

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
No. 1:08-cv-119**

	)	
EDWARD CARRINGTON, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
DUKE UNIVERSITY, et al.,	)	
	)	
Defendants.	)	
	)	

**MOTION TO CLARIFY OR IN THE ALTERNATIVE EXTEND  
TIME TO RESPOND TO DEFENDANT LINWOOD WILSON'S  
BRIEF IN SUPPORT OF MOTION TO DISMISS**

Pursuant to Local Rule 6.1(a) and Rule 6(b)(1) of the Federal Rules of Civil Procedure, Plaintiffs respectfully file this motion requesting that the Court clarify that the Scheduling Order entered April 14, 2008 (Doc. No. 51) applies to Plaintiffs' response to Defendant Linwood Wilson's Brief In Support of Motion to Dismiss (Doc. No. 80)<sup>1</sup> or in the alternative to request an order extending the time Plaintiffs have to respond to Defendant Wilson's brief. In support of this Motion, the Plaintiffs state as follows:

1. On April 14, 2008 the Court entered an Order (Doc. No. 51) granting the parties' joint motion to extend page limitations and to establish a Rule 12 briefing schedule. Under this established briefing schedule Plaintiffs' responses to motions to dismiss are due on August 28, 2008. This scheduling order, however, does not specifically reference Defendant Linwood Wilson.

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<sup>1</sup> Mr. Wilson, who is *pro se*, never actually filed a motion to dismiss. He did, however, file a brief as noted above to which Plaintiffs will be responding.

2. On April 22, 2008 Defendant Linwood Wilson filed a motion for an extension of time to answer Plaintiffs' complaint, which was granted on April 23, 2004 and gave Defendant Wilson until June 27, 2008 to file his answer and/or a motion to dismiss. Defendant Wilson filed a Brief in Support of Motion to Dismiss on June 26, 2008 citing both the order granting him until June 27, 2008 to file his motion and the Court's April 14, 2008 scheduling order. Defendant Wilson's brief, apparently in reliance on the April 14, 2008 scheduling order, exceeded the normal 20 page limit by 18 pages.

3. Under the normal rules pertaining to responses to motions, a response to Defendant Wilson's brief would be due today, July 21, 2008. Under the April 14, 2008 scheduling order, to which Mr. Wilson clearly considers himself to be subject, a response is not due until August 28, 2008. Since there is a potential ambiguity about when Plaintiffs' response to Defendant Wilson's brief is due, Plaintiffs respectfully file this motion seeking an order clarifying that Plaintiffs' response is not due until August 28, 2008 or in the alternative extending the time to respond until August 28, 2008.

4. To the extent that a response to Defendant Wilson's brief would be due today, good cause exists for granting Plaintiffs' requested extension of time. First, Plaintiffs are currently in the process of preparing responses to eight other motions to dismiss all of which have deadlines of August 28, 2008. It would be an undue burden on Plaintiffs to have to attempt to file a separate response to Defendant Wilson's brief ahead of that schedule. Second, Defendant Wilson has clearly availed himself of the benefits of April 14, 2008 scheduling order that permitted Defendants to use excess pages above and

beyond the normal 20-page limit for briefs. Fairness and equity dictate that Plaintiffs be given the additional time to treat with the arguments made on these excess pages and likewise be able to avail themselves of the more generous page limits set forth in the April 14, 2008 scheduling order. Third, granting the requested extension of time would not be prejudicial to Mr. Wilson as it will simply put him on a par with all other defendants whereas not granting the request would be extremely prejudicial to Plaintiffs.

5. While Plaintiffs have not been able to confer with Defendant Wilson regarding his position on this motion as he is *pro se* and has not provided Plaintiffs' counsel with e-mail or telephone contact information, it appears clear from the face of his brief that he considers himself subject to the April 14, 2008 scheduling order and therefore cannot have a reasonable objection to this request.

For the foregoing reasons, Plaintiffs respectfully request that the Court either 1) clarify that the April 14, 2008 scheduling order applies to Plaintiffs' response to Defendant Wilson's Brief In Support of Motion to Dismiss or 2) enter an order extending the time for Plaintiffs' response to August 28, 2008 and permit Plaintiffs to follow the page limits set forth in the April 14, 2008 scheduling order. A proposed order is attached.

Dated: July 21, 2008.

Respectfully submitted,

**COOPER & KIRK, PLLC**

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-and-

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2008, I electronically filed the foregoing Motion To Require Defendants To Participate In The Mandatory Rule 26(F) Discovery Conference with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel:

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As of the date of this filing, no attorney has made an appearance on behalf of the following Defendant. I hereby certify that I served the following Defendants by U.S.

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/s/ Nicole Jo Moss