

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOSEPH L. WATT,)
)
 Plaintiff,)
)
 v.) Case No. 05-3038-CM
)
 BUREAU OF PRISONS, et al.,)
)
 Defendants.)

ORDER

Pursuant to Fed. R. Civ. P. 26, this case comes before the court on the motion (**doc. 41**) of the defendants for an order delaying the planning and scheduling of the case and staying discovery pending a ruling on defendants' dispositive motion.¹ No timely opposition to the instant motion has been filed by plaintiff.

D. Kan. Rule 7.4 provides:

If a respondent fails to file a response within the time required by Rule 6.1(d), the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.

The undersigned magistrate judge court could grant the motion to stay solely on the basis that it is unopposed. However, the court will address the merits of the motion.

The court may stay discovery if: (1) the case is likely to be finally concluded via a dispositive motion; (2) the facts sought through discovery would not affect the resolution of the dispositive motion; or (3) discovery on all issues posed by the complaint would be

¹ Doc. 37.

wasteful and burdensome.² The decision whether to stay discovery rests in the sound discretion of court. As a practical matter, this calls for a case-by-case determination.

As a general rule, discovery is not stayed in this district based merely on the pendency of dispositive motions.³ However, upon careful review of the record, the instant motion, and the pending dispositive motion in this case, the court concludes that a stay of all pretrial proceedings—including discovery, the planning meeting conference, initial disclosures, and the scheduling of deadlines—is warranted until the court resolves defendants' pending dispositive motion.

In consideration of the foregoing,

IT IS HEREBY ORDERED:

1. The above-referenced motion for a stay (**doc. 41**) is granted.
2. All discovery and pretrial proceedings in this case are stayed until further order of the court. The November 30, 2005 scheduling conference is cancelled.
3. Copies of this order shall be served on all counsel of record and *pro se* plaintiff.

Dated this 8th day of November, 2005, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

² See *Wolf v. United States*, 157 F.R.D. 494, 495 (D. Kan. 1994) (citing *Kutilek v. Gannon*, 132 F.R.D. 296, 297-98 (D. Kan. 1990)).

³ See *Kutilek*, 132 F.R.D. at 297 (“The general policy in this district is not to stay discovery even though dispositive motions are pending.” (citing case law)).