

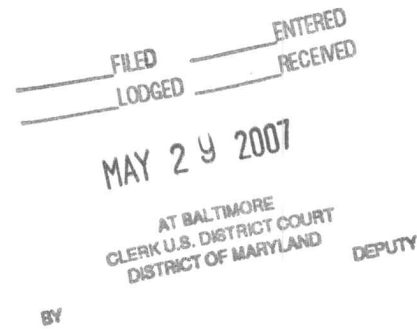
MEMO

TO: Clerk of the U.S. District Court  
101 W. Lombard Street, 4<sup>th</sup> Floor  
Baltimore, MD 21201

FROM: Rebekah A. Phelps-Davis  
Shirley L. Phelps-Roper  
Defendants Pro Se  
3640 Churchill Road  
Topeka, KS 66604  
[beshsnecs@cox.net](mailto:beshsnecs@cox.net)

DATE; May 25, 2007

SUBJECT; Snyder v. Westboro Baptist Church, et al., No. RDB 06 1389



Dear Clerk,

We are enclosed the original of a letter memo to The Honorable Richard D. Bennett regarding the May 29, 2007 phone conference, for filing in the above case. This letter memo is being faxed to the Court this date, and e-mailed to counsel also this date.

Please cause this original to be filed, and send the enclosed copy back to us, in the return envelope included.

Please call 785.233.4162 if you have any questions.

Thank you.

Enclosure – Original 2-page letter memo + 4 page attachment  
Copy of 2-page letter memo + 4 page attachment  
Return envelope

MEMO

TO: The Honorable Richard D. Bennett  
*Sent by fax to #410.962.3177*  
(Original mailed this date to Clerk for filing)

CC: Mr. Summers, Mr. Katz & Mr. Trebilcock, by e-mail

FROM: Rebekah Phelps-Davis & Shirley Phelps-Roper, defendants pro se

SUBJECT: *Snyder v. Westboro Baptist Church, et al.*, No. RDB 06 1389

DATE: May 25, 2007

FILED \_\_\_\_\_ ENTERED \_\_\_\_\_  
LODGED \_\_\_\_\_ RECEIVED \_\_\_\_\_

MAY 29 2007

AT BALTIMORE  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

DEPUTY

Dear Judge Bennett,

In response to the plaintiff's letter of May 24, 2007, to Your Honor, and in anticipation of a May 29, 2007 phone conference, we submit the following information for the Court's consideration. **As a preliminary matter, these defendants would request that this conference be on the record, if the Court can accommodate this request.**

Also before addressing discovery issues, plaintiff's counsel has requested leave to file a surreply. Please be advised that these defendants have no objection to the concept of a surreply (and realize the Court has discretion to allow the same). However, defendants are concerned about the numerous prejudicial factual statements made in this case that are simply not supported by the record or evidence. If the additional document to be filed is to include new statements of this nature which defendants have not had an opportunity to address, it would be prejudicial if those stood uncontested. If the Court could limit anything filed to information that has an evidentiary basis, defendants would not object, so long as new items are not raised. New issues or unsupported material would unduly prejudice defendants without allowing an answer.

Concerning discovery, defendants have not refused to participate and will abide by any and all orders of the Court. As the attached e-mail exchange reflects, defendants have raised issues which they believe need to be resolved before discovery commences as to them. None of those issues have been answered by plaintiff's counsel. The issues are these:

1. Are these new defendants to be granted a Rule 16 and Local Rule 104 scheduling conference and schedule/order as requested? Deadlines have passed regarding expert witnesses, and limited discovery time remains. This is prejudicial to these new defendants, who stand ready to participate in a scheduling conference with the Court and counsel as directed (whether the Court concludes a separate scheduling order is needed, or adjustments to the current one for new defendants). See *Rapco, Inc. v. Commissioner of Internal Revenue*, 85 F.3d 950, 953 (2d Cir. 1996) (prejudice to party seeking to modify pretrial order is relevant to determine if trial court abused discretion in declining to amend). Also see *Phillips v. Saar*, 2005 WL 5467624 at 3, fn 6 (D.Md.2005) (where plaintiff moved for discovery to resist motion to dismiss or for summary judgment, motion denied because no showing that discovery would answer motion and because discovery had not been ordered by the court, and per Rule 104.4 discovery is not to commence until a scheduling order is entered).
2. Is it appropriate, per the standard practice, to await ruling on pending motions before a scheduling conference and commencement of discovery? Defendants have raised substantial issues about whether a valid claim has been stated, and about whether the Court should exercise personal jurisdiction over these defendants. Defendants have presented substantial legal authorities in support of their motions, and believe those issues should be

addressed before the case proceeds. If the Court overrules defendants' motions concerning failure to state a claim (particularly on First Amendment grounds), or motions concerning lack of personal jurisdiction, defendants would respectfully submit that those issues should be reviewed on interlocutory appeal (by certification and petition) before this case proceeds, as these are significant legal issues, and will seek certification of the issues.

