

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**PLAINTIFFS' MOTION FOR CLARIFICATION OF [450] THE COURT'S JANUARY 7,
2020 ORDER THAT THE PARTIES SUBMIT ONE PROPOSED MODIFIED
DISCOVERY SCHEDULE**

Plaintiffs Janet Jenkins and Isabella Miller-Jenkins, through undersigned counsel, move for clarification of the Court's January 7, 2020 order that the parties submit one proposed modified discovery schedule to clarify the deadline by which that schedule must be submitted, and for an order that the deadline be March 9, 2020. *See* Op. & Order, ECF 450. A proposed order is attached. Plaintiffs state the following in support of this motion:

1. The Court's order is unclear as to the deadline by which the parties must submit one proposed modified discovery schedule. It simultaneously provides that the filing must be made "within 60 days of this Order," *id.* at 2, 5–6, "by February 6, 2020," *id.* at 2, and "by February 7, 2020," *id.* at 5; *see also id.* at 6 ("(February 7, 2020)"). The docket text for the order provides that "one modified proposed discovery schedule is to be submitted by dfts and plfts within 60 days of this Order (by 2/7/2020)."

2. Given the Court's desire "to minimize further back-and-forth regarding discovery," Op. & Order at 5, ECF 450, and consistent use of the phrase "within 60 days," Plaintiffs believe the Court intended that the proposed schedule be filed within 60 days of the

Court's January 7—that is, March 9, 2020. *See* Fed. R. Civ. P. 6(a)(1)(C) (“[I]nclude the last day of the period, but if the last day is a Saturday . . . , the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.”).

3. Plaintiffs believe a March 9 deadline would be appropriate because it would ensure that, should Defendants Philip Zodiates, Victoria Hyden, and Response Unlimited, Inc. acquire new counsel by the February 5 deadline, new counsel would be able to participate in negotiations over the proposed schedule. A February 6 or 7 deadline for the proposed schedule would make new counsel's participation in negotiating the proposed schedule much less likely.

4. Defendant Timothy Miller takes no position on this motion. *See* Ex. 1 at *15.

5. Defendants Liberty Counsel, Inc. and Rena Lindevaldsen (collectively, “Liberty Counsel Defendants”) and Defendant Linda Wall agree that March 9, 2020, makes the most sense for the “60 days” deadline to submit a modified schedule and is the likeliest date the Court intended. *Id.* at *1. They do not oppose this motion to clarify, requesting the deadline to be on that date. *Id.*

6. Defendant Kenneth Miller did not respond in time to Plaintiffs' January 8, 2020 request for his position on this requested relief.

7. The Liberty Counsel Defendants and Wall also agree that the Court clearly intended and anticipated that discovery deadlines would be extended through the modified schedule to be submitted by the parties. *Id.* at *1. With this shared understanding, Plaintiffs see no need to seek specific extensions of any currently unexpired discovery deadline before the parties negotiate a proposed modified discovery schedule.

CONCLUSION

For these reasons, the Court should grant Plaintiffs' motion for clarification and enter Plaintiffs' proposed order setting the deadline for the parties to submit one proposed modified discovery schedule to March 9, 2020.

Respectfully submitted.

January 9, 2020

/s/ Frank H. Langrock
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was served on the following counsel of record through the Court's CM/ECF system:

Brooks G. McArthur
Jarvis, McArthur & Williams, LLC
Counsel for Defendant Kenneth L. Miller

Horatio G. Mihet
Roger K. Gannam
Daniel Joseph Schmid
Liberty Counsel
*Counsel for Defendants Liberty Counsel, Inc. and
Rena M. Lindevaldsen*

Anthony R. Duprey
Neuse, Duprey & Putnam, PC
*Counsel for Defendants Liberty Counsel, Inc. and
Rena M. Lindevaldsen*

Norman C. Smith
Norman C. Smith, PC
Counsel for Defendant Linda M. Wall

Adam S. Hochschild
Hochschild Law Firm, LLC
Counsel for Defendant Linda M. Wall

Michael J. Tierney
Wadleigh, Starr & Peters, PLLC
Counsel for Defendant Timothy D. Miller

and on the following unrepresented parties by United States mail:

