

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

VLADK FILLER, )  
)  
Plaintiff, )  
)  
v. ) 1:15-cv-00048-JAW  
)  
HANCOCK COUNTY et al., )  
)  
Defendants. )

**ORDER ON MOTIONS TO STAY AND  
ORDER ON INITIAL WRITTEN DISCOVERY**

On January 27, 2016, this Court issued an order granting in part and denying in part the motion to dismiss of Assistant District Attorneys Mary Kellett and Paul Cavanaugh. *Order on Mots. to Dismiss* (ECF No. 42). On February 12, 2016, ADA Kellett filed a notice of interlocutory appeal to the Court of Appeals for the First Circuit. *Notice of Appeal* (ECF No. 45). On the same day, both ADAs Kellett and Cavanaugh moved to stay the proceedings pending resolution of the appeal. *Mot. to Stay Proceedings Pending Def. Mary Kellett's Interlocutory Appeal* (ECF No. 44) (*Kellett Stay Mot.*). The remaining Defendants joined in the motion to stay. *Defs. Town of Ellsworth, Town of Gouldsboro, John DeLeo and Chad Wilmot's Joinder in Mot. to Stay Proceedings Pending Def. Mary Kellett's Interlocutory Appeal* (ECF No. 50); *Defs. Povich's and Bassano's Joinder in Defs. Kellett's and Cavanaugh's Mot. to Stay Proceedings* (ECF No. 51); *Defs. Hancock Cty., William Clark, Washington Cty., Donnie Smith, Travis Willey, David Denbow, Michael Crabtree and Stephen McFarland's Joinder in Mot. to Stay Proceedings Pending Def. Mary Kellett's*

*Interlocutory Appeal* (ECF No. 52). On March 4, 2016, Mr. Filler objected to the motions to stay. *Def.'s Opp'n to Def. Kellett's Mot. to Stay Proceedings, and Remaining Defs.' Mot. to Join* (ECF No. 54). On March 14, 2016, Defendants Kellett and Cavanaugh replied to Mr. Filler's opposition. *Reply to Pl.'s Obj. to Mot. to Stay Proceedings Pending Def. Mary Kellett's Interlocutory Appeal* (ECF No. 55).

On April 1, 2016, the Court held a telephone conference of counsel in which it acknowledged that under the First Circuit case of *Hegarty v. Somerset County*, 25 F.3d 17 (1st Cir. 1994), "immunity from suit includes protection from the burdens of discovery." *Id.* at 18. In *Hegarty*, the First Circuit quoted the United States Supreme Court in *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), as stating that "[u]ntil this threshold immunity question is resolved, discovery should not be allowed." *Hegarty*, 25 F.3d at 18.

Even though ADA Kellett is entitled to a full stay of discovery during the appeal, the Court questioned whether the other Defendants would be similarly entitled to a stay. The Court's concern is that the case would proceed on a piecemeal basis with a series of interlocutory appeals staying discovery and that there would be no progress with any discovery, even among non-appealing Defendants, because one Defendant was engaged in an interlocutory appeal. With the possible exception of Defendants Povich and Bassano, each Defendant assured the Court that they did not intend to file a motion to dismiss, but each reserved the right to file a motion for summary judgment, which alleviated the Court's major concern of serial, unending motions to dismiss, interlocutory appeals, and stays of discovery.

Regarding whether discovery could proceed among the non-appealing Defendants, defense counsel pointed out that as the case revolves largely around ADA Kellett and her actions, it would be difficult to proceed with meaningful discovery unless she participated. The Court agreed and further contemplated that even though ADA Cavanaugh is not appealing the Court's January 27, 2016 Order, discovery directed to ADA Cavanaugh would be interwoven with discovery of ADA Kellett. The Court suggested that while ADA Kellett's appeal is pending, the remaining Defendants (other than ADAs Kellett and Cavanaugh) could make some progress by exchanging written discovery, a suggestion that the remaining Defendants agreed to.

Accordingly, the Court ORDERS the following:

- (1) The Court GRANTS the Motion to Stay Proceedings Pending Defendant Mary Kellett's Interlocutory Appeal (ECF No. 44) as to Defendants Mary Kellett and Paul Cavanaugh only;
- (2) For each Defendant (other than ADAs Mary Kellett and Paul Cavanaugh), the Court GRANTS in part and DENIES in part the motions to stay;
- (3) The Court GRANTS Defendants Town of Ellsworth, Town of Gouldsboro, John DeLeo and Chad Wilmot's Joinder in Motion to Stay Proceedings Pending Defendant Mary Kellett's Interlocutory Appeal (ECF No. 50); Defendants Povich's and Bassano's Joinder in Defendants Kellett's and Cavanaugh's Motion to Stay Proceedings

(ECF No. 51); Defendants Hancock County, William Clark, Washington County, Donnie Smith, Travis Willey, David Denbow, Michael Crabtree and Stephen McFarland's Joinder in Motion to Stay Proceedings Pending Defendant Mary Kellett's Interlocutory Appeal (ECF No. 52) to the extent these Defendants request a stay of discovery other than written discovery; however, the Court DENIES these motions to the extent they request a stay of written discovery;

- (4) Discovery is limited to not more than 30 interrogatories per law firm (subparts not permitted); 30 requests for admission per law firm; and 2 sets of requests for production per law firm; except upon motion, the Court will not allow any depositions until the resolution of ADA Kellett's interlocutory appeal;
- (5) The deadline for initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) for all parties other than ADAs Kellett and Cavanaugh shall be May 4, 2016.

Upon resolution of the pending appeal, the Court will amend this modified Scheduling Order and will set the other deadlines typically imposed.

SO ORDERED.

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
UNITED STATES DISTRICT JUDGE

Dated this 4th day of April, 2016