

**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.

MADELINE WILSON, *et al.*

Defendants

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**PLAINTIFF’S RESPONSE TO DEFENDANT RYAN’S MOTION TO STAY DISCOVERY**

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**COMES NOW**, the Plaintiff, for the purpose of responding to Defendant Ryan’s Motion to Stay Discovery. As grounds therefor, Plaintiff states as follows:

1. Plaintiff admits that opposing counsel has complied with D.C. COLO. LCivR 7.1A..
2. Plaintiff admits that Defendant Ryan has filed a Motion to Dismiss (document 25), but denies that this court may not have jurisdiction to hear this case and, therefore, it would not be appropriate to stay discovery pending the resolution of her Motion.
3. Plaintiff admits that a Rule 16 planning conference is scheduled for December 7<sup>th</sup> 2005 at 8:30 a.m. in the Alfred A. Arraj Courthouse, but Plaintiff denies that the Federal Rules cited by defendant require that discovery be stayed in the instant case.
4. Plaintiff denies defendant’s scurrilous allegation that he, “suing almost every person involved in state court custody and parenting time proceedings.” Dft. Mtn. at ¶ 4. Plaintiff also denies that disclosures and discovery with respect to the merits of Plaintiff’s claims are immaterial to the Court’s analysis of Defendant Ryan’s motion to dismiss —especially in light of her position that Plaintiff’s factual averments as to her joint action under Section 1983 were insufficient. Although Plaintiff believes that his Complaint is sufficient, early discovery is necessary to ascertain the extent of the collusion between Ryan, Wilson, *et al.* in opposition to Defendant

Ryan's position that Plaintiff has failed to state a claim and so that Plaintiff may perfect his Complaint, if necessary, in advance of any contemplated Motion for Summary Judgment. "The purpose of discovery is to remove surprise from trial preparation and enable the parties to obtain evidence necessary to evaluate and resolve their dispute. The discovery rules accomplish this objective by advancing the time at which disclosure can be compelled from the trial to the period preceding it, thereby reducing the possibility of surprise and obviating the need to conduct a trial in the dark or blindly." 23 Am. Jur. 2d Depositions And Discovery §§ 1-20. Moreover, this early discovery has benefit to Defendants: If Plaintiff, through discovery, were to learn that the circumstantial facts giving rise to an inference of civil conspiracy were misleading or misconstrued, he would have the opportunity to withdraw that claim[s] in good faith, which would save the costs of litigation over that issue[s] for all parties involved. *See id* ("Discovery also is designed to aid a party in preparing and presenting his or her case or defense, and to enable the parties to narrow and clarify the basic issues between them. Discovery should expedite the disposition of the litigation, by educating the parties in advance of trial of the real value of their claims and defenses, which may encourage settlements").

5. Plaintiff objects to defendant Ryan's adoption and incorporation of Defendant Fyfe's Motion to Stay Discovery based upon his assertion of a qualified immunity defense. Defendant Ryan has failed to cite any legal authority to support her position for assuming the benefits of a co-defendant's assertion of qualified immunity. *See Phillips v. Calhoun*, 956 F.2d 949, 953-54 (10<sup>th</sup> Cir. 1992) (dismissing an argument unsupported by cogent authority). Though Plaintiff denies that Fyfe is entitled to qualified immunity or that his assertion of qualified immunity should exempt him from discovery (especially in light of his argument that he is not a state actor), the scope of qualified immunity protection, as raised by Defendant Fyfe, extends "not merely to [the right to] avoid standing trial, but also to avoid the burdens of such pretrial matters as discovery." *Behrens v. Pelletier*, 516 U.S. 299, 308, 116 S.Ct. 834, 133 L.Ed.2d 773 (1996) (citation and quotation omitted). The purpose of qualified immunity is to avoid excessive disruption of governmental functions and to resolve insubstantial claims in the early stages of litigation. *See Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 2156, 150 L.Ed.2d 272 (2001). The scope, purpose and benefits of qualified immunity are not available to Defendant Ryan and she has not alleged as much.

WHEREFORE, for the reasons more fully set forth hereinabove, Plaintiff respectfully requests an Order denying Defendant Ryan's Motion to Stay Discovery.

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 Defendant Ryan's 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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