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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 Eisland, 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

OPPOSITION TO MOTION TO SPEED DISCOVERY

1 The defendant state judges and the defendant Chair of Washington’s Commission on
2 Judicial Conduct hereby oppose plaintiff’s Motion to Speed Discovery on the following
3 grounds:

4 1. On August 29, 2007, this Court stayed all discovery until October 26, 2007.
5 This Order applied to outstanding discovery, included plaintiffs’ request for documents and
6 interrogatories propounded on (but not served in accordance with the Federal Rules)
7 August 22, 2007.

8 2. Plaintiff’s Motion first seeks to shorten the response/objection time for all
9 discovery from 30 to 15 days. No justification is offered. Plaintiff also misinforms this Court
10 as to defendants’ position. Defendants have always opposed this request to circumvent the
11 rules.

12 3. Altering the response time for discovery is within the trial court’s discretion.
13 *United States v. A.B. Dick*, 7 F.R.D. 442 (D. Ohio 1947). The “sole question” is whether
14 alleged delay in obtaining the information or documents will prejudice the plaintiff’s rights.
15 *Id.* Plaintiff claims no prejudice; only that cutting the response time by one-half will help
16 discovery be “completed in a timely fashion.”

17 4. Concerns about completing discovery are premature, at best. The case has no
18 pretrial schedule or trial date. It will not have one, unless and until dispositive motions are
19 denied.

20 5. Plaintiff’s Motion also foretells his plan to request telephonic discovery
21 conferences and informal rulings from the Court. No justification is offered for abrogating the
22 procedures in Rules 26, 33, 34 and 37 for handling discovery matters. There is no basis for
23 placing the defense and the Court at plaintiff’s “beck and call.”

24 6. Denial of the Motion also is justified because plaintiff is trying to circumvent
25 the Court’s Stay Order of August 29 by requesting that the due date for responding to the
26 August 22 stayed discovery be accelerated to the “earlier” of the original due date

1 (presumably September 21) or 14 days after the expiration of the Stay Order. The defense
2 cannot be put into the position of retroactively or precipitately responding to such discovery.

3 7. The Court should instead grant defendants' Motion to Extend Stay so that
4 discovery matters are completely in abeyance (discovery request), disclosures, reports, and
5 discovery-related motion practice) until the defense summary judgment motions are decided.

6 8. Courts can suspend discovery pending a decision on defense dispositive
7 motions, thereby relieving the parties of discovery obligations:

8 This action was proper inasmuch as the duty of responding to interrogatories is
9 an incident to the status of being a party to litigation. Therefore if there is
10 reason to believe that there is a probability that said corporation may not be a
11 proper defendant and that the action may be dismissed with respect to said
12 corporation, it would be unreasonable to require it to undergo the burden of
13 answering interrogatories until its status as defendant is determined.

14 *Hilton v. W.T. Grant Co.*, 212 F. Supp. 126, 130 (D. Pa. 1962).

15 9. This Court has ruled in accord with the above decision, citing the immunity
16 defense as "an immunity from suit." (August 29 Order at 2). The Court should, therefore,
17 deny plaintiff's Motion to Speed Discovery.

18 DATED this 8th day of October, 2007.

19 ROB MCKENNA
20 Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2007, I electronically filed the foregoing **Opposition to Motion to Speed Discovery** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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