

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

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Jan

PAUL A. BONACCI,

Plaintiff,

vs.

THE CATHOLIC ARCHBISHOP OF
OMAHA, et al.,

Defendants.

4:CV91-3037

ROBERT W. EDEL
CLERK

**DEFENDANT'S JOINT MOTION FOR AMENDMENT
OF AMENDED ORDER OF PROGRESSION
AND REQUEST FOR SCHEDULING CONFERENCE**

COME NOW Defendants PETER CITRON, ALAN BAER, ROBERT WADMAN, MICHAEL HOCH, KENNETH BOVASSO and THE CITY OF OMAHA, by and through their undersigned counsel, and move the Court for an Order setting a scheduling conference and, thereafter, amending the Court's current Order of Progression. In support of said Motion, the parties would show to the Court as follows, noting with particularity Paragraphs 84 through 94.

1. That on February 1, 1991, Plaintiff filed his Complaint and Demand for Jury Trial.
2. That on February 4, 1991, Plaintiff filed his First Amended Complaint and Demand for Jury Trial.
3. That on February 28, 1991, Defendants City of Omaha, Michael Hoch and Kenneth Bovasso filed an Answer to Plaintiff's Amended Complaint.
4. That on March 15, 1991, Defendant Harold Anderson filed an Answer to Plaintiff's First Amended Complaint.

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5. That on April 2, 1991, Defendant Peter L. Citron filed a Motion to Dismiss Plaintiff's Amended Complaint, together with supporting Brief.
6. That on April 2, 1991, Defendant Alan Baer filed an Answer and Affirmative Defenses to Plaintiff's First Amended Complaint.
7. That on April 2, 1991, Defendant J.L. Brandeis & Sons, Inc. filed a Motion to Dismiss Plaintiff's First Amended Complaint, together with supporting Brief.
8. That on July 18, 1991, the Court entered a Memorandum and Order denying inter alia the Motions to Dismiss of Peter Citron and J.L. Brandeis & Sons, Inc.
9. That on July 29, 1991, Defendant J.L. Brandeis & Sons, Inc. filed an Answer and Affirmative Defenses to Plaintiff's First Amended Complaint.
10. That on July 31, 1991, Defendant Peter L. Citron filed an Answer and Affirmative Defenses.
11. That on April 30, 1992, the Court entered an Order setting a preliminary pretrial conference for May 14, 1992.
12. That on May 15, 1992, the Court entered an Order regarding discovery and progression of the case.
13. That on September 3, 1992, Defendant City of Omaha filed a Motion to Quash and Motion for Sanctions, together with supporting Brief.
14. That on September 3, 1992, Plaintiff filed a Motion to Allow Additional Discovery with Supporting Affidavit and Request for Oral Argument on Motion, to allow Plaintiff's counsel to inspect and examine the "Peter Citron tapes."
15. That on October 9, 1992, the Court entered a Memorandum and Order deferring ruling on Defendant City of Omaha's Motion to Quash and for Sanctions and

on Plaintiff's Motion for Additional Discovery for a period of 10 days to permit compliance with Local Rule 20I.

16. That on October 26, 1992, Defendant City of Omaha filed a Motion to Withdraw its Motion to Quash and Motion for Sanctions.

17. That on October 27, 1992, the Court entered an Order granting the withdrawal of Defendant City of Omaha's Motions to Quash and for Sanctions.

18. That on December 16, 1992, the Court entered its Order Setting Schedule for Progression of Jury Case.

19. That on April 21, 1993, Plaintiff filed a Notice of Oral Deposition of the Property Custodian of the Omaha Police Department and Michael Hoch and Kenneth Bovasso of the Omaha Police Department.

20. That on April 28, 1993, the Custodian of Records of the Omaha Police Department, and Defendants Kenneth Bovasso and Michael Hoch filed a Motion to Quash and for Protective Order.