Defendant Philip Zodhiates (Register Number 18649-084)
FCI Ashland
Federal Correctional Institution
P.O. Box 6001
Ashland, Kentucky 41105

Defendant Victoria Hyden
1212 Saint Cloud Avenue
Lynchburg, Virginia 24502

Defendant Response Unlimited, Inc.
c/o William Zodiates
274 Shalom Road
Waynesboro, Virginia 22980

January 9, 2020

/s/ Diego A. Soto _____
Diego A. Soto
Counsel for Plaintiffs

Diego Soto

From: Adam Hochschild <adam@hochschildlaw.com>
Sent: Thursday, January 9, 2020 11:20 AM
To: Horatio Mihet
Cc: Diego Soto; Tyler Clemons; Maya Rajaratnam; Daniel Schmid; Roger Gannam; Brooks G. McArthur; Anthony Duprey; Norman C. Smith; Robert B. Hemley; Hillary A. Borcharding; Michael J. Tierney; Scott McCoy; flangrock; Sarah Star; srs; Claudia Huerta; Jessica Stone; Beth Littrell; jswift; Emily Joselson; Linda Bradford Barron; Matthew D. Preedom; Toddy Ferguson
Subject: Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

I concur with Harry.

Adam S. Hochschild
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314.503.0326
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On Jan 9, 2020, at 9:21 AM, Horatio Mihet <hmihet@lc.org> wrote:

Diego – responding to your four points in order:

- 1) We consider all currently scheduled and noticed depositions to be cancelled and to be re-scheduled after Feb. 5.
- 2) We agree that March 9 makes the most sense for the “60 days” deadline to submit a modified schedule, and is the likeliest date the Court intended. We would not oppose a motion to clarify, requesting the deadline to be on that date.
- 3) We don’t think a separate motion to extend current discovery deadlines is necessary. The Court clearly intended and anticipated that discovery deadlines would be extended through the modified schedule to be submitted by the parties. There is no other way to read the Court’s Order, and it would make no sense to require the parties to submit an agreed modified discovery schedule if the Court intended to hold the parties to the current March 2 deadline. In fact, the Court has indicated that it is extending discovery deadlines to accommodate change in counsel for RUL/Zodhiates/Hyden. If you wish to include this understanding in your motion to clarify (#2), we would not oppose.
- 4) We take no position on the matters you raise in item 4.

HGM

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel

EXHIBIT 1

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From: Diego Soto <Diego.Soto@splcenter.org>

Sent: Wednesday, January 8, 2020 4:31 PM

To: Adam Hochschild <adam@hochschildlaw.com>; Horatio Mihet <hmihet@lc.org>

Cc: Tyler Clemons <Tyler.Clemons@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Anthony Duprey <Anthony@ndp-law.com>; Norman C. Smith <norman@normansmithlaw.com>; Robert B. Hemley <rhemley@gravelshea.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; srs <srs@sarahstarlaw.com>; Claudia Huerta <claudia.huerta@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; jswift <jswift@langrock.com>; Emily Joselson <ejoselson@langrock.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>

Subject: RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

Counsel:

Four matters for your consideration. Please let me know by close of business tomorrow your client's positions on these matters.

1. Plaintiffs agree to cancel next week's depositions in light of the Court's order allowing the RUL Defendants 30 days to find new counsel. Plaintiffs will work with Defendants to schedule depositions after the RUL Defendants acquire new counsel or after the February 5 deadline expires without an appearance by new counsel.
2. Plaintiffs intend to seek clarification of the deadline by which the parties must file the joint proposed modified discovery schedule. Plaintiffs read three possible deadlines:
 - a. Within 60 days of the Court's order (i.e., Monday, March 9, 2020)
 - b. Thursday, February 6 (see page 2)
 - c. Friday, February 7 (see pages 5–6 and docket text)

Given the Court's desire "to minimize further back-and-forth regarding discovery," Op. & Order at 5, ECF 450, and consistent use of the phrase "within 60 days," Plaintiffs believe the Court intended that the proposed schedule be filed within 60 days of the Court's January 7 order (i.e., Monday, March 9, 2020). Such a deadline would ensure that, should the RUL Defendants acquire new counsel by the February 5 deadline, new counsel would be able to participate in negotiations over the proposed schedule. A February 6 or 7 deadline for the proposed schedule would make new counsel's participation in negotiating the proposed schedule much less likely.

