

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

CIVIL ACTION NUMBER 1:07-CV-00953

EXPEDITED REVIEW REQUESTED

RYAN McFADYEN, et al.,

Plaintiffs,

v.

DUKE UNIVERSITY, et al.,

Defendants.

Joint Response of “Duke University Defendants,” “Duke Police Defendants,” and “Duke SANE Defendants” to Plaintiffs’ Motion For Extension of Time

On October 1, 2008, Plaintiffs filed a motion seeking ten additional days to file their responses to the Rule 12 motions to dismiss filed by the Defendants in this case (which would otherwise have been due on September 30). The “Duke University Defendants,” “Duke Police Defendants,” and “Duke SANE Defendants”¹ do not oppose a

¹ The “Duke University Defendants” have been defined by the Court and the parties for purposes of the motions to dismiss to comprise Duke University, Richard H. Brodhead, Stephen Bryan, John Burness, Kemel Dawkins, Matthew Drummond, Victor J. Dzau, Aaron Graves, Allison Haltom, Peter Lange, Larry Moneta, Robert K. Steel, Tallman Trask III, and Suzanne Wasiolek. The “Duke SANE Defendants” have been defined to comprise Duke University Health System, Inc., the Private Diagnostic Clinic, PLLC, Theresa Arico, Tara Levicy, and Dr. Julie Manly. The “Duke Police Defendants” have been defined to comprise the Duke University Police Department, Jeffrey O. Best, Phyllis Cooper, Robert Dean, Joseph Fleming, William F. Garber II, Leila Humphries, James Schwab, Gary N. Smith, and Greg Stotsenberg. (See Joint Mot. to Extend Page Limitations and to Establish a Rule 12 Briefing Schedule, Dkt. No. 23 (defining “Duke University Defendants” and “Duke SANE Defendants”); Joint Mot. to Reestablish

very brief extension for Plaintiffs to file their oppositions to those Defendants' Rule 12 motions to dismiss, provided that Defendants may also have additional time for their Reply briefs. Specifically, the three groups of Duke defendants would not oppose an extension allowing Plaintiffs to file their responses no later than 9:00 a.m. on Monday, October 6, 2008, provided that the Reply briefs for the three groups of Duke Defendants would be due on or before Wednesday, November 26, 2008. By so consenting, the Duke Defendants do not concede that Plaintiffs' belated "Motion for Extension of Time for Plaintiffs to File Rule 12 Briefs" (Dkt. No. 66) was proper. Moreover, as explained in the Joint Opposition of City of Durham Defendants to Plaintiffs' Motion for Extension of Time" (Dkt. No. 67), Plaintiffs did not consult with Defendants' counsel prior to filing as the Local Rules (Rule 6.1(a)) and Federal Rules of Civil Procedure (Rule 6(b)) require, and by consenting here to Plaintiffs' request for extension of time the Duke Defendants do not concede that Plaintiffs' consultation complied with these rules.

/s/ Jamie S. Gorelick

Jamie S. Gorelick
District of Columbia Bar No. 101370
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Telephone: (202) 663-6500
Facsimile: (202) 663-6363
Email: jamie.gorelick@wilmerhale.com

/s/ J. Donald Cowan, Jr.

J. Donald Cowan, Jr.
N.C. State Bar No. 0968
Ellis & Winters LLP
100 N. Greene Street, Suite 102
Greensboro, North Carolina 27401
Telephone: (336) 217-4193
Facsimile: (336) 217-4198
Email: don.cowan@elliswinters.com

Deadlines in the Rule 12 Briefing Schedule, Dkt. No. 37 (defining "Duke Police Defendants"); Order, Dkt. No. 38.)

/s/ Dan J. McLamb

Dan J. McLamb
N.C. State Bar No. 6272
Yates, McLamb & Weyher, LLP
421 Fayetteville Street, Suite 1200
Raleigh, N.C. 27601
Telephone: (919) 835-0900
Facsimile: (919) 835-0910
Email: dmclamb@ymwlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2008, I electronically filed the foregoing Joint Opposition of “Duke University Defendants,” “Duke Police Defendants,” and “Duke SANE Defendants” to Plaintiffs’ Motion for Extension of Time with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Counsel for the Plaintiffs

Robert C. Ekstrand

Email: rce@ninthstreetlaw.com

Counsel for City of Durham and Edward Sarvis

Reginald B. Gillespie, Jr.

Email: rgillespie@faison-gillespie.com

Counsel for Patrick Baker, Steven Chalmers, Ronald Hodge, Lee Russ, Stephen Mihaich, Beverly Council, Jeff Lamb, Michael Ripberger, and Laird Evans

Patricia P. Kerner

Email: tricia.kerner@troutmansanders.com

D. Martin Warf

Email: martin.warf@troutmansanders.com

Hannah Gray Styron

Email: hannah.styron@troutmansanders.com

Counsel for James T Soukup, Kammie Michael, David Addison, Richard D. Clayton

James B. Maxwell

Email: jmaxwell@mfbpa.com

Counsel for Mark Gottlieb

Edwin M. Speas, Jr.

Email: espeas@poynerspruill.com

Eric P. Stevens

Email: estevens@poyners.com

Counsel for Benjamin Himan

Henry W. Sappenfield

Email: hsappenfield@kennoncraver.com

Joel Miller Craig

Email: jcraig@kennoncraver.com

Counsel for DNA Security, Inc., Richard Clark

Kearns Davis

Email: kdavis@brookspierce.com

Robert James King, III

Email: rking@brookspierce.com

Counsel for J. Wesley Covington

Kenneth Kyre, Jr.

Email: kkyre@pckb-law.com

Linwood Wilson, pro se

Email: ADDRESS REDACTED

Counsel for Brian Meehan

James A. Roberts, III

Email: jimroberts@lewis-roberts.com

This 3d day of October 2008.

/s/ Jamie S. Gorelick

Jamie S. Gorelick

Attorney for Duke University, Richard H. Brodhead, Stephen Bryan, John Burness, Kemel Dawkins, Matthew Drummond, Victor J. Dzau, Aaron Graves, Allison Haltom, Peter Lange,

Larry Moneta, Robert K. Steel, Tallman Trask III, Suzanne Wasiolek, Duke University Police Department, Jeffrey O. Best, Phyllis Cooper, Robert Dean, Joseph Fleming, William F. Garber II, Leila Humphries, James Schwab, Gary N. Smith, Greg Stotsenberg, Duke University Health System, Inc., the Private Diagnostic Clinic, PLLC, Theresa Arico, Tara Levicy, and Dr. Julie Manly