

William L. Crowley  
 Natasha Prinzing Jones  
 Thomas J. Leonard  
 BOONE KARLBERG P.C.  
 201 West Main, Suite 300  
 P.O. Box 9199  
 Missoula, MT 59807-9199  
 Telephone: (406)543-6646  
 Facsimile: (406) 549-6804  
 bcrowley@boonekarlberg.com  
 npjones@boonekarlberg.com  
 tleonard@boonekarlberg.com

*Attorneys for Defendants Bitterroot Public Library,  
 City of Hamilton and Boone Karlberg P.C.*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF MONTANA  
 MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,  
 CITY OF HAMILTON, LEE  
 ENTERPRISES, INC., and BOONE  
 KARLBERG P.C.

Defendants.

Cause No. CV-11-064-M-DWM

**CITY AND LIBRARY  
 DEFENDANTS' BRIEF IN  
 OPPOSITION TO PLAINTIFF'S  
 MOTION TO STAY DISCOVERY**

## **INTRODUCTION**

On behalf of Defendants Bitterroot Public Library, Dr. Robert Brophy, Trista Smith, Nansu Roddy, City of Hamilton, Jerry Steele, Steve Snavelly, Steven Bruner-Murphy, Ryan Oster, Kenneth Bell and Jennifer B. Lint, this opposes Plaintiff's motion, dated May 17, 2011, to stay discovery pending a determination of Plaintiff's motion for partial summary judgment. It would be an abuse of discretion to grant the motion. A stay does not further the goal of efficiency for the Court and the parties.

## **DISCUSSION**

This Court has broad discretion to control discovery. *Little v. City of Seattle*, 863 F.2d 681, 685 (9<sup>th</sup> Cir. 1988). Upon a showing of good cause, a court may deny or limit discovery. Rule 26(c)(1), Fed. R. Civ. P. Here, good cause does not support Plaintiff's motion. The motion does not further the goal of efficiency for the Court and the parties.

A court may stay discovery while a dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9<sup>th</sup> Cir. 1989), amended at 906 F.2d 465 (9<sup>th</sup> Cir. 1990). However, here, Plaintiff's motion for partial summary judgment is not dispositive. While the individual City and Library Defendants have raised qualified immunity as a defense, they have not filed a motion for summary

judgment based on any defense, including qualified immunity. Prior to any such motion, a developed record is necessary. *See, e.g., Orchid Biosciences, Inc. v. St. Louis University*, 198 F.R.D. 670, 675 (S.D. Cal. 2001) (discovery regarding jurisdictional issues).

Plaintiff's motion for partial summary judgment is not dispositive in other respects. As this Court is well aware, there are many defenses to a § 1983 claim beyond qualified immunity of an individual defendant. In general, these may include (1) whether Plaintiff is asserting an actual constitutional violation, (2) the existence of a policy, custom, act or omission which violated Plaintiff's rights and (3) causation. Similar considerations apply to Plaintiff's state law claims in this case. Certainly, the City and Library Defendants anticipate filing motions for summary judgment. Those motions will reach beyond the qualified immunity of individual defendants. However, prior to doing so, an adequate record needs to be developed. That requires discovery.

Next, even if Plaintiff's motion for partial summary judgment is granted, it does not dispose of all liability claims, and it does not determine issues relating to damages. Discovery is necessary as to these matters.

For example, Plaintiff seeks damages for alleged permanent damage to his professional life. [Amended Complaint, ¶ 81.] Regardless of the result

concerning Plaintiff's motion for partial summary judgment, discovery is needed concerning the nature and cause of this damage item. Plaintiff's "professional life" is uncertain. The information known at this point includes:

1. According to Plaintiff, he lost his "FEMA" career where Plaintiff was deployed as a "federal officer" on August 8, 2007, due to a prosecution by the Ravalli County Attorney's Office. [Exh. F to Bell's Affidavit, 2/23/11, Cause No. DV-10-639 (email by Plaintiff, 9/23/10), *Spreadbury v. Bell and City of Hamilton*, District Court, Twenty-First Judicial District, Ravalli County, Montana.]

2. According to Plaintiff's Motions to Proceed *in Forma Pauperis*, filed May 11, 2010, in *Spreadbury v. Hoffman, et al.*, Cause No. CV-10-49-M-DWM-JCL, page 2, Plaintiff's last employment was in January 2009 with the Marcus Daly Memorial Hospital in Hamilton. According to Plaintiff's Affidavits of Indigency, filed April 26, 2010, in *Spreadbury v. Bell*, Cause No. DV-10-223 and *Spreadbury v. Roddy*, Cause No. DV-10-224, in the District Court, Twenty-First Judicial District, Ravalli County, Montana, Plaintiff was last employed in January 2009 as a housekeeper.

3. On June 28, 2010, Plaintiff advised, "Plaintiff holds national security clearance . . .". [Reply to Defense Opposition, 6/28/10, p. 2, ¶ 36 in *Spreadbury v.*

*Roddy*, Cause No. DV-10-224 in the District Court, Twenty-First Judicial District, Ravalli County, Montana.]

4. On July 30, 2010, Plaintiff advised that he “holds security clearance by FBI.” [Response to Motion to Dismiss, 7/30/10, in *Roddy v. Spreadbury*, Cause No. DA-10-352, Montana Supreme Court.]

5. According to Plaintiff’s email, dated April 11, 2011, he is a “licensed physics teacher.”

6. According to an Internet video of Plaintiff speaking at a public meeting, he has been working with federal, state and local officials in connection with a volunteer fire department.

Along the same lines, in this action, Plaintiff has alleged that he suffered a permanent loss of employment as determined by an employment specialist for the State of Montana in connection with a Social Security disability proceeding. [Plaintiff’s Combined Answer, 5/14/11, p. 14, ¶ 3.] Discovery is needed relating to this determination and Plaintiff’s Social Security disability proceeding.

As Plaintiff’s partial summary judgment motion is not dispositive on liability or damages, there is no annoyance, embarrassment, oppression or undue burden or expense for which Plaintiff needs protection. Rule 26(c)(1), Fed. R. Civ. P. Therefore, Plaintiff’s motion to stay should be denied.

## CONCLUSION

It would be an abuse of discretion to grant Plaintiff's motion to stay. His motion for partial summary judgment is not dispositive concerning liability. Even if it was, discovery is needed concerning the nature, extent and cause of Plaintiff's alleged damages in this action. Plaintiff's motion to stay does not serve the goal of efficiency of the Court and the parties.

DATED this 19<sup>th</sup> day of May, 2011.

/s/ William L. Crowley \_\_\_\_\_  
William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for Defendants*  
*Bitterroot Public Library, City of*  
*Hamilton and Boone Karlberg P.C.*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 868 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 19<sup>th</sup> day of May, 2011.

/s/ William L. Crowley  
William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for Defendants Bitterroot  
Public Library, City of Hamilton and  
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 19<sup>th</sup> day of May, 2011, a copy of the foregoing document was served on the following persons by the following means:

- 1        CM/ECF
- Hand Delivery
- 2        Mail
- Overnight Delivery Service
- Fax
- E-Mail

1.      Clerk, U.S. District Court
2.      Michael E. Spreadbury  
         700 South Fourth Street  
         Hamilton, MT 59840

/s/ William L. Crowley  
William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for Defendants Bitterroot Public  
Library, City of Hamilton,  
and Boone Karlberg P.C.*