

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

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SEAN HARRINGTON

CASE N<sup>o</sup> 05-cv-1858 (EWN – MJW)

Plaintiff,

vs.

MADLINE WILSON, *et al.*

Defendants

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**PLAINTIFF'S RESPONSE TO THE FYFE DEFENDANTS' MOTION TO STAY DISCOVERY**

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**COMES NOW**, the Plaintiff, for the purpose of responding to the Fyfe defendant's Motion to Stay Discovery. As grounds therefor, Plaintiff states as follows:

1. The Fyfe Defendants, citing *Workman v. Jordan*, 958 F.2d 332, 336 (10<sup>th</sup> Cir. 1992), have moved to stay discovery by reason of their claim to qualified immunity, despite that defendants have argued in their Motion to Dismiss that they are private, and not state, actors. Dft. Mtn. To Dismiss at pp. 22- 23.

2. On or about October 24, 2005, Plaintiff filed an Unopposed Motion to for Leave to Appear by Telephone and to Continue the Rule 16 Conference, citing, *inter alia*, the costs of out-of-state travel in needing to appear for a Rule 16 conference. The Court, granted a continuance based solely upon the medical situation pleaded, but denied the Motion for leave to appear by telephone based on costs or convenience. (*see* Document 23).

3. Plaintiff opposes defendants' Motion to Stay Discovery to the extent that the motion is based on a precedent that, itself, is based on the conservation of costs and convenience. Plaintiff believes that the Court has already spoken to the issue of costs and convenience relative to discovery and appearances through its October 28, 2005 Order.

4. In addition, because Plaintiff's claims are predicated on Fyfe's extortionate conspiracy to fix fees with others, including Defendant Ryan, if discovery were suspended for the Fyfe Defendants (on the basis of their qualified and absolute immunity defenses), but not stayed for the other defendant[s] who do not assert qualified or absolute immunity, Plaintiff would be deprived of the ability to prove his claims against the other defendants relative to the discoverable evidence that is in the possession of the Fyfe Defendants. Moreover, if discovery with the other defendants is not stayed, it is likely that they will share the fruits of their discovery with the Fyfe defendants, such that the Fyfe defendants will have a prejudicially greater opportunity to prepare their case, whilst Plaintiff will not have that time to analyze data and prepare his own case.

5. Alternatively, if the Court is inclined to grant the defendants' motion to stay discovery, Plaintiff respectfully requests that such order also stay the Rule 16 Conference and deadline for filing of the Proposed Scheduling Order, since the purpose of the conference and the Proposed Scheduling Order is to set forth discovery schedules, which will become moot if all discovery is stayed until the Motion[s] to Dismiss have been decided.

WHEREFORE, Plaintiff prays for an Order denying defendants' Motion to Stay Discovery or, in the alternative, for an Order that places the Rule 16 conference, the Proposed Scheduling Order and all discovery by any and all parties in abeyance until the resolution of all Motions to Dismiss have been tendered and adjudicated.

Respectfully submitted this 29<sup>th</sup> day of November, 2005:

/s Sean Harrington  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on November 29<sup>th</sup> 2005, I served the foregoing Response to the Fyfe Defendants' Motion to Stay Discovery *via* electronic mail to the following ECF participants who have entered their appearance or provided a Waiver of Service and who have indicated their consent to service through ECF.

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/s Sean Harrington