

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

RYAN MCFADYEN; MATTHEW WILSON;
and BRECK ARCHER,

Plaintiffs,

v.

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
STOTSSENBERG; ROBERT K. STEEL;
RICHARD H. BRODHEAD, Ph.D.; PETER
LANGE, Ph.D.; TALLMAN TRASK, III, Ph.D.;
JOHN BURNES; LARRY MONETA, Ed.D.;
VICTOR J. DZAU, M.D.; ALLISON HALTON;
KEMEL DAWKINS; SUZANNE WASIOLEK;
STEPHEN BRYAN; MATTHEW DRUMMOND;
DUKE UNIVERSITY HEALTH SYSTEMS, INC.;
PRIVATE DIAGNOSTIC CLINIC, PLLC;
JULIE MANLY, M.D.; THERESA ARICO, R.N.;
TARA LEVICY, R.N.; THE CITY OF DURHAM,
NORTH CAROLINA; MICHAEL B. NIFONG;
PATRICK BAKER; STEVEN CHALMERS;
RONALD HODGE; LEE RUSS; STEPHEN
MIHAICH; BEVERLY COUNCIL; EDWARD
SARVIS; JEFF LAMB; MICHAEL RIPBERGER;
LAIRD EVANS; JAMES T. SOUKUP; KAMMIE
MICHAEL; DAVID W. ADDISON; MARK D.
GOTTLIEB; BENJAMIN W. HIMAN;
LINWOOD WILSON; RICHARD D. CLAYTON;
DNA SECURITY, INC.; RICHARD CLARK;
and BRIAN MEEHAN, Ph.D.,

Defendants.

No. 1:07-CV-00953

**MOTION TO REESTABLISH DEADLINES
IN THE RULE 12 BRIEFING SCHEDULE**

Counsel for all represented parties, pursuant to FED. R. CIV. P. 6(b) and L.R. 6.1(a), respectfully move the Court to reestablish the deadlines originally set out in the Court's Order setting a briefing schedule for Defendants' anticipated Motions to Dismiss, entered on March 25, 2008 ("March 25th Order"). In support of this Motion, the parties show the Court the following:

1. Plaintiffs filed the Complaint on December 17, 2007. The original Complaint contained 35 causes of action stated in 391 pages, excluding the table of contents and numerous attachments that consisted of documents as well as electronic media.
2. Due to the length of the original Complaint and the number of causes of action, the parties agreed to the following Rule 12 briefing schedule, which was approved by this Court on March 25, 2008:
 - a. Motions or Answers Due: April 25, 2008;
 - b. Responses Due: 90 days after the filing of Motions; and
 - c. Replies Due: 30 days after the filing of Responses.

3. Plaintiffs filed a First Amended Complaint on April 17, 2008, and a Second Amended Complaint on April 18, 2008 (the “Amended Complaint”).¹ Prior to the filing of the Amended Complaint, the motions or answers were due on April 25, 2008. By operation of Rule 15, the motions or answers are now due on May 5, 2008. The Amended Complaint contains 40 causes of action stated in 425 pages, excluding the table of contents and numerous attachments, consisting of documents as well as electronic media. The Amended Complaint contains several new factual allegations – as well as several legal theories not presented in the original Complaint, including significant variations on the previously-pleaded federal civil rights statutory claims and state common law negligence claims and the addition of several entirely new causes of action.

4. Because of the additional allegations and causes of action in the Amended Complaint, Defendants need additional time to prepare their motions or answers.

5. Based on the necessary time to review the new allegations and causes of action, the parties’ counsel have conferred and agreed, subject to the Court’s approval, to reestablish the deadlines originally established in the Rule 12 briefing schedule entered on March 25, 2008. Pending Court approval, the parties request to reestablish the following new dates as the briefing schedule deadlines:

¹ Upon the request of the Court, Plaintiffs re-filed the Amended Complaint on April 18, 2008 in order to change the placement of the media attachments to the pleading in the ECF system. The ECF system designated the re-filing as the Second Amended Complaint, but the pleading remains styled as the First Amended Complaint. To the extent that any consent is required and pursuant to FED. R. CIV. P. 15(a), Defendants consent to the filing of the Second Amended Complaint, filed on April 18, 2008, styled as the “First Amended Complaint.”

a. Motions or Answers Due: July 2, 2008;

b. Responses Due: no later than 90 days after the date all Defendants' Motions or Answers are filed; and

c. Replies Due: no later than 30 days after the date Plaintiffs' Responses are filed.

6. Because of the significant new allegations and legal theories directed at the Duke University Police Department and individual Duke Police officers, the Duke University Police Department and the individual Duke Police officers named as defendants in the Complaint seek, for purposes of the Rule 12 motion briefing, to be recognized as a separate Defendant group, known as the "Duke Police Defendants," and, as with the other Defendant-groups proposed previously by the parties and delineated in the March 25th Order, the Duke Police Defendants request the Court's approval to file a separate motion to dismiss and memorandum in support, up to and including 50 pages in length, and to file a separate reply memorandum up to and including 25 pages in length. The Plaintiffs do not object to the Duke Police Defendants' request for a separate motion and brief.

WHEREFORE, undersigned counsel respectfully request that the Court approve the proposed extension of the Rule 12 briefing schedule.

Respectfully submitted, this the 25th day of April, 2008.

[Signatures on Following Page]

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Certificate of Service

I hereby certify that on 25 April 2008 I electronically filed this MOTION TO REESTABLISH DEADLINES IN THE RULE 12 BRIEFING SCHEDULE with the Clerk of Court using the CM/ECF system, which will provide electronic notification to all counsel.

I further certify that on 25 April 2008 I served the following defendant Linwood E. Wilson, who is not a registered user of the CM/ECF system, by United States mail, addressed as follows:

Linwood E. Wilson
6910 Innesbrook Way
Bahama, NC 27503

This 25th day of April 2008.

/s/ J. Donald Cowan, Jr.
J. Donald Cowan, Jr.