

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSEPH R. REISINGER,	:	CIVIL ACTION – LAW
	:	
Plaintiff,	:	
	:	JURY TRIAL DEMANDED
v.	:	
	:	
THE CITY OF WILKES BARRE;	:	
THOMAS LEIGHTON;	:	
FRANCIS KRATZ;	:	
GREGORY BARROUK;	:	
MICHAEL KERMEC and	:	
THE CADLE COMPANY II, INC.	:	
	:	
Defendants.	:	No. 3:09-cv-00210

**MOTION TO DISMISS COMPLAINT, FILED PURSUANT TO
FED. R.C.P. 41(a)(2) TO ALLOW THE PLAINTIFF TO MAKE
JUDGE CONABOY’S ORDERS OF DECEMBER 8, 2010,
FINAL ORDERS, FOR PURPOSES OF PERMITTING AN
IMMEDIATE APPEAL OF SAME**

AND NOW, the Plaintiff, Joseph R. Reisinger, *pro se*, is filing this Motion to Dismiss the Complaint with Prejudice, pursuant to Fed. R.C.P. 41(a)(2), so as to make Judge Conaboy’s Orders of December 8, 2010, final appealable orders, to allow an immediate appeal of same by the Plaintiff, and in support hereof, asserts the following:

1. The Complaint in this case was filed on February 9, 2009, against the City of Wilkes-Barre, Thomas Leighton, Francis Kratz, and Gregory Barrouk (collectively the “City Defendants”), and Michael Kermec, and the Cadle Company II, Inc. (collectively the “Cadle

Defendants”) and the City Defendants and the Cadle Defendants are referred to herein collectively as the “Defendants”.

2. In the Complaint, the Plaintiff was seeking redress, pursuant to 42 U.S.C. § 1983, for the deprivation by the Defendants of the Plaintiff’s constitutional rights as provided to him by the Constitution of the United States, and further, the Plaintiff also sought remedies for the Plaintiff’s State Claims of invasion of privacy, intentional interference with contractual relationships, civil conspiracy and the intentional infliction of emotional distress by the Defendants.

3. The above case was then assigned to Judge Conaboy, and various motions were recently pending before Judge Conaboy, in reference to the above case, the first being that on July 23, 2010, counsel for the City Defendants filed a Motion for Extension of Time to Complete Discovery and to Amend the Amended Case Management Schedule (Doc #41) (the “CD Motion”).

4. In the CD Motion, the City Defendants specifically requested an extension of deadlines which they asserted were necessary due to the difficulty they allegedly have had conducting depositions, noting that depositions were routinely cancelled without justification at the Plaintiff’s request. They also asserted that other depositions needed to be scheduled and that they were also allegedly awaiting further information from the Plaintiff.

5. For the above reasons, the City Defendants therefore requested the discovery deadline be extended until September 30, 2010, and that all of the other deadlines also be extended for the Defendants, and further, they requested that the Plaintiff be prohibited from taking any depositions as specified in Judge Conaboy’s February 9, 2010 Order.

6. Then on August 6, 2010, the Plaintiff filed a Motion for Enlargement of Time to File (i) Motions to Compel Production of Documents, and (ii) a Response and a Proposed Alternative Amended Case Management Plan in Opposition to City Defendants' Motion for Extension of time to Complete Discovery and to Amend the Amended Case Management Schedule (Doc #43), (the "Pl. #1 Motion").

7. In the Pl. #1 Motion, the Plaintiff specifically requested an extension of time to file an alternative amended schedule for discovery, in opposition to the CD Motion, and also sought an enlargement of time to file motions to compel the production of documents, and also indicated therein that both the City Defendants and the Cadle Defendants had failed to respond adequately to the Plaintiff's requests for production of documents and the interrogatories that he sent to each of the Defendants, and were therefore acting in bad faith.

8. Finally the Plaintiff also therein advised Judge Conaboy at that time of his disadvantaged position in this case due to (i) his poor health, (ii) the fact that his financial situation has been jeopardized because of the improper actions by the Defendants, (iii) the fact that he is a solo practitioner, and (iv) the sudden death of his son, as the reasons for his requests for an extension of time.