21. That on April 28, 1993, Defendant Peter Citron filed a Motion to Quash the subpoena duces tecum served on Property Custodian of Omaha Police Department, together with supporting Brief.

22. That on April 28, 1993, the Court entered an Order deferring ruling on Motions to Quash and giving the parties 10 days to provide a listing of the materials, to provide written arguments concerning relevance of material sought and to provide the Court with views on whether the previous limitation on scope of permissible discovery should be lifted.

23. That on April 29, 1993, a conference call took place regarding the Citron materials among Judge Piester and Messrs. Warin, Sipple, Koenig, DeCamp and Ms. Hahn.

24. That on May 4, 1993, Defendants City of Omaha, Michael Hoch and Ken Bovasso filed a Motion to Dismiss Conspiracy Claims Brought Pursuant to 42 U.S.C. §1985(3), together with supporting Brief.
25. That on May 5, 1993, Defendant Peter Citron executed an Affidavit regarding examination of materials in possession of Omaha Police Department.
26. That on May 10, 1993, Defendant Peter Citron filed a Motion for Leave to Adopt by Reference Pre-Trial Motions and Memoranda of Co-Counsel, together with supporting Brief.
27. That on May 11, 1993, Defendant Peter Citron filed an Additional Brief in Support of Peter Citron's Motion to Quash.
28. That on May 13, 1993, Plaintiff filed a Motion to File Supplemental Brief and Affidavit Opposing City of Omaha and Peter Citron's Motions to Quash Deposition Notices and Subpoena.
29. That on May 13, 1993, Plaintiff filed an Additional Brief in Support of Plaintiff's Discovery Motions, together with Affidavit of Plaintiff.
30. That on May 15, 1993, Defendant Peter Citron submitted an informal letter brief in response to Plaintiff's Memorandum Brief Opposing Motions to Quash Subpoena and Deposition Notices, Additional Brief and Mr. Bonacci's Affidavit.
31. That on May 17, 1993, Plaintiff submitted a letter to the Court in reply to Defendant Citron's informal letter brief.
32. That on May 27, 1993, the Court entered a Memorandum and Order that Plaintiff's Affidavit shall be filed under seal; that the supplemental and reply briefs regarding pending motions to quash were deemed submitted; and giving Defendants City of Omaha, Hoch and Bovasso twenty days to apply to the District Court of Douglas

County, Nebraska, for authority to release the materials and setting a briefing schedule in the event the application is granted or denied.

33. That on June 23, 1993, Defendant City of Omaha filed a Motion to Transfer Custody of Property to the direction of the United States District Court for the District of Nebraska.

34. That on June 25, 1993, the Court entered an Order transferring "Citron Materials" to custody of Magistrate Judge David Piester.

35. That on August 4, 1993, Plaintiff filed a Motion to Modify Protective Order with regard to "Citron Tapes", together with supporting Brief.

36. That on September 9, 1993, the Court entered a Memorandum and Order regarding Motions to Quash and Citron Materials.

37. That on September 29, 1993, Defendant Robert C. Wadman filed an Answer to Plaintiff's Amended Complaint.

38. That on September 29, 1993, the Court entered a Memorandum and Order denying Defendants City of Omaha's, Hoch's and Bovasso's Motion to Dismiss Conspiracy Claim.

39. That on October 7, 1993, Defendants Wadman, Bovasso and Hoch filed a Motion to Dismiss, together with supporting Brief.

40. That on November 19, 1993, the Court entered a Memorandum and Order amending the December 16, 1992, Order of Progression.

