

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.

**DEFENDANT'S MOTION TO STAY DISCOVERY PENDING RULING ON
DEFENDANT'S REQUEST FOR WITNESS IMMUNITY**

DEFENDANT Brian Koopman ("Koopman"), by and through his attorneys, the Loveland City Attorney's Office and Wick & Trautwein, LLC, and pursuant to Fed. R. Civ. P. 26(c), respectfully moves that the Court order stayed all discovery pending ruling on Koopman's request for witness immunity based upon *Rehberg v. Paulk*, 566 U.S. ____ (2012) (No. 10-788, slip op., decided April 2, 2012). In support hereof, Koopman states as follows:

D.C.COLO. LCivR 7.1 CERTIFICATION

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

1. Koopman has filed a Defendant's Motion for Leave to Supplement Defendant's Motion for Judgment on the Pleadings [#180, filed 04/05/2012] and the Court, by Minute Order, granted said motion [#181, filed 04/06/2012]. Koopman has thereby raised the issue of witness immunity pursuant to *Rehberg* in connection with

Koopman's testimony at plaintiff's preliminary hearing in the underlying criminal case which serves in part as the basis for plaintiff's sole malicious prosecution claim.

2. The parties are currently in the midst of discovery. The Court would act well within its discretion to decide the threshold question of witness immunity prior to permitting further discovery. See *Moore v. Busby*, 92 Fed.Appx. 699, 702 (10th Cir. 2004) (upholding protective order under Fed.R.Civ.P. 26(c) to stay discovery pending decision by district court to decide threshold question of judicial immunity prior to permitting discovery); *Bryant v. O'Connor*, 848 F.2d 1064 (10th Cir. 1988) (upholding stay of discovery pending ruling on absolute judicial and quasi-judicial immunity).

WHEREFORE, Koopman respectfully requests the Court enter a protective order staying further discovery pending its ruling on Koopman's request for witness immunity.

DATED this 10th day of April, 2012.

WICK & TRAUTWEIN, LLC

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 10, 2012, I electronically filed the foregoing **DEFENDANT'S MOTION TO STAY DISCOVERY PENDING RULING ON DEFENDANT'S REQUEST FOR WITNESS IMMUNITY** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail address:

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