

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-CV-01858

SEAN HARRINGTON,

Plaintiff,

v.

MADELINE WILSON and the "LAW OFFICE OF MADELINE WILSON";  
CHRISTY RYAN;  
BILL J. FYFE and COLUMBINE COUNSELING CENTER, P.C.;  
LAURA ARCILISE, in her personal capacity;  
LOUISE CULBERSON-SMITH, in her personal capacity;  
JOHN GLEASON (in his personal capacity and his official capacity as Attorney  
Regulation Counsel);  
WENDELL PRYOR in his official capacity as Director of the Colorado Civil Rights  
Division & Colorado Civil Rights Commission;  
ROBERT EVANS, in his official capacity as ADA Coordinator and Court Administrator  
for the First Judicial District;  
the JEFFERSON COUNTY COMBINED COURT, through the  
COLORADO ATTORNEY GENERAL, JOHN SUTHERS (in his official Capacity),

Defendants

---

**THE FYFE DEFENDANTS' MOTION TO STAY DISCOVERY**

---

Defendants, Bill J. Fyfe and Columbine Counseling Center, P.C. (collectively referred to as "the Fyfe Defendants"), by their attorneys, Jaudon & Avery LLP, move this Court to stay discovery until the resolution of their Motion to Dismiss. In support thereof, the Fyfe Defendants state:

CERTIFICATE OF COMPLIANCE WITH D.C.COLO.LR 7.1

Undersigned counsel conferred with Plaintiff and Defendants' attorneys regarding this

motion. While Defendants agree with the relief requested and intends to join or file separate motions to stay discovery, Plaintiff opposes the motion.

1. This case arises out of a domestic relations case filed in Jefferson County District Court. In his First Amended Complaint, Plaintiff asserts various federal and state law claims against, among others, the Fyfe Defendants. In response, the Fyfe Defendants have filed their Motion to Dismiss arguing that this Court does not have subject matter jurisdiction or should abstain from exercising jurisdiction and that the Fyfe Defendants are immune from suit under both the absolute immunity doctrine and qualified immunity doctrine.

2. In Workman v. Jordan, 958 F.2d 332, 336 (10<sup>th</sup> Cir. 1992), the Tenth Circuit held that when the qualified immunity defense is raised, the district court should stay discovery until the immunity issue is resolved. The Tenth Circuit explained:

Turning to the merits of the appeals, we reiterate that qualified immunity is not only a defense to liability but also entitlement to immunity from suit and other demands of litigation. Discovery should not be allowed until the court resolves the threshold question whether the law was clearly established at the time the allegedly unlawful action occurred. The question is purely legal, and a court cannot avoid answering the question by framing it as factual.

\* \* \*

Certainly, if discovery should not be allowed until the threshold question is resolved, a case should not be permitted to proceed to trial until the question is resolved. In the absence of a showing of unresolved facts bearing on the immunity issue, the district court erred in postponing until trial a decision on the motions to dismiss.

Workman, 958 F.2d at 336 (citations omitted).

3. The rationale for qualified immunity applies equally to absolute immunity. "The essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct in a civil damages action." Mitchell v. Forsyth, 472 U.S. 511, 525 (1985). Absolute immunity is an entitlement not to stand trial or face the other burdens of litigation. Id. at 526. The

entitlement is an immunity from suit rather than a mere defense to liability and is effectively lost if a case is erroneously permitted to go to trial. Id. Thus, courts have allowed the stay of discovery when the issues of absolute and qualified immunity have been raised. E.g. Zamora v. City of Belen, 229 F.R.D. 225, 227-28 (D.N.M. 2005).

4. Because the Fyfe Defendants have raised both qualified immunity and absolute immunity, they are entitled to stay all discovery until the resolution of their Motion to Dismiss. The Fyfe Defendants should not be forced to bear the expense or the burden of discovery. After all, immunity is not just protection from liability, but protection from suit and the financial demands of discovery.

5. Furthermore, the Fyfe Defendants have argued that this Court does not have subject matter jurisdiction to hear this case based on the doctrines of *Rooker-Feldman*, Domestic Relations Exception, and *Younger* abstention. Given that this Court may not even have jurisdiction to hear this case, this Court should suspend all discovery until the resolution of these issues.

WHEREFORE, the Fyfe Defendants move this Court to stay all discovery until the resolution of their Motion to Dismiss filed contemporaneously with this Motion.

Respectfully submitted this 28<sup>th</sup> day of November, 2005.

s/ David H. Yun  
\_\_\_\_\_  
David H. Yun  
Jaudon & Avery LLP  
1660 Wynkoop Street, Suite 1010  
Denver, CO 80202  
Phone: 303.832.1122  
Fax: 303.832.1348  
Email: [dyun@jalegal.com](mailto:dyun@jalegal.com)  
Attorneys for Defendants Bill J. Fyfe and Columbine  
Counseling Center, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2005, I electronically filed the foregoing **THE FYFE DEFENDANTS' MOTION TO STAY DISCOVERY** with the Clerk of the United States District Court for the District of Colorado using the CM/ECF system which will send notification of such filing to the following:

Sean Harrington, *pro se*  
197m Boston Post Road, West  
Marlborough, Mass. 01752  
Fax: 508-630-9004  
[esoxlucios@msn.com](mailto:esoxlucios@msn.com)

Brett N. Huff, Esq.  
[bhuff@wsteele.com](mailto:bhuff@wsteele.com)

Randolph S. Dement, Esq.  
[rdement@dementlaw.com](mailto:rdement@dementlaw.com)

Christine Wilkinson, Esq.  
[ck.wilkinson@state.co.us](mailto:ck.wilkinson@state.co.us)

s/ Olivia Erkhart  
\_\_\_\_\_