

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Brian P. Carr
Plaintiff

versus

Sam Reed, in his official capacity as Secretary of State 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 representing in their official capacity as representatives 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

Civil No. 3:07-cv-05260-RJB

Plaintiff's Reply
to Defendants'
Motion to Apply Court's Stay
Order to Defendant Wanda
Briggs, to Extend Stay and to
Stay Motion Practice re:
Discovery

Noting Date:
October 12, 2007

In this reply, plaintiff urges the Court to deny the defendant's Motions to Apply Court's Stay Order to Defendant Wanda Briggs, to Extend Stay and to Stay Motion Practice re: Discovery with a Calendar Noting Date of October 12, 2007. The arguments and relief sought by the defendants are incorrect and unfounded.

Argument 1

Efforts to Speed Discovery Consistent with Court's Orders

The defendants argue that the relief sought by the plaintiff to speed resolution of discovery disputes through less formal processes are completely the invention of the plaintiff and would '*circumvent the Rules 26, 33, 34 and 37*', but, in fact, the less formal dispute resolution is

described in the court Order of May 24, 2007, [document 2](#), paragraph 1, which states '*All discovery matters should be resolved by agreement if possible. If a ruling is needed on any discovery question, and counsel wish to avoid the time and expense of a written motion, they may obtain an expedited ruling through a telephone conference call to the court at (253) 882-3832.*' While the defendants may be adverse to speedy and less expensive resolution of discovery disputes, such efforts are hardly inconsistent with the intentions of the court. The relief sought of filing discovery documents in the court's CM/ECF System enables that process as the court can hardly be called on to resolve disputes concerning documents which it does not have access to. It also does not mandate this form of resolution, but the defendants' opposition to this relief could be indicative of defendants' lack of interest in a speedy resolution to this matter.

Argument 2

Wanda Briggs Not Eligible for Immunity

The Order to Stay Discovery ([document 25](#)) of August 29, 2007 based the stay on individuals who were listed in the complaint as private individuals and who sought protection from such suits as described in [Mitchell v. Forsyth, 472 U.S. 511](#) (1985). However, Wanda Briggs is sued only in her official capacity (Amended Complaint of August 15, 2005, [document 21](#), [paragraph 90](#)) and no damages are sought from this defendant ([relief 16](#)). The review of a complaint by the Commission of Juicial Conduct (CJC) before any hearings is a purely administrative function as there is not '*the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court*' as described in [Forrester v. White, 484 U.S. 219](#) (1988). Official immunity does not preclude injunctive relief against individuals in their official capacity when there is a constitutional issue to be resolved, which is all that is sought in [relief 19](#), see [Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89](#) (1984) with '*The Court in Ex parte Young, supra, recognized an important exception to this general rule: a suit challenging the federal constitutionality of a state official's action is not one against the State.*'

Argument 3

Stay on Motion Practice Ill-conceived

The relief sought of a stay on motion practice is highly irregular and possibly unconstitutional. The court receives jurisdiction to resolve certain disputes through motions submitted by the

parties and it is questionable (from a constitutional perspective) if the court has the authority to prevent parties from submitting motions in an on-going matter. Of course the court does have the ability to deny all motions which it deems inappropriate or unwarranted and to assign costs for frivolous or otherwise poorly considered motions. Indeed this portion of this motion could warrant consideration of costs.

Further, were there such an order in place to stay motion practice related to discovery, the defendants could have been precluded from seeking an extension of the stay of discovery as that certainly appears to be discovery related motion practice. The relief sought is so vague that even the Motion for Summary Judgement on behalf of defendant Wanda Briggs ([document 41](#), Spetember 27, 2007) could be precluded as it would eliminate further discovery for this defendant and is, therefore, related to discovery. While judicial immunity has been found to protect parties from the requirements of discovery proper, it is not conceivable how it could be extended to motion practice related to discovery. How would the issue be raised at all except through motion practice? How would it be resolved except through motion practice?

Argument 4

Defendant Able to Respond Earlier

Mr. Clark argues that he was not able to respond earlier to the Amended Complaint, but he has been aware of the content of the Amended Complaint since July 30, 2007 ([document 14](#)) and could have made a dispositive motion for all matters in the Amended Complaint ([document 21](#)) by August 31, 2007. As service was not obtained until August 27, 2007 ([document 31](#)), the defendant was not **required** to answer until after August 31, 2007, but the defendant was certainly not precluded from addressing issues at that time.

Conclusion

What is apparent is that the defendants never addresses issues until the last possible moment and that this completely unfounded request for an extension of the stay is just another delaying tactic.

For the reasons set forth above, the plaintiff respectfully requests that the defendants' Motion to Apply Court's Stay Order to Defendant Wanda Briggs, to Extend Stay and to Stay Motion

Practice re: Discovery be denied.

Respectfully submitted, October 8, 2007 (Vancouver, WA).

s/ Brian P Carr
Signature of Plaintiff
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

CERTIFICATION

I hereby certify that on October 8, 2007, a true and accurate copy of the foregoing plaintiff's Reply Brief to Defendants' Motion to Apply Court's Stay Order to Defendant Wanda Briggs, to Extend Stay and to Stay Motion Practice re: Discovery was filed electronically. 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
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357