Defendants expeditiously presented these issues, with significant legal briefing, for the Court's consideration, meeting all imposed deadlines. There is simply no basis for asserting that defendants are not proceeding in this matter in a timely manner. At the same time, however, they have interests and rights which are substantial which require attention. Defendants respectfully submit that it is fitting to address these issues, and if the Court disagrees with defendants' legal position, that this should not preclude them having the opportunity for adequate pretrial and discovery time and trial preparation opportunities. Otherwise they are prejudiced to such a degree that due process is implicated. See *Twardzik v. Sepauley*, 286 F.Supp. 346 (E.D.Pa. 1968) (on motion to dismiss it is incumbent upon district court to determine question of jurisdiction before proceeding with other aspects of case). When a motion to dismiss or for summary judgment raises a question of personal jurisdiction, the plaintiff has the burden of proving grounds for jurisdiction (if on the evidence, by a preponderance; if on the pleading, by a prima facie showing), see, e.g., *Mylan Laboratories, Inc. v. Akzo*, 2 F.3d 56 (4<sup>th</sup> Cir. 1993). Also see *Orteck International, Inc. v. Transpacific Tire & Wheel, Inc.*, 2006 WL 2572474 at 4 (D.Md. 2006). There are facts not in dispute, such as that plaintiff is not a resident of Maryland; the epic appeared on a passive informational Website; the epic was not sent to plaintiff but instead he went Googling to find it; and defendants have only been to Maryland a few times in their entire lives, all of which speak against personal jurisdiction per the legal authorities provided by defendants.

3. If the Court allows discovery to go forward while these matters are unresolved, and without a scheduling conference/order as to these defendants, there is a question of location of defendants' depositions. Plaintiff's counsel announced in the attached e-mail that the depositions of defendants would be taken in Maryland, rather than Kansas where defendants reside. A defendant who did not choose Maryland as the jurisdiction to litigate is entitled to be deposed at the place of her residence, unless plaintiff shows peculiar circumstances compelling otherwise. See *Morin v. Nationwide Federal Credit Union*, 229 F.R.D. 362 (D.Conn. 2005); *O'Sullivan v. Rivera*, 229 F.R.D. 187 (D.New Mexico 2004); *Rapoca Energy Company, L.P. v. AMCI Export Corporation*, 199 F.R.D. 191 (W.D.Va. 2001); *Six West Retail Acquisition, Inc. v. Sony Theatre Management Corporation*, 203 F.R.D. 98 (S.D.N.Y. 2001); *Armsey v. Medshares Management Services, Inc.*, 184 F.R.D. 569 (W.D.Va. 1998). Plaintiff filed this suit in Maryland; there are no circumstances indicating defendants have submitted to this forum, or that would indicate that the burden of the cost of travel should shift to them in spite of this rule of law; plaintiff has raised funds for this litigation (Attachment 14 to defendants' motion, from records provided by plaintiff, shows that at least 233 of the 729 who wrote plaintiff's web page made money contributions); there is no basis for requiring defendants to travel to Maryland to be deposed.

Thank you.

Attachment - 4 pages of e-mail exchanges between plaintiff's counsel and defendants

**Becky and Shirley**

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**From:** Becky and Shirley [beshsnscs@cox.net]  
**Sent:** Thursday, May 10, 2007 9:27 PM  
**To:** 'Summers, Sean E.'; 'Jon Katz'  
**Cc:** 'trebilcock@shumakerwilliams.com'  
**Subject:** RE: Deposition dates

We're puzzled how there could be a discovery dispute, or any discovery at all, in light of Rule 104.4, "Unless otherwise ordered by the court or agreed upon by the parties, discovery shall not commence and disclosures need not be made until a scheduling order is entered." We are not aware of any scheduling order entered as to us, nor has there been a scheduling conference. Do you have some contrary rule or case law?