3. Given the discovery deadlines between today and March 9, the likelihood that those deadlines would expire before the proposed schedule is even filed, and the Court's recognition of "the importance of moving along the discovery process," Op. & Order at 5, ECF 450, Plaintiffs intend to file a motion to extend the current discovery schedule by 30 days (to account for the 30 days given to the RUL Defendants to find new counsel) or in the alternative by 60 days (to make the need for further extensions less likely after the RUL Defendants' February 5 deadline to find new counsel expires). I have set out the proposed schedules below. After the RUL Defendants acquire new counsel or after the February 5 deadline expires without an appearance by new counsel, the parties would meet and confer as ordered to determine whether any further modifications are needed. Plaintiffs do not believe the Court put discovery on hold, stayed discovery, or otherwise altered requirements to respond to discovery requests pursuant to the federal rules. Plaintiffs believe discovery can continue before February 5 except where it would prejudice an unrepresented party.

	Current deadline	30-day extension	60-day extension	Explanation
Deadline for Defendant Philip Zodhiates to respond to Plaintiff Janet Jenkins's Motion for Partial Summary Judgment on Count One	Monday, January 13, 2020	Wednesday, February 12, 2020	Friday, March 13, 2020	30/60-day extension
Deadline to serve all interrogatories and requests for production	Monday, January 20, 2019 (ECF 425 ¶1)	Wednesday, February 19, 2020	Friday, March 20, 2020	6 weeks before the close of discovery (ECF 425 ¶1)
Deadline for depositions of all witnesses (fact and expert)	Monday, March 2, 2020 (ECF 425 ¶4)	Wednesday, April 1, 2020	Friday, May 1, 2020	Same day as deadline to complete all discovery
Deadline to complete all discovery	Monday, March 2, 2020 (ECF 425 ¶5)	Wednesday, April 1, 2020	Friday, May 1, 2020	30/60-day extension
Deadline to serve all requests for admission	Monday, March 30, 2020 (ECF 425 ¶6)	Wednesday, April 29, 2020	Friday, May 29, 2020	4 weeks after close of all discovery (ECF 425 ¶6)
Deadline to file motions, including summary judgment motions but excluding motions relating to the conduct of trial	Monday, April 13, 2020 (ECF 425 ¶2)	Wednesday, May 13, 2020	Friday, June 12, 2020	6 weeks after close of all discovery (ECF 320 ¶15)
Deadline for trial readiness	Monday, June 1, 2020 (ECF 425 ¶7)	Monday, July 6, 2020	Monday, August 3, 2020	First Monday after 30/60-day extension

4. Plaintiffs also intend to file a motion asking the Court to order three things:

- a. Gravel & Shea PC to serve on the RUL Defendants the Court's order requiring them to find new counsel by February 5 and to file proof of service;
- b. If Zodiates and Hyden do not secure counsel by February 5, they must file notices of pro se appearances per Local Rule 11(a);

- c. If RUL does not secure counsel by February 5, it must file an affidavit explaining why it did not secure counsel by February 5, given that it cannot proceed pro se per Local Rule 11(b).

Also, I noticed that Bob and his colleagues were included in this email chain. Please let me know if you would prefer not to be included in further communications about this case.