9. Next, on August 16, 2010, the Plaintiff filed a Motion to Compel Production of Documents Directed Toward City Defendants, to Enlarge the Time to Complete Discovery and to Amend the Amended Case Management Plan (Doc #45) (the "Pl. #2 Motion") and a Brief in Support thereof (Doc #46).

10. Additionally on August 16, 2010, the Plaintiff filed a Motion to Compel Production of Documents Directed Toward Cadle Defendants (Doc #47) (the "Pl. #3 Motion") and the Brief in Support thereof (Doc #48).

11. Then, on August 17, 2010, Judge Conaboy issued an Order (Doc. #49), granting the requests of the City Defendants, in their original CD Motion (Doc #41), and also issued an Order (Doc #49) denying the Pl. #1 Motion (Doc #43), and Judge Conaboy also issued an Amended Case Management Order (Doc #50).

12. Next, on August 18, 2010, Judge Conaboy then issued an Order (Doc #51), denying the Pl. #2 Motion (Doc #45), and also, denying the Pl. #3 Motion (Doc #47).

13. Finally, on August 31, 2010, the Plaintiff filed his Motion for Reconsideration of Judge Conaboy's August 17, 2010 and August 18, 2010 Orders (Doc #52) and his Brief in support thereof was also filed the same date (Doc #53).

14. The Plaintiff filed the Petition for Reconsideration because the effect of Judge Conaboy's above Orders in fact constituted the imposition of the "Death Penalty" on the Plaintiff, because the Plaintiff will not be able to establish all of the aspects of his case, as set forth in the Complaint, without having the normal access to discovery.

15. The primary thrust of the Plaintiff's causes of action in the Complaint is that there was a comprehensive conspiracy alleged to have existed between the City Defendants and the Cadle Defendants, and without (i) being able to secure all of the documentation needed, such as copies of all the phone bills, cell phone bills and all the e-mails that were exchanged between the above Defendants during the critical period of time set forth in the Complaint, and (ii) being able to conduct the deposition of all of the Defendants named in the Complaint, the Plaintiff will find it extremely difficult to be able to prove his case.

16. Further, in the Petition for Reconsideration, the Plaintiff asserted that many of the representations set forth by counsel for the City Defendants, in the CD Motion, were not accurate, and as a consequence, the Plaintiff provided a substantial amount of documentation, as

attachments to the Petition for Reconsideration, indicating that the Plaintiff had not in fact been routinely dilatory in his compliance with prior discovery deadlines.

17. Further, in the Petition for Reconsideration, the Plaintiff established in great detail the discovery efforts that the Plaintiff had undertaken, since Judge Conaboy's Order of March 24, 2010, allowing the Plaintiff to seek discovery, including that the Plaintiff in fact gave a copy of all of his scheduling sheets, as an attachment to the Petition for Reconsideration, to Judge Conaboy, that were prepared by the Plaintiff during the Plaintiff's above discovery efforts.

18. Further, in the Petition for Reconsideration, the Plaintiff asserted therein that there was bad faith on the part of all of the Defendants in the above case, because (i) they all had "stone walled" all of the Plaintiff's prior discovery efforts, (ii) there were misstatements of facts made by the City Defendants in the CD Motion, and (iii) there also were tortious acts that were undertaken during the above case by the City Defendants, dealing with issuing illegal citations to the Plaintiff (see Case #3:10-cv-2111), further weakening the Plaintiff's financial position, thereby making it much more difficult for the Plaintiff to be able to prosecute his above case.

19. Then, on October 22, 2010, Judge Conaboy consolidated the above case with three other cases, 10-2005, 10-2007, and 10-211 (the "Consolidated Cases").

20. Next, on October 28, 2010, Judge Conaboy issued an Order (i) that all deadlines pending in the above Consolidated Cases were suspended until further Order of Judge Conaboy, (ii) that all of the then motions pending before Judge Conaboy, by both the Plaintiff and the Defendants, were deemed moot, and (iii) that no further filings would be accepted in the Consolidated Cases without the permission of Judge Conaboy.

21. Further, on the same above date, Judge Conaboy advised that a status and scheduling conference would soon be scheduled, and then, on November 4, 2010, Judge

Conaboy issued a scheduling Order for a status conference in regard to the Consolidated Cases to be held on Wednesday, December 7, 2010, at 11:00 am, at Judge Conaboy's Office.

