

EXHIBIT 24

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March 21, 2012

VIA ELECTRONIC MAIL

Jeremy Falcone
Ellis & Winters, LLP
P.O. Box 33550
Raleigh, NC 27636

Re: *McFadyen, et al. v. Duke University, et al.*,
No. 1:07-CV-953 (MDNC)

Dear Jeremy:

This letter is in response to yours of March 13, 2012 in which you ask for clarification of the basis for objections we have asserted in depositions from time to time. You assert that we "have instructed the Plaintiffs not to answer questions based on your prior representation of the deponent and/or "joint defense" privilege. In particular you note that our instructions have been that "information learned from counsel" is privileged, and ask that we "identify the extent of the joint defense privilege" we are asserting.

We have not asserted a "joint defense privilege." Rather, the objections we have asserted in connection with the joint defense *agreement* are the attorney-client and work product privileges. Reference to the joint defense agreement in any objection clarifies that we are asserting an additional (perhaps unnecessary) basis for asserting the privileges beyond what is obvious under the circumstances.

Next you complain that we have asserted the privileges to prevent disclosure of "facts acquired from other persons or sources." I am unaware of any instance in which that occurred at all, except insofar the "fact acquired" is, in fact, a protected communication or work product. In this regard, we have not instructed a witness not to answer any question; instead, we have advised witnesses to answer the question to the extent they can without waiving their privilege.

McFadyen, et al. v. Duke University, et al.
MDNC File No. 1:07-CV-953

Page 2 of 2

When objecting to questions that call for disclosure of work product and or privileged communications, we are asserting those privileges for ourselves and for Ryan, Matt, and Breck as clients and participants in the joint defense agreement. Of course, this arises only in the depositions of other participants in that agreement, and only when and to the extent that your questions call for disclosure of privileged material.

Because we are not asserting a "joint defense privilege" I cannot "identify the extent" of it and we have no intent to invoke it going forward. Whether we invoke attorney-client or work product privileges going forward is really up to you. I can assure you that, if you cease asking questions that call for disclosure of privileged matter, we will not object on that basis.

Finally, you asked Stefanie to identify – based on her memory – the participants in the joint defense agreement. She responded to the extent her memory served, and suggested that you make this inquiry in the usual course, through interrogatories. That made great sense to me, and I do not recall any disagreement from your side. So please advise me if your position has changed. In the meantime, without waiting for a formal request, we will provide you with copy of the joint defense agreement.

Sincerely,



Robert C. Ekstrand

RCE/bah

REPRESENTATION AGREEMENT

This is an agreement between Ekstrand & Ekstrand, LLP (the “Firm”) and _____ (the “Client”). Client has been notified that, by virtue of his status as members of the Duke Lacrosse Team, he is a subject of a criminal investigation being conducted by Durham law enforcement, and has reason to believe that he also may be the subject of civil and/or administrative investigations and/or proceedings by such governments as well as proceedings within Duke University. Specifically, Client has been a subject of accusations made by the Durham Police Department with respect to matters relating to events that transpired in the residence located at 610 N. Buchanan on or about March 13, 2006. This agreement is retroactive to the date of client’s initial contact with the Firm, and covers all communications between client and the Firm since that time. The accusations as well as information received by counsel indicate that there exists a possibility that Client may become the subject of the same or a similar criminal, civil or administrative investigation or proceeding (including proceedings conducted by Duke University’s Judicial Affairs office). Client understands that the Firm has been retained by a significant majority of the Duke Men’s Lacrosse Team, and that he may have a list of all Team members who are now or have been represented in this matter by this Firm. Further, Client understands that the Firm may have Joint Representation arrangements with other counsel who represent individual members of the Team in this investigation and any subsequent proceedings.

