 2011, shall be deemed preserved regardless of whether the objection is raised at the deposition.
- f. Expert discovery with respect to Counts 21 and 24 is currently stayed.
 - g. Supplementations under Rule 26(e) shall be due within 30 days after a party discovers new information that must be disclosed, provided, however, that

during the final 30 days of discovery, all supplementations shall occur as soon as practicable so as not to prejudice the other party. In addition, 45 days before the close of fact discovery, the parties shall certify that they have produced all supplementations currently available to them.

3. Mediation. The Plaintiffs and the Duke Defendants have agreed to have Jonathan Harkavy mediate this case and the undersigned shall so order that Mr. Harkavy be named as mediator.

4. Other items.

a. Plaintiffs shall be allowed until October 31, 2011, to request leave to join additional parties or amend pleadings. The Duke Defendants, likewise, shall be allowed until October 31, 2011, to request leave to join additional parties or amend pleadings.

b. By the written consent of counsel for the Plaintiffs and the Duke Defendants, the parties shall be able to agree to modify this Initial Pretrial Order without the consent of the Court, except that the close of discovery shall not be changed by consent of the parties without the consent of the Court. The Parties shall, however, provide notice to the Court of any such modification.

So Ordered this the 19th day of September, 2011.



United States Magistrate Judge