

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Prison Legal News, <u>et al.</u> ,	)	CIVIL ACTION NO. 2:10-2594-SB-BM
	)	
Plaintiff,	)	
	)	
United States of America,	)	
	)	
Plaintiff Intervenor	)	
	)	
v.	)	<b>ORDER</b>
	)	
Berkeley County Sheriff Wayne	)	
DeWitt, <u>et al.</u>	)	
	)	
Defendants.	)	
	)	

This action has been filed by the Plaintiffs pursuant to 42 U.S.C. § 1983 challenging alleged censorship policies at the Berkeley County Detention Center. The Defendant Wayne DeWitt, the Berkeley County Sheriff, is currently scheduled for a deposition on December 16, 2011. Before the Court is a motion to quash the deposition, which is opposed by Plaintiffs as well as the Intervenor Plaintiff. Given the nature of the motion and the time frame involved, the Court is issuing its ruling on an expedited basis.

A review of the filings in this case shows that the Defendants have been represented by the Senn Law Firm since the filing of Defendants' Answer on November 1, 2010. A Scheduling Order was entered by the Court on December 7, 2010, providing, in part, for discovery to be completed by June 6, 2011. The Scheduling Order has been amended numerous times since then, with the current discovery deadline being February 21, 2012. See Court Docket No. 147. The filings before the Court further reflect several attempts by the Plaintiffs to obtain DeWitt's deposition, with the aforementioned deposition date of December 16, 2011 eventually being established.

Recently, Attorney Gedney Howe has been retained by DeWitt as his personal counsel.<sup>1</sup> In the Motion to Quash, which was filed by Mr. Howe, Defendant DeWitt requests that Plaintiffs not be allowed to take his deposition at this time due to the fact that he has only recently retained Mr. Howe as his personal counsel, and Mr. Howe asks for sixty (60) days in which to become familiar with this case. While Plaintiffs acknowledge that a new counsel's request for additional time would normally be accommodated, they object to the Motion to Quash in this instance, citing to the fact that Sheriff DeWitt is a key witness in this case, that there has been considerable delay in obtaining DeWitt's deposition, the fact that if the requested time period is granted the deposition will take place only shortly before the expiration of the discovery period (possibly necessitating the need for a further extension of the discovery deadlines), and that DeWitt continues to also be represented by the Senn Law Firm who are capable of preparing him for his deposition. Plaintiffs further complain that the Defendant waited until shortly before the deposition was scheduled to take place before filing his Motion to Quash, although it is also apparent in the filings before the Court that Mr. Howe had communicated his request for a delay to Plaintiffs at least as far back as December 8, 2011.

After careful review and consideration of this matter, the Court orders that the Motion to Quash be **granted**, in part, and **denied** in part. First, the Court notes that Sheriff DeWitt is being sued both individually and in his official capacity, and that Plaintiffs seek, inter alia, both compensatory and punitive damages against him in his individual capacity. While Plaintiffs are

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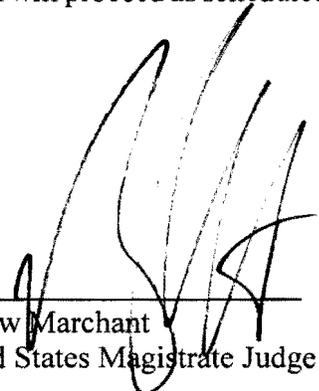
<sup>1</sup>Although Mr. Howe participated in status conferences before the Court on November 29, 2011 and December 8, 2011, and has participated in recent discussions with case counsel, he did not file a formal notice of appearance as counsel in this case until December 13, 2011. See Court Docket No. 175.

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correct that the Senn Law Firm has been and continues to represent Sheriff DeWitt, Sheriff DeWitt has now obtained personal counsel to represent him in this case as well. That is his right, and the Court finds that if new counsel is going to represent DeWitt at his deposition, he should be afforded more time to prepare. However, given the current discovery deadlines as well as the fact that the Defendants have made several attempts to secure Sheriff DeWitt's deposition prior to this time, the Court does not find that a sixty (60) day extension is justified. The Court is further concerned about any further delays in the scheduling of Sheriff DeWitt's deposition.

Therefore, the Court will impose a deposition deadline for Sheriff DeWitt of no later than Tuesday, January 17, 2012, unless a later deadline is requested by the Plaintiffs. In other words, the Defendants are to make Sheriff DeWitt available for a deposition by no later than January 17, 2012. This deadline is five (5) weeks prior to the expiration of the discovery deadlines in this case, which should provide ample time for the parties to engage in whatever followup may be needed after the completion of this deposition. Case counsel should confer immediately upon receipt of this Order to begin the process of scheduling this deposition. Further, if Sheriff DeWitt takes the position that he is unavailable for a deposition between now and Tuesday, January 17, 2012, then given the delays that have already been occasioned in this case, his deposition will proceed as scheduled on December 16, 2011.

**IT IS SO ORDERED.**



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Bristow Marchant  
United States Magistrate Judge

December 15, 2011  
Charleston, South Carolina

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