41. That on November 19, 1993, the Court entered a Memorandum and Order regarding the Citron Materials.

42. That on November 23, 1993, the Clerk of Court submitted rules regarding viewing of the Citron Materials.

43. That on November 24, 1993, the Court entered an Order granting Defendant Citron's Motion for Leave to Adopt by Reference Pretrial Motions and Memorandum of Co-Counsel.
44. That on December 1, 1993, Plaintiff filed a Notice of Plaintiff's Inspecting "Citron Tapes" and Notice of Plaintiff's Intent to Personally Attend "Citron Tapes" Inspection.
45. That on December 6, 1993, Defendant Peter Citron filed an Objection to Plaintiff Viewing Material.
46. That on December 7, 1993, the Court entered an Order stating that Plaintiff shall not be permitted to view the materials.
47. That on December 8, 1993, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for December 14, 1993.
48. That on December 14, 1993, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for December 22, 1993.
49. That on December 31, 1993, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for January 13, 1994.
50. That on January 6, 1994, the Court entered an Order granting the Plaintiff until January 18, 1994, to respond to Defendant City of Omaha's Motion to Dismiss.
51. That on January 11, 1994, the Court entered an Order changing the date of the pretrial conference from August 10, 1994 to August 3, 1994.
52. That on January 17, 1994, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" for January 20, 1994.
53. That on January 18, 1994, Plaintiff filed Brief Opposing City of Omaha Defendants' Motion to Dismiss.

54. That on February 8, 1994, the Court entered a Memorandum and Order staying Defendants' Motion to Dismiss; granting Plaintiff 10 days to file a second amended complaint; and granting Defendants 10 days from filing of amended complaint to amend motion to dismiss and supporting brief.

55. That on February 8, 1994, the Court entered an Order denying Defendant Citron's Motion for Leave to Adopt by Reference Pre-trial Motions and Memoranda of Counsel for Defendants City of Omaha, Hoch and Bovasso.

56. That on February 9, 1994, Plaintiff filed Notice of Plaintiff's Inspecting "Citron Tapes" and Designation of Additional Expert to View Materials.

57. That on February 10, 1994, the Court entered an Order withdrawing Defendant Citron's Motion to Join Motions of Defendants Wadman, Hoch and Bovasso.

58. That on February 17, 1994, Plaintiff filed Second Amended Complaint and Demand for Jury Trial.

59. That on March 3, 1994, Defendants City of Omaha, Michael Hoch, Kenneth Bovasso and Robert Wadman filed their Answer to Plaintiff's Second Amended Complaint.

60. That on April 7, 1994, Defendant Baer filed Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint.

61. That on April 28, 1994, Defendant Peter Citron filed his Answer and Affirmative Defenses to Second Amended Complaint.

62. That on May 12, 1994, Defendant Harold Anderson filed a Motion for an order setting a time limit for Plaintiff's viewing of "Citron Materials" and revising Progression Order to extend deposition deadline.

63. That on May 16, 1994, the Court entered a Memorandum and Order denying Defendants Wadman, Bovasso and Hoch's Motion to Dismiss on Basis of Qualified Immunity.

64. That on May 16, 1994, Defendant Alan Baer filed a Motion for Extension of Progression Order setting a time limit for Plaintiff's viewing of "Citron Materials" and to extend deposition deadline.

65. That on May 16, 1994, Plaintiff filed Notice of Records Deposition and Subpoena Duces Tecum of Douglas County Attorney's Office for May 27, 1994.

66. That on May 19, 1994, Defendant Peter Citron filed Motion for an Extension of Progression Order setting a limit for Plaintiff's viewing of "Citron Materials" and to extend deposition deadline.

67. That on July 6, 1994, the Court entered a Memorandum and Order granting Defendants' Motions for Continuance and Motions to limit Plaintiff's viewing of "Citron Materials" giving him until August 31, 1994, to complete the initial viewing.

68. That on July 6, 1994, the Court entered its Amended Order Setting Schedule for Progression of Case.

69. That on September 30, 1994, Plaintiff filed Designation of "Citron Materials."

70. That on October 7, 1994, Defendants City of Omaha, Wadman, Hoch and Bovasso filed Objection to Plaintiff's Designation of Citron Materials.

