

**IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF NEW MEXICO**

JOHN DOE,

Plaintiff,

**v.
CITY OF ALBUQUERQUE,**

No. 08cv1041MCA/LFG

Defendant.

**PLAINTIFF'S UNOPPOSED MOTION TO STAY PROCEEDINGS RELATING
TO PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND
EXPENSES AND PLAINTIFF'S BILL OF COSTS**

Plaintiff, by undersigned counsel, respectfully moves this Court for its order staying proceedings in this Court relating to both the Plaintiff's Motion for Attorneys' Fees and Expenses and Plaintiff's Bill of Costs pending resolution of the appeal on the merits which defense counsel has informed the undersigned will be taken by defendant from this Court's Memorandum Opinion and Order (3/31/10) (Doc. 62) entered herein granting plaintiff summary judgment on the merits.

As grounds, plaintiff states:

1. Defendant does not oppose this motion and a proposed order approved by defense counsel granting the relief sought by this motion is being emailed to the Court's proposed text email address along with a pdf copy of this motion as filed.
2. Defense counsel has communicated to undersigned counsel the definite intent of the defendant to appeal this Court's Memorandum Opinion and Order (Doc. 62) entered herein.
3. Based on the Court's Order granting plaintiff summary judgment on the merits, plaintiff is a prevailing party for purposes of an award of attorneys' fees and expenses under 42 U.S.C. § 1988 and statutory costs pursuant to Fed. R. Civ. P. 54 and 28 U.S.C. § 1920. And based on the Court's Order, plaintiff's fee motion and Bill of Costs must be filed on or before May 3, 2010.



D.N.M. LR-Cv 54.1, 54.5.

4. As a matter of judicial economy and efficiency, proceedings in this Court related to attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988 and statutory costs should be stayed pending the resolution of defendant's appeal on the merits. If plaintiff prevails on appeal, then the issue of fees and costs, as well as plaintiff's appellate fees and costs, may be addressed after remand in a single proceeding before this Court. If plaintiff does not prevail on appeal, his entitlement to fees and costs will have been extinguished and any work undertaken by this Court and counsel for the parties on the issues of fees and costs in advance of the resolution of the appeal will have been wasted.

5. This Court has so ruled in the past based on identical grounds raised by the parties to a case going up on appeal. *See e.g. ACLU-NM v. Santillanes*, No. CIV 05-1136 MCA/WDS.

6. No undue delay or prejudice will result from the grant of this motion.

WHEREFORE, plaintiff respectfully requests this Court grant the relief sought herein and enter its order that should defendant appeal from the Memorandum Opinion and Order (3/31/10) (Doc. 62), the time for plaintiff to file his motion for attorneys' fees and expenses and his Bill of Costs be stayed until 30 days after the date the mandate from the appellate courts is returned to this Court.

Respectfully submitted,

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Plaintiff's Fee Counsel

I HEREBY CERTIFY that a copy of the foregoing pleading was served on all counsel of record by email through the CM/ECF system this 19th day of April, 2010.

Electronically filed
Philip B. Davis

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