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The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Brian P. Carr,

Plaintiff,

v.

Sam Reed, in his official capacity as Secretary of the State of Washington, Wanda Briggs in her official capacity as Chair of the State of Washington Commission of Judicial Conduct, and Rob McKenna, in his official capacity as Attorney General of the State of Washington and, separately, as private individuals the Honorable Robert L. Harris, John F. Nichols, Barbara D. Johnson, Kenneth Eiesland, Rich Melnick, John Hagensen, Kelli E. Osler, Joel Penoyar, (J.)C.C. Bridgewater, J. Robin Hunt, Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson as well as other currently unnamed parties as determined by the Court,

Defendants.

NO. C07-5260RJB

JOINT STATUS REPORT AND
DISCOVERY PLAN

1 The original Complaint names as defendants the Clark County Superior and District
2 Court judges and commissioners who ruled on these matters, the panel of three Court of
3 Appeals judges who ruled adversely to plaintiff when he appealed these matters and the five
4 Justices of the Washington Supreme Court who ruled adversely to plaintiff. Plaintiff disagrees
5 with the decisions reached by all of the defendant judges. Plaintiff also has sued the
6 Washington Secretary of State and Attorney General, presumably because they administer or
7 defend the State's election laws. Plaintiff challenges the electoral laws of the State because
8 they require state judicial candidates to be admitted to practice in Washington and impose a
9 filing fee or petition requirement on all candidates. In an Amended Complaint, plaintiff adds
10 the Executive Director of Washington's Commission on Judicial Conduct because that
11 organization rejected plaintiff's complaints about the defendant judges arising out of the "no
12 contact" orders issued and refused in plaintiff's marital dissolution proceedings.

13 While the Complaints allege many causes of action, all but one pertain to state law
14 issues raised by plaintiff before and decided by state courts. The claim about the
15 constitutionality of the State's laws regulating qualifications for state judicial officeholders has
16 also been decided by federal courts that have upheld such state law qualifications for judicial
17 office. The claim against the CJC also is subject to dismissal under well-established federal
18 precedent, including the absolute immunity of quasi-judicial agencies like this Commission
19 and the Bar Association. Thus, the case is not complex, factually or legally.

20 2. FRCP 26(f) Conference.

21 Counsel and plaintiff conducted this teleconference on August 2, 2007. Defense
22 counsel stated that discovery in the case would be about matters and documents of public
23 record and that non-public files kept by judges, if any existed, would be withheld as privileged
24 or work product. Of concern to plaintiff is the Judicial Information System which plaintiff
believes contains information that the Clark County judges accessed without Notice or Service.

1 Defense counsel also discussed staying discovery and the filing of this Report until
2 fully dispositive motions were brought. A Motion to Stay is pending before the Court but is
3 opposed by plaintiff.

4 3. Additional Parties.

5 No additional parties should be joined.

6 4. ADR.

7 Given the nature of the case—a challenge under federal law to final judgments and
8 decisions about state law issues brought against judicial and quasi-judicial officers—ADR is
9 not warranted at this time.

10 5. ADR Scheduling.

11 See No. 4 above. While plaintiff is amenable to ADR for determination of the amount
12 of damages, Defendants oppose ADR. Plaintiff believes ADR has the potential for eliminating
13 the need for a trial and should be considered once the scope of the issues of fact is determined.
14 Defendants will not agree to pay damages or voluntarily enter into the other relief plaintiff
15 requests so ADR will not be productive.

16 6. Proposed Discovery Plan.

17 A. FRCP 26(f) conference took place on August 2, 2007. The parties
18 exchanged initial disclosures on August 15, 2007.

19 B. Plaintiff seeks a corrective addition to the defendants' initial disclosures.
20 Attached as a separate document is the initial disclosures from Mr. Clark.
21 In that initial disclosures document as well as the document submitted to the
22 court by Mr. Veljacic (document number 20), there is no disclosure
23 concerning insurance agreements of the 15 Defendants listed as private
24 individuals as required by FRCP 26(a)(1)(D). This was justified with the
representation that there are no such documents regarding the State

1 defendants and, if there were, 'Damages are not appropriate, as a matter of
2 law, for the claims pleaded in the Complaint'. However, according to
3 plaintiff's reading of FRCP 26(a)(1)(D), these disclosures are required until
4 there is a determination of the court saying damages are precluded. They
5 must be disclosed if liability is a reasonable possibility (the rule says 'may
6 be liable' rather than 'likely to be liable'). Plaintiff raised this issue on
7 August 17, 2007 via email but the parties have not been able to resolve the
8 issue.