71. That on October 10, 1994, Defendant Harold Anderson filed Motion to Strike Plaintiff's Designation of Citron Materials.

72. That on October 11, 1994, Defendant Alan Baer filed Motion to Strike Plaintiff's Designation of "Citron Materials."

73. That on October 16, 1994, Plaintiff filed a Motion to dismiss Defendant Harold Anderson from the lawsuit.

74. That on October 31, 1994, the Court entered an Order dismissing Defendant Harold Anderson from the lawsuit.

75. That on December 5, 1994, the Court entered a Memorandum and Order granting the Defendants' various Motions to Strike.

76. That on January 30, 1995, and continuing through January 31, 1995, the Plaintiff's deposition in this case was recommenced.

77. That on February 28, 1995, the Plaintiff's deposition was again recommenced.

78. That on February 28, 1995, the Plaintiff's deposition was concluded.

79. That, on information and belief, Plaintiff has failed or neglected to review and sign the deposition transcript in this case.

80. That on February 28, 1995, the Court entered an Order granting Defendant's Motion to Continue (Filing No. 169), scheduling the trial of this case for the February 1996 jury term, establishing the pretrial conference for January 11, 1996, and providing for a deposition deadline of December 28, 1995, with other deadlines modified accordingly.

81. That on March 10, 1995, the Court entered an Order with respect to the disposition of the so-called "Citron Materials."

82. That on March 20, 1995, Plaintiff filed a pleading captioned "Response to Magistrate's Order for Recommendations on Disposition of 'Citron Materials'" with an accompanying Brief.

83. That on April 21, 1995, the Court entered an Order with respect to the so-called "Citron Materials."

84. That the Plaintiff has failed to dismiss Defendant Bovasso in spite of repeated representations by Plaintiff's counsel that he would do so.

85. That Plaintiff has failed to properly serve Defendant Wadman.

86. That Plaintiff has failed to make appropriate expert witness designations by the deadline established by the Court's current Order of Progression.

87. That some of the Defendants are planning on filing potentially dispositive Motions for Summary Judgment on or prior to November 17, 1995.

88. That given the current status of discovery in this case, there is no practical way in which the parties can complete the remaining discovery prior to the discovery deadline established in the Court's Order of February 28, 1995.

89. That the Defendants believe that a scheduling conference with the Court is the appropriate vehicle for addressing an Amended Progression Order. Given that the Court's prior Scheduling Orders have been amended on several occasions, the Defendants believe it would be beneficial for all counsel and the Court to have a face-to-face meeting to discuss scheduling.

90. That the Defendants are painfully aware of the fact that this case has been on file for a considerable period of time. However, the Defendants would call the Court's attention to the fact that at the outset of this litigation there were 16 Defendants and, assuming that the Plaintiff makes good on his promises to dismiss Defendant Bovasso, there will only be six Defendants remaining in this litigation. Of those six remaining Defendants, Mr. King has failed to file a responsive pleading or participate in any fashion, so that arguably the only Defendants remaining in the case are Messrs. Citron, Baer,

Hoch, Wadman (assuming there was ever proper service) and the City of Omaha. Accordingly, albeit at a snail's pace, progress is being made with respect to resolving this matter. Defendants would also direct the Court's attention to the unusual nature of the claims asserted in this case and specifically to the considerable time consumed with respect to the issues surrounding the "Citron Materials." In that connection, the Defendants would remind the Court that Plaintiff's counsel, in a prior session with the Court, advised the Court that the Citron Tapes were the "smoking gun" with respect to this case. The record will speak for itself in this regard, but the fact remains clear that the Plaintiff made, at best, minimal efforts to review and properly designate these materials for use in this case. Accordingly, all of the "Citron Materials" have now been barred from introduction into evidence in this case.