Sincerely,
Diego



Diego Soto he/him/his
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From: Adam Hochschild <adam@hochschildlaw.com>
Sent: Wednesday, January 8, 2020 2:23 PM
To: Horatio Mihet <hmihet@lc.org>
Cc: Tyler Clemons <Tyler.Clemons@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Anthony Duprey <Anthony@ndp-law.com>; Norman C. Smith <norman@normansmithlaw.com>; Robert B. Hemley <rhemley@gravelshea.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; srs <srs@sarahstarlaw.com>; Claudia Huerta <claudia.huerta@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; jswift <jswift@langrock.com>; Emily Joselson <ejoselson@langrock.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>
Subject: Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

I concur with Harry.

Adam S. Hochschild
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On Jan 8, 2020, at 11:36 AM, Horatio Mihet <hmihet@lc.org> wrote:

Tyler and Company:

We read Judge Sessions' Order of yesterday (below), and the one on Monday granting leave to withdraw to Zodiates/Hyden/RU counsel, as intending to put discovery on hold for thirty days, so as to give new counsel time to enter an appearance, attend depositions and otherwise engage in discovery. The new discovery order to be worked out and submitted by the parties on February 7 would reflect this and push the discovery deadline out to compensate for the time lost.

Under these circumstances, please confirm TODAY that you are cancelling and rescheduling all depositions currently scheduled for next week. As you know, Zodiates/Hyden/RU are currently unrepresented, and will likely be unrepresented next week, since the Court has given them until Feb. 5 to obtain new counsel. Although I don't represent these parties, it will be prejudicial to them to be unrepresented at these depositions, and it would be prejudicial to us and everyone else to attend depositions that will have to be re-taken. And, in any event, any deposition taken while these parties are unrepresented will not be binding on them, per Rule 32. It would be a waste of everyone's time to take depositions next week, that will then have to be re-taken once the unrepresented parties secure counsel.

If you do not agree to reschedule these depositions, we will (1) ask that any deposition that has to be re-taken be done at Plaintiff's expense (both time and travel); and (2) oppose any extension of the March 2 discovery deadline in the new scheduling order on the ground that Plaintiff did not agree to put discovery on hold to protect the rights of unrepresented parties.

Please let us know today how you intend to proceed.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
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From: cmecfhelpdesk@vtd.uscourts.gov <cmecfhelpdesk@vtd.uscourts.gov>
Sent: Tuesday, January 7, 2020 4:07 PM
To: Courtmail@vtd.uscourts.gov
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U.S. District Court

District of Vermont

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Case Name: Jenkins v. Miller et al

Case Number: [2:12-cv-00184-wks](#)

Filer:

Document Number: [450](#)

Docket Text:

OPINION AND ORDER granting [431] MOTION to Amend the Discovery Schedule/Order re: deadline to serve all interrogatories and requests to produce; granting [432] MOTION to Amend the Discovery Schedule/Order re: the Number of Depositions Plaintiffs Are Permitted ; denying as moot [440] Motion to Stay Discovery Deadlines; one modified proposed discovery schedule is to be submitted by dfts and pltfs within 60 days of this Order (by 2/7/2020). Signed by Judge William K. Sessions III on 1/7/2020. (jam)

2:12-cv-00184-wks Notice has been electronically mailed to:

Ritchie E. Berger, Esq rberger@dinse.com, amitchell@dinse.com,
dwilliams@dinse.com

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Horatio G. Mihet, Esq hmihet@lc.org, court@lc.org

Daniel J. Schmid, Esq dschmid@lc.org, court@lc.org

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Adam S. Hochschild, Esq adam@hochschildlaw.com

2:12-cv-00184-wks Notice has been delivered by other means to:

Response Unlimited, Inc.

