

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

RYAN MCFADYEN, MATTHEW)	
WILSON, BRECK ARCHER,)	
)	
Plaintiffs,)	
)	
v.)	1:07CV953
)	
DUKE UNIVERSITY, et al.,)	
)	
Defendants.)	

ORDER

This matter came before the Court for a pretrial scheduling conference on May 23, 2014. Attorney Robert C. Ekstrand appeared for Plaintiffs; Attorneys Dixie T. Wells and Paul K. Sun, Jr. appeared for Defendants Robert Steel, Richard Broadhead, John Burness, Victor Dzau, Gary Smith, Aaron Graves, Robert Dean, Matthew Drummond, and Duke University (“the Duke Defendants”); and Attorney Reginald B. Gillespie, Jr. appeared for the City of Durham. After conferring with the parties, the Court set the following deadlines for the case.

Discovery will begin on the day of the hearing, May 23, 2014, and will close on July 22, 2014. The only remaining claims at issue in this case are Counts 18, 21, 24, and 41 against the Defendants noted above. Fact discovery has already been conducted as to Counts 21 and 24. Therefore, fact discovery will proceed only as to Counts 18 and 41, but expert discovery will proceed on Counts 18, 21, 24, and 41. If Plaintiffs seek additional fact discovery as to Counts 21 and 24, including with respect to issues raised in any prior motion to compel, Plaintiffs must file a motion by June 2, 2014, requesting leave to reopen specific, limited discovery on these counts, supported by a sufficient basis therefor. With respect to Count 41, the parties agreed

during the hearing that this claim related to incidents otherwise described in greater detail in Counts One and Two, specifically related to the non-testimonial order and the search of Plaintiff McFadyen's dorm room.

In order to address concerns of burdensomeness in document review and production, the presumptive end date for review of data will be August 31, 2007. Plaintiffs may also submit narrowly-tailored requests for review and production of data for the period August 31, 2007, through December 18, 2007 (the filing date of the action), subject to Defendants' objections, including as to burdensomeness. The parties are encouraged to resolve these issues by agreement, but if no agreement is reached, any remaining dispute may be presented to the Court on Motion for Protective Order or Motion to Compel. As noted during the hearing, Plaintiffs must seek leave of Court, with a sufficient basis presented, before requesting review and production of documents for the period after December 18, 2007.

Plaintiffs, the Duke Defendants, and the City may each notice up to 15 depositions, plus experts, as follows: each group may notice up to ten depositions of up to 7 hours, and each group may notice up to five depositions of up to 2 hours, in addition to depositions of any designated experts. With respect to written discovery, each group may serve up to 25 interrogatories, 25 requests for admission, and 25 requests for production on any other party, as articulated during the May 23, 2014 hearing. The parties may agree to extend these limits by consent, and in the absence of consent any party may file a motion requesting leave to expand these limits if supported by a sufficient basis, for further consideration by the Court. The parties may serve an unlimited number of requests for authentication of documents.

In light of the expedited discovery period, written discovery response time will be 20 days from the actual date of electronic delivery or hand delivery. Initial disclosures required by Rule 26(a)(1) must be provided by May 30, 2014. In addition, by May 30, 2014, Plaintiffs must provide Defendants with 2 available deposition dates for each of the Plaintiffs.

The deadlines for expert disclosures and reports under Rule 26(a)(2)(B) and (C) are as follows: from Plaintiffs by June 16, 2014, from Defendants by July 1, 2014, and from Plaintiffs in rebuttal by July 16, 2014. At the time of the disclosures, Plaintiffs must provide 3 available deposition dates for their experts between June 17 and June 30, 2014, Defendants must provide 3 available deposition dates for their experts between July 2 and July 15, 2014, and Plaintiffs must provide 3 available deposition dates for any rebuttal expert between July 17 and July 22, 2014.

With respect to Plaintiffs' damages expert, Plaintiffs may follow the schedule set out above, or in the alternative, Plaintiffs must disclose the name of the damages expert by June 16, 2014, and must provide the expert's report by July 1, 2014, although in that instance, Plaintiffs would forego a rebuttal.¹ This alternative schedule is available only for a single damages expert. Under this schedule, Plaintiffs must provide 3 available deposition dates for the damages expert between July 2 and July 9, 2014, and Defendants' expert disclosure and report on damages must be provided by July 10, 2014, with 3 available deposition dates between July 11 and July 18, 2014.

¹ The Court adopted this alternative option at the hearing to address Plaintiffs' concerns that there would be insufficient time to obtain a report from a damages expert by June 16, 2014.

In addition, with respect to any proposed expert on prosecutorial or police conduct, any such expert disclosures must be simultaneously provided by Plaintiffs and the City on July 1, and in that instance the disclosing parties must make 3 deposition dates available between July 2 and July 15, 2014; simultaneous rebuttals must be provided by July 16, with each side providing 3 deposition dates between July 17 and July 22, 2014.² As noted at the hearing, however, the Court makes no determination at this time whether such an expert could be presented at trial, and any objections to such an expert may be presented and considered on pre-trial motions in limine.

Mediation is to be completed by July 22, 2014. The mediator will be Mr. Harkavy or, if he is not available, by another mediator with the agreement of all parties. If Mr. Harkavy is not available and the parties cannot agree on an alternative mediator, they are to advise the Court, and the Clerk will select a mediator from the Court's panel of mediators.

The protective order already entered in the action continues to be in effect. The parties are to confer regarding any additional confidentiality issues so that a supplemental consent protective order can be submitted to the Court by May 30, 2014, to the extent that there are additional categories of documents or other provisions that need to be included.

The parties are to work together to resolve any issues regarding discovery of electronically stored information ("ESI"). In this regard, the parties must meet within 7 days after Plaintiffs serve a request for production of documents, in order to address and resolve to the extent

² The Court adopted this alternative option at the hearing to address the City of Durham's concern that any such experts be disclosed simultaneously, so that Plaintiffs could not use the rebuttal period to provide a report that was not actually rebuttal and should have been provided initially.

possible any ESI issues. As noted during the hearing, Defendants' response time on the requests runs from the date of service rather than the date of the meet-and-confer session.

Supplementation under Rule 26(e) is due within 5 days of learning of the need therefor and no later than the close of discovery. Notices of intent to file dispositive motions must be filed by July 23, 2014. Summary judgment motions are due August 5, 2014, responses are due August 19, 2014, and replies are due August 26, 2014.

The parties may modify internal deadlines by agreement with notice to the Court, but may not modify the summary judgment briefing schedule or the close of discovery date without Court approval.

IT IS THEREFORE ORDERED that the deadlines set out above will govern in this action. Specifically, discovery will run from May 23, 2014, until July 22, 2014; initial disclosures are due by May 30, 2014; mediation is to be completed by July 22, 2014; notices of intent to file dispositive motions must be filed by July 23, 2014; and summary judgment motions are due August 5, 2014, responses are due August 19, 2014, and replies are due August 26, 2014.

This, the 27th day of May, 2014.

/s/ Joi Elizabeth Peake
United States Magistrate Judge