

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-cv-02802-REB- MEH

JEREMY C. MYERS,

Plaintiff,

v.

BRIAN KOOPMAN, in his individual capacity,

Defendant.

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DEFENDANT'S MOTION FOR STAY

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DEFENDANT Brian Koopman ("Koopman"), by and through his attorneys, the Loveland City Attorney's Office and Wick & Trautwein, LLC, and pursuant to Fed.R.App.P. 8(a)(1)(A), respectfully moves that the Court enter a stay of proceedings in the District Court and, in particular, a stay of the Court's Order Concerning Defendants' Motion to Dismiss [#140] filed June 17, 2011 to the extent that the said Order lifts the stay on discovery in this case and permits further proceedings in the District Court, and in support hereof, states as follows:

D.C.COLO.LCivR. 71.A Certification

Undersigned defense counsel hereby certifies that he has conferred with plaintiff's counsel who is opposed to the relief requested herein.

1. The court, in its Order Concerning Defendants' Motion to Dismiss [#140] filed June 17, 2011, denied Koopman absolute prosecutorial immunity and lifted the stay on discovery in this case.

2. Koopman plans to forthwith file a notice of appeal to the United States Court of Appeals for the Tenth Circuit of said denial of absolute immunity pursuant to 28 U.S.C. §1291 and the collateral order doctrine. See *Robinson v. Volkswagenwerk AG*, 940 F.2d 1369, 1370 (10<sup>th</sup> Cir. 1991) ("We have jurisdiction based on the collateral order doctrine as applied to a denial of absolute immunity.").

3. According to Fed.R.App.P. 8(a)(1)(A), a party must ordinarily move first in the district court for a stay of an order of a district court pending appeal.

4. Because of defendant's intent and imminent plan to seek interlocutory appellate review of the Court's denial of absolute immunity, defendant has shown good cause for the Court to enter a stay order of further proceedings before the District Court. See *Stewart v. Donges*, 915 F.2d 572, 575 and n.3 (10<sup>th</sup> Cir. 1990) ("the filing of a notice of appeal . . . from a decision within the collateral exception, 'is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.' . . . Any subsequent action by it is null and void," except that "[t]he district court retains jurisdiction over tangential matters such as . . . issuing stays . . . pending appeal.").

WHEREFORE, defendant Brian Koopman respectfully requests the Court enter an order staying all further proceedings before the District Court pending resolution by the Court of Appeals of defendant's imminent interlocutory appeal.

DATED this 29<sup>th</sup> day of June, 2011.

WICK & TRAUTWEIN, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2011, I electronically filed the foregoing Defendant's Motion for Stay with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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