Philip Zodhiates

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1070689342 [Date=1/7/2020] [FileNumber=1295033-0]
[d3fae09a2686410790ba8938849f6fd25735b3a544cc9fcd80bd1ae6978f3eea6632
21f06dc5d0c63b7950a5756e4d51027044d0063073784483944ba56a69c3]]

Diego Soto

From: Robert B. Hemley <rhemley@gravelshea.com>
Sent: Thursday, January 9, 2020 10:07 AM
To: 'Horatio Mihet'; Diego Soto; Adam Hochschild
Cc: Tyler Clemons; Maya Rajaratnam; Daniel Schmid; Roger Gannam; Brooks G. McArthur; Anthony Duprey; Norman C. Smith; Hillary A. Borcharding; Michael J. Tierney; Scott McCoy; flangrock; Sarah Star; srs; Claudia Huerta; Jessica Stone; Beth Littrell; jswift; Emily Joselson; Linda Bradford Barron; Matthew D. Preedom; Toddy Ferguson
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I can confirm that we have provided Mr. Zodiates, Ms. Hyden, and Response Unlimited with the Court's orders granting our motion for leave to withdraw and addressing scheduling. We do not intend to "serve" through any other means and view that as unnecessary.



Robert B. Hemley | *Shareholder*
Gravel & Shea PC

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Horatio G. Mihet, Esq.*

*Vice President of Legal Affairs and
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Liberty Counsel

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Counsel:

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 - a. Within 60 days of the Court’s order (i.e., Monday, March 9, 2020)
 - b. Thursday, February 6 (see page 2)
 - c. Friday, February 7 (see pages 5–6 and docket text)

Given the Court’s desire “to minimize further back-and-forth regarding discovery,” Op. & Order at 5, ECF 450, and consistent use of the phrase “within 60 days,” Plaintiffs believe the Court intended that the proposed schedule be filed within 60 days of the Court’s January 7 order (i.e., Monday, March 9, 2020). Such a deadline would ensure that, should the RUL Defendants acquire new counsel by the February 5 deadline, new counsel would be able to participate in negotiations over the proposed schedule. A February 6 or 7 deadline for the proposed schedule would make new counsel’s participation in negotiating the proposed schedule much less likely.

3. Given the discovery deadlines between today and March 9, the likelihood that those deadlines would expire before the proposed schedule is even filed, and the Court’s recognition of “the importance of moving along the discovery process,” Op. & Order at 5, ECF 450, Plaintiffs intend to file a motion to extend the current discovery schedule by 30 days (to account for the 30 days given to the RUL Defendants to find new counsel) or in the alternative by 60 days (to make the need for further extensions less likely after the RUL Defendants’ February 5 deadline to find new counsel expires). I have set out the proposed schedules below. After the RUL Defendants acquire new counsel or after the February 5 deadline expires without an appearance by new counsel, the parties would meet and confer as ordered to determine whether any further modifications are needed. Plaintiffs do not believe the Court put discovery on hold, stayed discovery, or otherwise altered requirements to respond to discovery requests pursuant to the federal rules. Plaintiffs believe discovery can continue before February 5 except where it would prejudice an unrepresented party.

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Also, I noticed that Bob and his colleagues were included in this email chain. Please let me know if you would prefer not to be included in further communications about this case.

Sincerely,
Diego



Diego Soto he/him/his
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
T 334.956.8427 C 334.604.1414 F 334.956.8481
diego.soto@splcenter.org | www.splcenter.org
Admitted in Alabama and the District of Columbia

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From: Adam Hochschild <adam@hochschildlaw.com>

Sent: Wednesday, January 8, 2020 2:23 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Tyler Clemons <Tyler.Clemons@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Anthony Duprey <Anthony@ndp-law.com>; Norman C. Smith <norman@normansmithlaw.com>; Robert B. Hemley <rhemley@gravelshea.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; srs <srs@sarahstarlaw.com>; Claudia Huerta <claudia.huerta@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; jswift <jswift@langrock.com>; Emily Joselson <ejoselson@langrock.com>; Linda Bradford Barron <lbrannon@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>

Subject: Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

I concur with Harry.

Adam S. Hochschild
Hochschild Law Firm, LLC
314.503.0326
adam@hochschildlaw.com
www.HochschildLaw.com

On Jan 8, 2020, at 11:36 AM, Horatio Mihet <hmihet@lc.org> wrote:

Tyler and Company:

We read Judge Sessions' Order of yesterday (below), and the one on Monday granting leave to withdraw to Zodiates/Hyden/RU counsel, as intending to put discovery on hold for thirty days, so as to give new counsel time to enter an appearance, attend depositions and otherwise engage in discovery. The new discovery order to be worked out and submitted by the parties on February 7 would reflect this and push the discovery deadline out to compensate for the time lost.