9 C. Discovery of the public court files may be necessary. Deposition of the
10 parties may be necessary, depending on the outcome of dispositive motions.
11 The defense will seek a Protective Order limiting the depositions of the
12 defendants to matters of public record. The defense believes inquiries into
13 judicial mental impressions are not permitted under federal or state law.
14 The defense has moved to stay discovery pending the decision of dispositive
15 motions while plaintiff has opposed the delay.

16 D. The limitations on discovery in the federal rules should control. In addition,
17 Defendants are likely to seek limitations on discovery to protect the work
18 product and mental impressions of judicial officers. Plaintiff has submitted
19 an initial request for documents. Plaintiff believes the case will progress
20 most promptly if all parties are required to submit their opposition to any
21 requested document or interrogatory question promptly, possibly within 14
22 days of service. The defense has a right to the timeframes for responding
23 under the federal rules so those deadlines will control.

24 E. The plaintiff believes that all records from RCW 26.50 (Domestic Violence)
cases which are entered into the record in this case should be redacted to

1 show only the case number and the first names of the parties with no other
2 identifying information. Further, references to such cases be by case
3 number and first names only. The plaintiff has requested in the Complaint
4 in Relief paragraph number 14 and 15 that the records of all these matters be
5 sealed and this process can be accomplished much more easily if this suit
6 itself does not complicate this process. Of course, references to the plaintiff
7 may include the normal identifying information. The defendants do not see
8 any need to redact any information from public records and object because
9 the redaction of items from public records and pleadings from other cases is
10 unnecessary and onerous. Defendants believe this should be the subject of
11 separate motion practice under the Federal Rules

12 F. To support speedy resolution of disputes during the discovery process, the
13 Plaintiff believes that all Requests for Access to Documents, Interrogatories,
14 and Responses to these requests should be required to be filed via the ECF
15 so that the Court can be consulted for early resolution of disputes.

16 G. Based on the above, discovery is expected to be minimal, thereby
17 controlling costs.

18 H. The defense believes the Court should stay discovery per the Motion filed
19 on August 10, 2007 while plaintiff opposes any such delays. Defendants
20 may seek other Protective Orders concerning discovery against the judicial
21 defendants or discovery regarding the Judicial Information System.

22 7. Discovery Cut-Off.

23 Defendants expect that discovery should be completed by December 31, 2007.
24 Plaintiff hopes for an earlier completion; however, to meet even that deadline, plaintiff
believes it is necessary for the parties to submit their objections promptly for quick

1 resolution. The defense believes the timeframes and other requirements of the federal
2 rules should control.

3 8. Magistrate.

4 The parties do not agree to assignment of the case to a United States Magistrate.

5 Case Management Issues.

6 9. No bifurcation is necessary.

7 10. The parties have no current position about the need to file pretrial statements or
8 a pretrial order.

9 11. See above referencing ways to shorten and simplify this case; defendants
10 recommend staying discovery and dispositive motions while plaintiff
11 recommends continuing discovery while those issues are resolved.

12 12. The case can be ready for trial in early March 2008.

13 13. The case should be tried to the Court. No jury demand was made.

14 14. Given the number of defendants, trial could take three to five days.

15 15. Trial Date.

16 Due to trial and other commitments, March 2008 is the preferable trial time for
17 defendants.

18 Respectfully submitted, August 22, 2007 (Vancouver, WA).

19 *s/ Brian P Carr*
20 Signature of Plaintiff
21 Brian Carr
22 11301 NE 7th St., Apt J5
23 Vancouver, WA 98684
24 503-545-8357

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CERTIFICATION

I hereby certify that on August 22, 2007, a true and accurate copy of the foregoing Joint Status Report and Discovery Plan as well as the two attached documents, Mr. Clark's 'Initial Disclosures' and Plaintiff's 'Discovery Request for Documents and Interrogatories' were filed electronically. Mr. Clark's Initial Discovery plan is as received from AgnesR@ATG.WA.GOV of Mr. Clark's office. Plaintiff sent his 'Discovery Request for Documents and Interrogatories' via email to the Defendants on August 19, 2007 and is hereby serving them via the court's CM/ECF System. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system as all parties have elected electronic filing as indicated on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.

s/ Brian P Carr
Signature of Plaintiff
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