

**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 Response to Defendants'
Motion to Stay Discovery

Noting Date:
August 24, 2007

In this Response, Plaintiff urges the Court to deny the Defendant's Motion to Stay Discovery.

Argument 1

Discovery Required to Resolve Question of Judicial Immunity

The Defendants cites DiMartini v. Ferrin, 889 F.2d 922, 926, 1989 U.S. App. LEXIS 17366 (1990), which relies on [Harlow Et Al v. Fitzgerald, 457 U.S. 800](#). However, Harlow states that '*government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known*'. There are numerous allegations in the COMPLAINT of conduct which does violate clearly established statutory and constitutional rights. The limitations on judicial immunity is stated more clearly in [Mitchell v. Forsyth, 472 U.S. 511 \(1985\)](#) with '[an official] is immune unless his actions violated clearly established law'. To determine judicial immunity and whether the Defendants violated clearly established law requires limited inquiries into the actions taken and their basis in law. The Plaintiff expects that once this inquiry is made, the Court will determine that none of the Defendants cited for damages are eligible for any form of judicial immunity. The Defendants cited [Miller v. Gammie, 335 F.3d 889, 894, 2003](#) (but it is a quote from [Mitchell v. Forsyth, 472 U.S. 511 \(1985\)](#), which relies on [Harlow Et Al v. Fitzgerald, 457 U.S. 800](#), each cited above). However, the decision in [Miller v. Gammie, 335 F.3d 889, 894, 2003](#) actually confirmed the ability of the court 'for a limited time to ascertain what relevant functions were performed' before determining judicial immunity.

Argument 2

Rooker-Feldman Doctrine Does Not Apply

The Defendants claims of a defense based on the Rooker-Feldman doctrine, res judicata also falls short. While many of the issues in this case were raised before the trial court and in the briefs to the appellate courts, none of the decisions of the court or appellate division addressed these issues. Indeed, the lack of a right of appeal (Count IV of the Complaint) was not and could not be raised before appellate courts, but is a fundamental right of the Plaintiff from the [Fourteenth Amendment](#). The absence of any answer to the serious questions before the state court in their decisions permits federal courts to consider the questions; state courts are not permitted to simply ignore the requirement of the state constitution and statutes without repercussions.

Misconstruing and concealing such violations does not constitute a decision which meets the requirements of the Rooker-Feldman doctrine.

Argument 3

No Justification For Delay In Discovery

Of the twenty one (21) declarations of relief sought by the Plaintiff, only one is related to damages which could be precluded by judicial immunity and all of the issues of facts for which discovery is sought are related to the manner in which the Defendants performed their duties and numerous questions as whether their 'actions violated clearly established law'. Until these issues are resolved there is no way for the court to resolve the question judicial immunity and whether the Defendants' actions violated clearly established law.

For the additional defendant, Wanda Briggs of the Washington Commission on Judicial Conduct added in the Plaintiff's Amended Complaint filed on August 15, 2007, the only relief sought is injunctive relief and that relief is almost exclusively dependent on the other COUNTS of the Amended Complaint. There can not be any claims of judicial immunity for the new Defendant and it is not anticipated that any more than the most superficial of discovery will be required. Further, it is expected that all issues of fact can be resolved with the new Defendant long before the other issues of fact are determined. There is no need to delay the resolution of the serious issues of fact pending the answer of the new Defendant.

While the Mr. Clark notes that the new defendant will need to answer after the deadlines for initial disclosure and Joint Status Report, in all likelihood Mr. Clark will represent the new defendant and has known of this since July 1, 2007 (notified via email on that date) and could easily include the new defendant in his responses for these requirements.

Argument 4

Tardiness of Defendants Should not Hinder Plaintiff's Rights

The Defendants also argue that the court should delay the progress of this matter until they have time to prepare dispositive motions, but the Defendants have had well over two months to prepare and submit such motions. The inability of the Defendants to manage their time to avoid what they consider wasted effort should not hamstring this court, forcing it to wait for motions which may or may not help resolve the issues at hand. The proper course to preserve Defendants' rights to avoid discovery would have been to raise a Motion to Dismiss on or before June 23, 2007 (when an Answer was required) as well as a Motion to defer Discovery until the Motion to Dismiss was resolved.

The Defendants' tardiness in submitting any speculative dispositive motions should not be rewarded. Instead all motions to delay Discovery should be denied until any dispositive motions are resolved; Defendants should be held to meeting Discovery requirements until then.

Conclusion

For the reasons set forth above, Plaintiff respectfully requests that the Defendants' Motion to Stay Discovery be denied and that the Defendants be required to abide by the current discovery process until such time as any dispositive motions which they may submit are resolved. Further the court is asked to aggressively pursue the discovery process once the Combined Joint Status Report and Discovery Plan as Required by [FRCP 26](#) (f) and [Local Rule CR 16](#) is submitted by the Plaintiff on August 22, 2007 as required by the court.

Respectfully submitted, August 19, 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 August 19, 2007, a true and accurate copy of the foregoing Plaintiff's Opposition to Defendants' Motion to Stay 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

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Vancouver, WA 98684

503-545-8357