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Please let us know today how you intend to proceed.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774
Orlando, FL 32854
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(407) 875-0770 fax

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*Licensed in Florida and Ohio

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Sent: Tuesday, January 7, 2020 4:07 PM

To: Courtmail@vtd.uscourts.gov

Subject: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

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U.S. District Court

District of Vermont

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Case Name: Jenkins v. Miller et al

Case Number: [2:12-cv-00184-wks](#)

Filer:

Document Number: [450](#)

Docket Text:

OPINION AND ORDER granting [431] MOTION to Amend the Discovery Schedule/Order re: deadline to serve all interrogatories and requests to produce; granting [432] MOTION to Amend the Discovery Schedule/Order re: the Number of Depositions Plaintiffs Are Permitted ; denying as moot [440] Motion to Stay Discovery Deadlines; one modified proposed discovery schedule is to be submitted by dfts and pltfs within 60 days of this Order (by 2/7/2020). Signed by Judge William K. Sessions III on 1/7/2020. (jam)

2:12-cv-00184-wks Notice has been electronically mailed to:

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Thomas E. McCormick, Esq tem@mc-fitz.com

Norman C. Smith, Esq nc.smith@myfairpoint.net, cs.fergie@myfairpoint.net

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pdesfosses@wadleighlaw.com

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Horatio G. Mihet, Esq hmihet@lc.org, court@lc.org

Daniel J. Schmid, Esq dschmid@lc.org, court@lc.org

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CMECFLGBT@splcenter.org

J. Tyler Clemons, Esq tyler.clemons@splcenter.org, 5990831420@filings.docketbird.com,
claudia.huerta@splcenter.org

Adam S. Hochschild, Esq adam@hochschildlaw.com

2:12-cv-00184-wks Notice has been delivered by other means to:

Response Unlimited, Inc.

Philip Zodiates

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Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1070689342 [Date=1/7/2020] [FileNumber=1295033-0]
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21f06dc5d0c63b7950a5756e4d51027044d0063073784483944ba56a69c3]]

Diego Soto

From: Michael Tierney <mtierney@wadleighlaw.com>
Sent: Thursday, January 9, 2020 9:19 AM
To: Diego Soto; Adam Hochschild; Horatio Mihet
Cc: Tyler Clemons; Maya Rajaratnam; Daniel Schmid; Roger Gannam; Brooks G. McArthur; Anthony Duprey; Norman C. Smith; Robert B. Hemley; Hillary A. Borcharding; Scott McCoy; flangrock; Sarah Star; srs; Claudia Huerta; Jessica Stone; Beth Littrell; jswift; Emily Joselson; Linda Bradford Barron; Matthew D. Preedom; Toddy Ferguson
Subject: RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

Diego:

I take no position and will defer to others as far as particular discovery deadlines.

You had filed a motion for summary judgment against 3 defendants and the other 2 have filed motions to extend the response deadline. Please tell me what you understand to be the response deadline for Timothy Miller.

Thanks,

Michael

Michael J. Tierney, Esq.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, NH 03101
603-669-4140
603-206-7239 (Direct)
603-669-6018 (Fax)

From: Diego Soto <Diego.Soto@splcenter.org>
Sent: Wednesday, January 8, 2020 4:31 PM
To: Adam Hochschild <adam@hochschildlaw.com>; Horatio Mihet <hmihet@lc.org>
Cc: Tyler Clemons <Tyler.Clemons@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Anthony Duprey <Anthony@ndp-law.com>; Norman C. Smith <norman@normansmithlaw.com>; Robert B. Hemley <rhemley@gravelshea.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Michael Tierney <mtierney@wadleighlaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; srs <srs@sarahstarlaw.com>; Claudia Huerta <claudia.huerta@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; jswift <jswift@langrock.com>; Emily Joselson <ejoselson@langrock.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>
Subject: RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

Counsel:

Four matters for your consideration. Please let me know by close of business tomorrow your client's positions on these matters.

1. Plaintiffs agree to cancel next week's depositions in light of the Court's order allowing the RUL Defendants 30 days to find new counsel. Plaintiffs will work with Defendants to schedule depositions after the RUL Defendants acquire new counsel or after the February 5 deadline expires without an appearance by new counsel.

2. Plaintiffs intend to seek clarification of the deadline by which the parties must file the joint proposed modified discovery schedule. Plaintiffs read three possible deadlines:

- a. Within 60 days of the Court's order (i.e., Monday, March 9, 2020)
- b. Thursday, February 6 (see page 2)
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Given the Court's desire "to minimize further back-and-forth regarding discovery," Op. & Order at 5, ECF 450, and consistent use of the phrase "within 60 days," Plaintiffs believe the Court intended that the proposed schedule be filed within 60 days of the Court's January 7 order (i.e., Monday, March 9, 2020). Such a deadline would ensure that, should the RUL Defendants acquire new counsel by the February 5 deadline, new counsel would be able to participate in negotiations over the proposed schedule. A February 6 or 7 deadline for the proposed schedule would make new counsel's participation in negotiating the proposed schedule much less likely.

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Diego Soto he/him/his
Staff Attorney | LGBTQ Rights & Special Litigation
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Subject: Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

I concur with Harry.

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Hochschild Law Firm, LLC
314.503.0326
adam@hochschildlaw.com
www.HochschildLaw.com

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Please let us know today how you intend to proceed.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774
Orlando, FL 32854
(407) 875-1776 phone
(407) 875-0770 fax

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District of Vermont

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Case Name: Jenkins v. Miller et al

Case Number: [2:12-cv-00184-wks](#)

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Document Number: [450](#)

Docket Text:

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2:12-cv-00184-wks Notice has been electronically mailed to:

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J. Tyler Clemons, Esq tyler.clemons@splcenter.org, 5990831420@filings.docketbird.com,
claudia.huerta@splcenter.org

Adam S. Hochschild, Esq adam@hochschildlaw.com

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Philip Zodiates

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Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1070689342 [Date=1/7/2020] [FileNumber=1295033-0]
[d3fae09a2686410790ba8938849f6fd25735b3a544cc9fcd80bd1ae6978f3eea6632
21f06dc5d0c63b7950a5756e4d51027044d0063073784483944ba56a69c3]]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,

Plaintiffs,

v.

KENNETH L. MILLER, et al.,

Defendants.

No. 2:12-cv-184-WKS

**DECLARATION OF DIEGO A. SOTO
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLARIFICATION OF [450] THE
COURT'S JANUARY 7, 2020 ORDER THAT THE PARTIES SUBMIT ONE
PROPOSED MODIFIED DISCOVERY SCHEDULE**

I, Diego A. Soto, declare under penalty of perjury that the following is true and correct:

1. I am a Staff Attorney at the Southern Poverty Law Center and represent Plaintiffs Janet Jenkins and Isabella Miller-Jenkins in this case.

2. Exhibit 1 is a true and correct copy of an email exchange between counsel for all parties on and between January 8, 2020, and January 9, 2020.

Executed on January 9, 2020

/s/ Diego A. Soto

Diego A. Soto

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL., :
 :
 Plaintiffs, :
 :
 v. : Case No. 2:12-cv-184
 :
 KENNETH L. MILLER, ET AL., :
 :
 Defendants. :

ORDER

Plaintiffs' motion for clarification of [450] the Court's January 7, 2020 order that the parties submit one proposed modified discovery schedule is **granted**. The parties are **ordered** to submit one proposed modified discovery schedule on or before March 9, 2020.

DATED at Burlington, in the District of Vermont, this _____
day of _____, _____.

/s/ _____
William K. Sessions III
District Court Judge