22. At the above scheduled conference of all of the parties related to the Consolidated Cases with Judge Conaboy, Judge Conaboy initially had his staff segregate the Plaintiff from all of the Defendants and their legal counsel.

23. Further, Judge Conaboy then met with the Plaintiff, and advised the Plaintiff that it was his then intention to have the above conferences with the various parties, so that he could determine whether there was a prospect of settling the Consolidated Cases.

24. As a consequence, the Plaintiff then had a frank colloquy with Judge Conaboy, and his legal assistant, where the Plaintiff advised Judge Conaboy as what his sentiments were in regard to seeking a settlement of this case.

25. During the above conference with the Plaintiff, Judge Conaboy said that he had only one decision left to be made in the above case, which was to for him to rule on the petition for reconsideration that the Plaintiff had filed many months previously on August 31, 2010.

26. Then, at the conclusion of Judge Conaboy's above conference with the Plaintiff, it is believed that Judge Conaboy then met with counsel for both the City Defendants and the Cadle Defendants, and then ultimately, at a certain point, met independently with the Kellers, who were then representing themselves in regard to Case #3:10-cv-2005, referenced above.

27. At the conclusion of all of the above conferences, Judge Conaboy then returned to meet with the Plaintiff, and advised the Plaintiff that there was no possibility of settling the case, and that the Plaintiff will be hearing from him.

28. Then, approximately two hours after the above conference, the Plaintiff received a copy of an order from Judge Conaboy denying the petition for reconsideration that the Plaintiff

had filed, and for some reason, splitting up the four above cases that Judge Conaboy had previously consolidated, whereby this case, Case # 3:09-cv-210, would be proceeding on a “stand-alone basis”.

29. There was no motion filed by either party previously requesting bifurcation of the above Consolidated Cases before the above conference with Judge Conaboy, and therefore, the Plaintiff does not understand why Judge Conaboy, on his own motion, after the above conferences with the respective parties, changed his original order requiring consolidation of all the other cases, without requiring a motion to be filed by the moving party, thereby allowing the opposing party to have an opportunity to file a response.

30. It is respectfully submitted that that is was advantageous for the Plaintiff to have all of the above cases consolidated with the original above case, because the City Defendants are constant, as being parties, throughout all of the above cases.

31. Further, on the same above date, Judge Conaboy assigned the responsibility of the above cases, now in a bifurcated form, to this Court.

32. The Plaintiff is filing this Motion because, by proceeding *pro se*, it is obvious that the Plaintiff does not have the financial ability to retain counsel, and additionally, clearly cannot afford to proceed with the case, in its present context, whereby the Plaintiff cannot secure any additional discovery information, and therefore will most likely be unable to prove his case at the trial stage.

33. The Plaintiff cannot afford financially to proceed with the ultimate trial of the case as it presently is constituted, and only then, after the conclusion of that case, be able to file an appeal because of Judge Conaboy’s above decisions.

34. Thus, seeking to have Judge Conaboy's above orders made to be final orders now pursuant to Fed. R.C.P. 41(a)(2) then allows the Plaintiff to be able to submit the propriety of Judge Conaboy's above orders for review now by the Third Circuit Court of Appeals, and it is respectfully submitted that Judge Conaboy's above decisions were an abuse of discretion, and the Plaintiff is hopeful that the Third Circuit Court of Appeals will concur with his assessment.

35. Therefore, because of the above reasons, the Plaintiff has filed this Motion to Dismiss with Prejudice pursuant to Fed. R.C.P. 41(a)(2), and it is hoped that this Court will enter the Order, requested herein, as soon as possible, in order to allow the Plaintiff to timely file an appeal to the Third Circuit Court of Appeals later today, January 6, 2011.

WHEREFORE, for all of the above reasons, the Plaintiff respectfully requests that this Court grant the relief requested by the Plaintiff that this Court issue immediately an Order dismissing the Complaint the Plaintiff filed in the above-captioned matter with prejudice, thereby allowing Judge Conaboy's Orders of December 8, 2010, related to the Petition for Reconsideration, and the Order bifurcating the above four cases, to be final Orders, allowing for the immediate appeal of same.

Respectfully submitted,

/s/ Joseph R. Reisinger
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