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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**JAMES M. CLEAVENGER,**

Case No. 6:13-cv-01908-DOC

Plaintiff,

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S OPPOSED MOTION TO  
SET A RULE 16 CONFERENCE**

vs.

**UNIVERSITY OF OREGON (an Agency and  
Instrumentality of the State of Oregon), et al.,**

Defendants.

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**I. RESPONSE TO REQUEST FOR RULE 16 CONFERENCE**

Contrary to Plaintiff's Motion, Defendants do not oppose the scheduling of a Rule 16 Conference. When attorney Jason Kafoury and the undersigned spoke on Friday, October 17, Mr. Kafoury did not discuss the scheduling of a Rule 16 Conference. Rather, he inquired about postponing Plaintiff's deposition. The undersigned told him that Defendants had to object to that request because of the court's order in this case. Mr. Kafoury stated that he intended to file a

motion to postpone the deposition if his firm decided to represent Plaintiff. Defendants oppose postponing Plaintiff's deposition, which is currently scheduled for October 28-29, because the court on October 8 ordered that "Plaintiff must make himself available for a deposition within three weeks by October 29, 2014," and that "[n]o further time extensions for this deposition will be given."

However, Defendants do not oppose Plaintiff's request for a Rule 16 Conference to discuss the matter. Defendants' counsel in fact welcomes a Rule 16 Conference.

Defendants' counsel desires to proceed with Plaintiff's deposition on October 28-29, but does not want to do so without Plaintiff's counsel present unless the court so orders, because of Oregon Rule of Professional Conduct Rule 4.2, "Communication with Person Represented by Counsel." That rule provides in relevant part as follows:

In representing a client . . . , a lawyer shall not communicate . . . on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person; [or]
- (b) the lawyer is authorized by law or by court order to do so[.]

If the court requires the deposition to proceed on October 28-29, then the court should authorize Defendants' counsel to take it even if Plaintiff's lawyers decide not to attend so that Defendants' counsel do not violate Rule 4.2.

## **II. RESPONSE TO DECLARATION OF JAMES M. CLEAVENGER**

Defendants respond as follows to statements made in the Declaration of James M. Cleavenger – In Support of Plaintiff's Expedited Motion to Set a Rule 16 Conference.

1. Plaintiff's statement at page 2 of his declaration that "Neither I, nor anyone from Kafoury & McDougal took part in scheduling these new dates [for Mr. Cleavenger's deposition]" is at a minimum incorrect in part and misleading in another.

