91. The Defendants would also like to specifically focus the Court's attention on the fact that the Plaintiff has failed or neglected to sign his deposition. As the Court is aware, this deposition was conducted over several years and in multiple settings. Given the nature of the claims presented in this case and the Plaintiff's reliance on his claim of multiple personality syndrome, the Defendants are necessarily reluctant to proceed with any additional discovery until the Plaintiff has signed his deposition in this case. In this connection, the Defendants are submitting simultaneously with this Motion a video tape, together with corresponding transcript, of an excerpt of the Plaintiff's deposition. (This deposition excerpt is offered for the limited purpose of providing the Court with an insight into the difficulty of the issues raised in this case and, hopefully, an appreciation of the Defendants' collective reluctance to proceed with additional discovery until the Plaintiff has verified the information contained in his deposition.) As with other sensitive materials

that have been filed in this case, the Defendants would respectfully request that this deposition excerpt and corresponding transcript be filed under seal.

92. That Plaintiff's failure to appropriately designate expert witnesses in this case raises serious questions about whether this case could even proceed to trial in the absence of such expert testimony. The Plaintiff relies as a threshold matter on the assertion that he has a medical condition known as "multiple personality syndrome." The Defendants are of the opinion that such a condition cannot be self-diagnosed; and, therefore, the Plaintiff's failure to appropriately designate expert witnesses would necessitate the Court's entry of an order of directed verdict at the conclusion of the Plaintiff's case. The Defendants do not believe that they should be required to spend the enormous sums of money necessary to defend these allegations if the Plaintiff cannot adduce expert testimony as to this threshold issue.

93. That this request is not made for purposes of delay, but rather in an effort to preserve judicial and other resources and in an effort to narrow some of the issues and claims presented by this litigation.

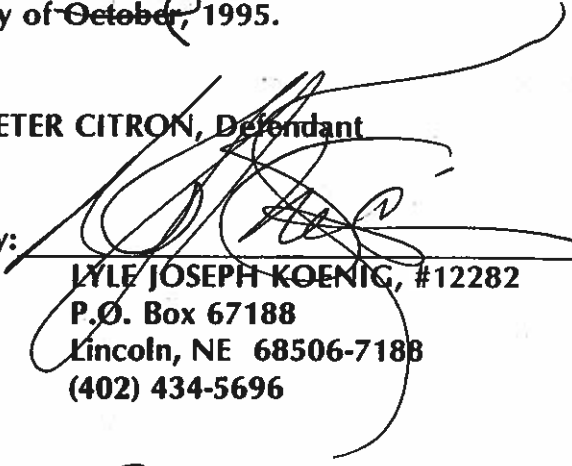
94. That pursuant to NELR 7.1(a)(1), the Defendants are not submitting a Memorandum in support of this Motion as this Motion raises no substantial issue of law and the relief sought is within the Court's discretion. Further, that all of the matters necessary for the Court's consideration of this Motion are before the Court, with the exception of the deposition excerpt which is offered as an exhibit to the Motion.

WHEREFORE, these Defendants respectfully request that the Court enter an Order setting a scheduling conference for this case, at which time an amended order of progression could be discussed and an appropriate Scheduling Order entered.

Respectfully submitted this 2nd day of ~~October~~ ^{November}, 1995.

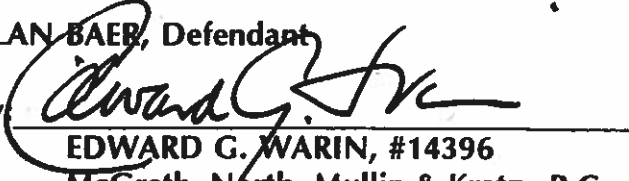
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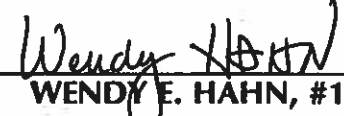
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ROBERT WADMAN, MICHAEL HOCH,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon:

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Mr. Stan Sipple
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by United States First Class Mail, postage prepaid, on this 3rd day of ~~October~~ ^{November}, 1995.

