

1 NORMAN H. KIRSHMAN, P.C.  
Nevada Bar Number: 2733  
2 3800 Howard Hughes Parkway, Ste. 500  
Las Vegas, NV 89169  
3 Telephone: (702) 699-5917  
Facsimile: (702) 369-5497

4 Attorney for *Plaintiffs*

5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 MARY KAY PECK, an individual,  
9 Plaintiff,

10 v.

11 THE CITY OF HENDERSON, a municipality;  
12 JAMES B. GIBSON, an individual; JACK  
CLARK, an individual; ANDY HAFEN, an  
13 individual; STEVE KIRK, an individual;  
GERRI SCHRODER, an individual; and DOES  
14 1 through 25.

15 Defendants.

CASE NO. 2:09-cv-00872

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' SECOND EMERGENCY  
MOTION TO STAY DISCOVERY and  
REQUEST FOR SANCTIONS**

18 Defendants' First Motion was stricken by this Court because Defendants' counsel failed to  
19 comply with Local Rule 26-7(c)(2) and (3).

20 Shortly after counsel's compliance with the above-cited Local Rule, the attached letter,  
21 incorporated herein as Exhibit A, was hand delivered to Defendants' counsel on July 31, 2009.  
22 The Motion Defendants' counsel characterizes "Emergency" was received on August 3, 2009 at  
23 4:33 p.m., citing numerous cases I have not had time to read.

24 The following depositions have been noticed by Plaintiff:

25	Mark Calhoun	City Manager	August 24, 2009 at 9:00 a.m.
26	Steve Hanson	Finance Director	August 24, 2009 at 1:00 p.m.
	Cindy Herman	COH Information Officer	August 25, 2009 at 9:00 a.m.
27	Shauna Hughes	City Attorney	August 25, 2009 at 1:00 p.m.
	Lori Grossman	Executive Office Manager	August 25, 2009 at 3:30 p.m.
28	Gerri Schroder	Councilmember	August 26, 2009 at 9:00 a.m.

1           Andy Hafen           Councilmember           August 26, 2009 at 1:00 p.m.  
2           Steve Kirk           Councilmember           August 27, 2009 at 9:00 a.m.  
3           Jack Clark           Councilmember           August 27, 2009 at 1:00 p.m.  
4           James Gibson           Mayor           August 28, 2009 at 1:00 p.m.

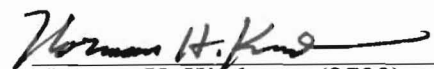
5           These depositions will address the “Qualified Immunity” issue raised by the Motion as  
6 well as related §1983 issues. Significant by its absence from the Motion is a contention that  
7 Mayor Gibson and the Councilmembers were engaged in activity covered by the “Absolute  
8 Privilege.”

9           The prejudice that Plaintiff, currently unemployed, would experience by delaying  
10 discovery would exceed Defendants’ prejudice, if any, by orders of magnitude. Defendants’  
11 Reply on the Rule 12 (c) Motion is due August 13, 2009, and no hearing has been scheduled. In  
12 addition, ENE before Magistrate Judge Leavitt is scheduled for October 20, 2009, with briefs due  
13 October 13, 2009.

14           Plaintiff reserves the right to supplement this Response on or before August 10, 2009.  
15 Suffice at this time to note resolution of the Qualified Immunity issue, an affirmative defense  
16 which Defendants have the burden of proving, implicates issues of fact. See Plaintiff’s Response  
17 to Rule 12(c) Motion.

18 Dated: August 4, 2009

19           Respectfully submitted,  
20           NORMAN H. KIRSHMAN, P.C.

21             
22           Norman H. Kirshman (2733)  
23           3800 Howard Hughes Parkway, Ste 500  
24           Las Vegas, NV 89169  
25           Attorney for Plaintiff

1 CERTIFICATE OF MAILING

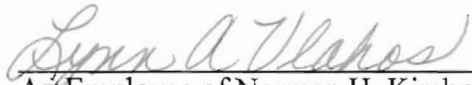
2  
3 I hereby certify that on the 4th day of August, 2009, I served a true and correct copy of  
4 **“PLAINTIFF’S RESPONSE TO DEFENDANTS’ SECOND EMERGENCY MOTION TO**  
5 **STAY ALL DISCOVERY and REQUEST FOR SANCTIONS”** by:

6 X serving the following parties electronically through CM/ECF as set forth below;

7 \_\_\_\_\_ faxing a copy to the numbers below;

8 \_\_\_\_\_ depositing a copy in the United States mail, first class postage fully prepaid to the  
9 persons and addresses listed below:

10  
11 William E. Cooper, Esq.  
12 William E. Cooper Law Offices  
13 601 E. Bridger Avenue  
14 Las Vegas, NV 89101  
15 [wecooper@williamcooperlaw.com](mailto:wecooper@williamcooperlaw.com)

16   
17 \_\_\_\_\_  
18 An Employee of Norman H. Kirshman, P.C.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

LAW OFFICE OF  
**NORMAN H. KIRSHMAN, P.C.**  
ATTORNEY AND COUNSELOR AT LAW  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, NV 89169

TELEPHONE: (702) 699-5917  
FACSIMILE: (702) 369-5497  
CELLULAR: (702) 338-9667

Licensed in: Nevada, California  
and New York  
kirshmanlaw@yahoo.com

July 30, 2009

**HAND DELIVERY**

Mr. William E. Cooper  
Cooper Law Office  
601 E. Bridger Ave.  
Las Vegas, NV 89101

RE: Mary Kay Peck v. City of Henderson

Dear Bill:

Attached please find Deposition Notices for the following: Mark Calhoun, Steve Hanson, Cindy Herman, Shauna Hughes, Lori Grossman, Gerri Schroder, Andy Hafen, Steve Kirk, Jack Clark, and Jim Gibson.

If the dates are not compatible with yours or deponents' schedule, we can try to accommodate calendars.

In order to make the ENE conference scheduled for October 20, 2009 more meaningful, the depositions should be taken as early as possible in advance of that date.


As I see this case, whatever the Court decides on the qualified immunity issue will not dispose of the entire case. Given the fact the decision to terminate Plaintiff is the decision of the City, Plaintiff's constitutional rights remain to be litigated, and depositions are appropriate to probe the Councilmembers' motives in voting to terminate her employment for cause, plus a plethora of material issues of fact, i.e. due process, when the termination decision was made, the ambiguities you referred to during our July 29<sup>th</sup> conversation, and others we both know will have to be addressed by the trier of fact.

W.E. Cooper  
July 30, 2009  
Page 2

Bill, because I respect your ethical standards and skills, you are one of the few lawyers with whom I would informally share these thoughts. My concern is the pressures that may be applied to make this case so expensive for my client that she will accept a settlement proposal that falls far below what is fair and equitable. For the record, if a point is reached when my client can no longer afford the cost of litigation, I will not abandon her.

Unless you disagree with my analysis, you might reconsider your chances of convincing the Court that as a matter of law another Motion to Stay Discovery would be appropriate re Rule 11.

Very truly yours,

  
Norman H. Kirshman

NHK:lav  
cc: M.K. Peck