Do you intend to conduct a conference with us pursuant to Rule 104.7, which would be the opportunity for you to provide authorities supporting the notion that discovery should start as to us two defendants when we have not had a scheduling conference or order? Certainly if we are overlooking some procedural or substantive rule or case law we would gladly consider them. But from what we understand, when a person is sued, they have the opportunity to first challenge the Court's jurisdiction; that failing, to file an Answer; and thereafter to participate in a scheduling conference and have a scheduling order, all before discovery commences. We do not understand why you think there is an exception in this case, so would ask that you provide your basis. We have filed a substantial motion challenging the claims in this case; we have not received any response from you; and that matter is still pending before the Court.

We look forward to your response on these points.

We also look forward to you conferring with us about our availability concerning dates and times for any conference with the Court on this matter.

Thank you.

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**From:** Summers, Sean E. [mailto:ssummers@barley.com]  
**Sent:** Thursday, May 10, 2007 6:50 PM  
**To:** Becky and Shirley; Jon Katz  
**Cc:** trebilcock@shumakerwilliams.com  
**Subject:** RE: Deposition dates

I am acting under the assumption that this means that you will not respond to plaintiff's written discovery. Consequently, I will be notifying the Court that we have a discovery dispute and Court intervention is necessary.

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Sean E. Summers (ssummers@barley.com)  
Esquire  
Barley Snyder LLC  
100 East Market Street

5/25/2007

York, PA 17401  
717.852.4997 - Direct Dial  
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**Barley Snyder LLC**

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-----Original Message-----

**From:** Becky and Shirley [mailto:[beshsnscs@cox.net](mailto:beshsnscs@cox.net)]

**Sent:** Monday, May 07, 2007 7:45 AM

**To:** Summers, Sean E.; 'Jon Katz'

**Cc:** [trebilcock@shumakerwilliams.com](mailto:trebilcock@shumakerwilliams.com)

**Subject:** RE: Deposition dates

Hello Mr. Summers.

Thank you for your e-mail.

We have filed a motion for summary judgment, and a motion for reconsideration of the denial of the motion for stay, among other requests for relief. Our position is that we have raised substantial threshold questions which should be resolved before we are put to the cost of litigation, and which we believe should be resolved, according to the undisputed facts and the case law, in our favor in the form of dismissal or summary judgment. We have seen or heard nothing from the plaintiff pursuant to Rule 56(f) and other authorities, which refutes the facts which we set forth in detail in our motion. Further the substantial documentation of the events in question, including photographs and contemporaneous records, suggests there are no facts to dispute our version. For these reasons, we believe these motions need to be addressed and resolved at this stage of the litigation, including pursuant to the United States Supreme Court's recent decision in *Scott v. Harris*, --- S.Ct. ---, 2007 WL 1237851 (U.S., 4/30/2007), and because of the substantial constitutional issues we have raised.

Our understanding of the case law is that if we participate in discovery at this stage, particularly depositions, we will waive the challenges to jurisdiction we've raised in the motions.

Our understanding of the case law is that if a defendant is sued in a different

5/25/2007

jurisdiction, that defendant is entitled to be deposed in the city of her residence. If the Court allows discovery to proceed, and you bear the cost of the space, we are willing to present ourselves in Kansas City, Missouri, near MCI, so you do not feel the need to distract this process with some phantom concern about being served or some such thing as that. That is offered simply as a courtesy, not because we believe the law requires us to make this gesture.

Our understanding of federal procedure and local rules is that the Court is required to conduct a scheduling conference, and from there discovery takes place. We have not received notice of any such scheduling conference, and don't anticipate this will occur until our motions are resolved, and we have had an opportunity to seek any necessary interlocutory review, and thereafter file an Answer (all of which we believe would not be consistent with the substantial case law set out in our motion).

For all these reasons, we believe your request to take depositions and your written discovery items are premature. We would intend to move for a protective order if you proceed with discovery at this time, or schedule our depositions in Maryland. Once all of the above issues are resolved, if depositions are to proceed, we will gladly provide you with alternative dates and work with you to accommodate your schedule.

Please advise if you have any questions.

Thank you.

Rebekah A. Phelps-Davis  
Shirley L. Phelps-Roper

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**From:** Summers, Sean E. [mailto:ssummers@barley.com]  
**Sent:** Friday, May 04, 2007 11:32 AM  
**To:** Jon Katz; Becky and Shirley  
**Cc:** trebilcock@shumakerwilliams.com  
**Subject:** Deposition dates

Please let me know your availability for the depositions of Shirley Phelps-Roper and Rebekah Phelps-Davis. I believe both depositions can be completed in one day. I am proposing the following dates.

June 7, 8, 11, 20, 21 or 25.

The deposition will be in or around Westminster, Maryland.

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Sean E. Summers (ssummers@barley.com)  
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