

**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.

**BRIEF IN SUPPORT OF
PLAINTIFFS' UNCONTESTED
MOTION TO SEAL**

Plaintiffs, through counsel, submit this Brief in Support of their Motion to Seal.

NATURE OF THE MATTER AND STATEMENT OF FACTS

On 18 January 2012, Duke University moved for a protective order to prevent and/or limit inquiry into topics that Plaintiffs had listed on a Rule 30(b)(6) notice of deposition. [DE 262]. In briefing this motion, Duke attached, as an exhibit, a copy of a report summarizing Plaintiff Matthew Wilson's Undergraduate Judicial Board hearing produced by Mr. Wilson in discovery ("Hearing Report"). [DE 270-1]. The purpose behind Duke's filing of the Hearing Report was ultimately mooted; the parties resolved their discovery dispute without a ruling on Duke's motion for a protective order. [DE 282; DE 288].

The Hearing Report contains private information from a closed-session disciplinary action brought against a college student nearly eight years ago. (*See* DE 270-1). Mr. Wilson wishes to have the Hearing Report sealed, and Duke does not oppose that relief. Additionally, the City of Durham, the only other remaining Defendant in this case, does not oppose having the Hearing Report sealed.

QUESTION PRESENTED

Whether good cause exists to seal an exhibit to a mooted, non-dispositive motion, where the document contains private information about a closed-session student disciplinary proceeding?

ARGUMENT

I. The Interests Promoted by Sealing Mr. Wilson’s Hearing Report Outweigh any Possible Right of Public Access to this Document.

This Court “has supervisory power over its own records and may, in its discretion, seal documents if the public’s right of access is outweighed by competing interests.” *In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Since the Hearing Report was not filed in connection with a dispositive motion or invoked in any Court order, no First Amendment right of access attaches to this document. *Bayer CropScience Inc. v. Syngenta Crop Prot., LLC*, -- F. Supp. 2d --, 2013 WL 5703212, at *2 (M.D.N.C. 2013).

Under the less-demanding common law standard, the decision to seal a document is “best left to the sound discretion of the [district] court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598-99 (1978).

The Fourth Circuit employs a defined procedure when faced with a request to seal documents. Before sealing documents, the Court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d

288, 302 (4th Cir. 2000). Notice may be deemed adequate when a party files a publicly viewable motion to seal, and no member of the public challenges the motion. *E.g., Bell v. Shinseki*, No. 1:12CV57, 2013 WL 3157569, at *9 (M.D.N.C. June 20, 2013).

The public has no valid interest in the content of a private university's judicial report from 2006. This is especially true where, as here, the Court did not rely on the Hearing Report, since no order was issued on the discovery motion for which this document was submitted. *See id.* (sealing records that “would have little value in further the public oversight of the judicial process” because they were not relied upon in resolution of dispositive motions). Nor does the Hearing Report enhance public understanding of any important historical event.

Weighed against this nonexistent public interest, Mr. Wilson has a compelling interest in keeping the Hearing Report under seal. The Hearing Report contains private, generally non-public information about an incident in which Mr. Wilson was involved many years ago. *See Briggs v. Marriott Int'l, Inc.*, 368 F. Supp. 2d 461, 463 n.1 (D. Md. 2005) (sealing “personal and medical information related to Plaintiff”).

Finally, considering that the Court's docket is public, there is no alternative less drastic than sealing that would adequately protect the private information contained in the Hearing Report. *See Ashcraft*, 218 F.3d at 302.

CONCLUSION

For the reasons above, Plaintiffs respectfully request that the Court grant their Motion to Seal and enter the attached order after a reasonable time has passed for objections.

This the 19th day of June, 2014.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of the filing to counsel of record for Defendants and Defendant Linwood Wilson, all of who are registered CM/ECF users.

Respectfully submitted by:

EKSTRAND & EKSTRAND LLP

/s/ Stefanie Sparks Smith

Stefanie Sparks Smith
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