

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at FRANKFORT

CIVIL ACTION NO. 3:06-cv-36-KKC

MARCUS CAREY,

PLAINTIFF,

v.

OPINION AND ORDER

STEPHEN D. WOLNITZEK, *et al.*,

DEFENDANTS

* * * * *

This matter is before the Court on the Motion for Voluntary Dismissal [DE 126] filed by the Plaintiff, Marcus Carey. In his motion, Carey seeks to voluntarily dismiss his one unresolved claim in this case: a claim that Canon 5(B)(1)(c)) (the “Commits Clause”) of the Kentucky Code of Judicial Conduct is unconstitutional on its face. Carey asks that his challenge to the Commits Clause be dismissed given the possibility that the Supreme Court may grant certiorari in *Bauer v. Shepard*, No. 10-425, and that any resulting decision in that case may finally resolve the constitutionality of the Commits Clause.

This Court previously stayed the deadlines for filing answers or responsive pleadings to Carey’s amended complaint challenging the constitutionality of the Commits Clause pending resolution of *Bauer*. The Court further ordered that, upon resolution of that case, the Court would set a telephonic conference to discuss scheduling in this matter. [DE 123].

Carey has now filed a Notice with the Court stating that the Supreme Court denied certiorari in *Bauer*. Accordingly, the Court hereby ORDERS as follows:

- 1) Carey's Motion for Voluntary Dismissal [DE 126], which was premised upon the fact that *Bauer* was pending before the Supreme Court, is DENIED as moot; and
- 2) this matter is set for a telephonic scheduling conference on **September 7, 2011 at 10:00 a.m.** Chambers will initiate the call.

Dated this 29th day of August, 2011.



Signed By:

Karen K. Caldwell

A handwritten signature in black ink, consisting of the initials "K.K." followed by a stylized flourish.

United States District Judge