This Joint-Representation Agreement contemplates that EKSTRAND & EKSTRAND, LLP (“the Firm”) will represent all members of the Duke University Men’s Lacrosse Team who execute this agreement in all matters relating to or arising from the investigation of allegations of criminal wrongdoing at the residence located at 610 N. Buchanan Boulevard in Durham, North Carolina on or about March 13, 2006. Based upon the information available to the Firm at this time, the Firm does not believe that its representation of all Members currently involves any actual conflict of interest. Moreover, Client believes and agrees that he and the other individuals represented by the Firm in this matter have a mutual interest in presenting a unified response to the allegations and a coordinated approach to the development of evidence in this matter. The Client understands, however, that, in the future, the Firm’s representation of client in this multiple representation may give rise to actual conflicts of interest, should the interests of Client become inconsistent with the interests of the other Clients subject to the same investigation and proceedings.

Although the Firm is not currently aware of any actual conflicts, events may develop that cause the Firm’s representation of an individual Client to become adverse to the representation of the one, some or all of the other Clients involved in this joint representation. Client recognizes his right to employ separate counsel now, or at any later time in the investigation or subsequent proceedings, if any. This agreement does not in any way bind Client—or anyone—to continuing representation by the Firm. Client understands that he may terminate the Firm’s representation of him at any time.

Client recognizes that, in the event an individual client involved in this representation exercises his right to employ his own separate counsel, certain acts might require the Firm to

withdraw from its common representation of the remaining individuals. Further, Client recognizes that forcing such an immediate withdrawal, under some circumstances could cause severe hardship, potential prejudice, and undue expense to the clients who would otherwise remain subject to the agreement. Therefore, Client agrees that, absent an actual conflict of interest in the continued representation of the remaining parties, Client may not demand the Firm's withdrawal from that continued representation of the remaining parties.

Further, Client acknowledges that the Firm cannot continue to represent an individual client if an actual conflict arises with one or more other clients. In such an event, the Client whose circumstances create a conflict with any other client shall immediately advise the Firm of the conflict, but will not discuss the specific circumstances with the Firm. Communication of such a conflict shall be made to Robert Ekstrand personally; and, in the event Robert Ekstrand is not available, this communication must be made to a current employee of the Firm. Upon confirmation of that communication, the Firm will immediately withdraw from its representation of that conflicted client. Further, Client hereby agrees that, if an actual conflict arises and is asserted, Client shall immediately return all materials, notes or other work product that any employee of the Firm has provided to him in the course of the representation, and those materials are not to be shared with any individual at any time. Similarly, if it becomes apparent to the Firm that an actual conflict exists between Client and other clients in this representation, the Firm, on its own initiative, will notify the Client of the circumstances, ascertain the accuracy of them, and, if an actual conflict exists and is not waived by Client, the Firm will immediately withdraw from its representation of Client. Further, Client agrees not to assert any such conflict of interest against the Firm or to undertake to disqualify the Firm from its continuing common representation of the remaining clients subject to this multiple representation.

None of the information obtained by any party hereto as a result of this agreement shall be disclosed to third parties without the consent of those Members made available in the first instance information protected by the attorney-client and/or attorney work product privilege.

Modifications of this agreement must be in writing and signed by all parties hereto.

Any party hereto may voluntarily withdraw from this agreement upon giving or express and written notification to all other parties to this agreement, in which case this agreement shall no longer be operative as to the withdrawing party, but the agreement shall continue to protect all communications and information covered by the agreement and disclosed to the withdrawing party or to the party's counsel upon notification of withdrawal. Immediately upon demand, a withdrawing party and his counsel shall immediately return all joint defense materials and copies thereof.

The signatories to this agreement agree that the confidentiality prescribed above will not become retrospectively inoperative if adversity should subsequently arise among the signatories (or between any of them), irrespective of any claim that the joint defense privilege may otherwise become prospectively inoperative by virtue of such claimed adversity.

Client understands and acknowledges that the Firm may enter into Joint Defense Agreements with counsel for individuals who are also subjects in the same investigation without

obtaining the express prior authorization of Client. At the same time, Client may—and should—notify the Firm if Client has any objections to entry into such an agreement with counsel for an individual subject to this investigation and any subsequent proceedings.

By signing this agreement, Client certifies that he has read this agreement, understands it and agrees to abide by it.

Client Signature

FOR THE FIRM:
