

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.	:	

**OPINION AND ORDER: MOTIONS CONCERNING DEFENDANTS' ACQUISITION OF
NEW COUNSEL**

(ECF 499, 506, 508, 453)

Plaintiff Janet Jenkins, for herself and as next friend of her daughter Isabella Miller-Jenkins, has brought suit against several individuals and organizations, alleging that they kidnapped and conspired to kidnap Isabella. Plaintiffs assert claims of commission of, and conspiracy to commit, an intentional tort of kidnapping and conspiracy to violate civil rights under 42 U.S.C. § 1985(3).

This Opinion and Order concerns the failure of Defendants Philip Zodhiates, Responses Unlimited, Inc. (RUL), and Victoria Hyden to acquire new counsel by the Court's deadline of April 15, 2020. On April 21, 2020, Plaintiffs filed a motion for order to show cause (ECF 499) for Defendant's noncompliance with the Court's instruction. On April 30, 2020, Victoria Hyden, RUL Defendants, and Zodhiates filed a motion for extension of time

(of 60 days) to secure new counsel (ECF 506) due to COVID-19. On May 1, 2020, Plaintiffs filed a motion to stay or modify the May 15, 2020 deadline to submit a discovery schedule (ECF 508) pending the Court's decisions on these two motions. Finally, Plaintiffs have also previously filed a motion for leave (ECF 453) to serve discovery documents on Zodhiates through RUL Defendants and Victoria Hyden until his new counsel is appointed.

For the reasons set forth below, Defendants' motion for extension of time (ECF 506) is **granted** in part and **denied** in part; Defendants Zodhiates, RUL, and Victoria Hyden are hereby ordered to acquire new counsel within 30 days of this Order. Plaintiffs' motion for order to show cause (ECF 499) is **denied** as moot. Plaintiffs' motion to stay and modify the May 15, 2020 deadline to submit a discovery schedule (ECF 508) is **granted**. Parties must now submit one modified discovery schedule within 60 days of this Order. Plaintiffs' motion for leave (ECF 453) to serve discovery documents on Philip Zodhiates through Victoria Hyden and RUL Defendants until his new counsel is appointed is **granted**.

DISCUSSION

- I. **Defendants' motion for extension of time (ECF 506) and Plaintiffs' motion for order to show cause (ECF 499)**

Philip Zodhiates, RUL Defendants, and Victoria Hyden now move to extend their deadline to procure successor counsel by 60 days in light of the COVID-19 pandemic. Defendants contend that, because the Ashland housing facility where Zodhiates is currently located has been under lockdown, Defendants need additional time to secure counsel. **ECF 506**. Defendants further note that, although their request was mailed to the Court on March 29, 2020, it was sent to the wrong address by mistake, thereby significantly delaying its receipt by the Court. **ECF 506-1**.

The Court appreciates the unexpected obstacles brought on by the COVID-19 pandemic to Defendants' capacity to effectively locate and secure new counsel, particularly in light of Zodhiates' incarceration. As such, the Court grants in part Defendants' request to extend their deadline, and further orders that Defendants' new counsel enter appearance within 30 days of this Order. This new deadline grants Defendants ample time to procure successor counsel in light of current events; indeed, a 30-day deadline extension from the date of this Order gives Defendants time in excess of the original extension that he sought at the end of March. As such, the Court expects this deadline extension to be the final delay in the matter of successor counsel. If Zodhiates and / or Hyden are unable to procure counsel by the extended deadline, they may each enter

appearances for themselves *pro se*. RUL Defendants must secure counsel by the deadline, however, as LLC corporations may appear in federal court "only through a licensed attorney." *Lattanzio v. COMTA*, 481 F.3d 137, 140 (2d Cir. 2007). Failure to enter appearance of counsel or on behalf of themselves may result in judgment being granted to Plaintiffs. Defendants' motion to extend the deadline is **granted** in part and **denied** in part.

Additionally, Plaintiffs filed a motion for order to show cause for Defendants' delay in obtaining new counsel soon after the April 15 deadline had passed. Because Defendants have subsequently addressed their non-compliance with the deadline, Plaintiffs' motion for order to show cause is **denied** as moot.

II. Plaintiffs' motion for leave (ECF 453) to serve discovery documents on Philip Zodhiates through Victoria Hyden and RUL Defendants until his new counsel is appointed

Plaintiffs seek leave to serve discovery documents on Philip Zodhiates through Victoria Hyden and RUL Defendants until Zodhiates' new counsel is appointed. In making this request, Plaintiffs cite concerns as to whether Zodhiates would be able to receive the complete volume of discovery materials in prison at FCI Ashland and securely maintain their confidentiality from staff and other inmates. See **ECF 453**. Plaintiffs' motion for leave appears to be unopposed. Absent any apparent objection from Defendants in the record, the Court sees no problem in allowing alternative service of discovery to Hyden and RUL

Defendants, particularly given COVID-19 related difficulties in prison communication and access that might arise at the current time. Plaintiffs' motion for leave is **granted**.

III. Plaintiffs' motion to stay or modify the May 15, 2020 deadline to submit a discovery schedule (ECF 508)

Finally, Plaintiffs have filed a motion to stay or modify the May 15, 2020 deadline for the parties to submit one modified discovery schedule. In light of the Court's order to extend Defendants' deadline to acquire new counsel within 30 days of this Order, the Court orders the parties to submit one modified discovery schedule within 60 days of this order. Mindful of the ample delays that have already occurred in this case's discovery process, the Court underscores that this will be its final extension of the deadline. Plaintiffs' motion to stay or modify the May 15, 2020 deadline is **granted**.

CONCLUSION

For the reasons set forth below, Defendants' motion for extension of time (ECF 506) is **granted** in part and **denied** in part; Defendants Philip Zodhiates, RUL, and Victoria Hyden are hereby ordered to acquire new counsel within 30 days of this Order. Plaintiffs' motion to stay or modify the May 15, 2020 deadline to submit a discovery schedule (ECF 508) is **granted**; parties must now submit one proposed modified discovery schedule within 60 days of this Order. Plaintiffs' motion for leave (ECF

453) to serve discovery documents on Philip Zodhiates through Victoria Hyden and RUL Defendants until his new counsel is appointed is **granted**. Plaintiffs' motion for order to show cause (ECF 499) is **denied** as moot.

DATED at Burlington, in the District of Vermont, this 8th day of June, 2020.

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