

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PASTORI M. BALELE,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF REVENUE,  
RICHARD CHANDLER, SCOTT STEELE,  
DENNIS WOGSLAND, THOMAS HENTER,  
PAUL HUGHES, MARK ZIMMER,  
MARY E. NELSON and WENDY MILLER,

Defendants.

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ORDER

13-cv-201-bbc

Pro se plaintiff Pastori Balele originally filed this action in Dane County Circuit Court and on March 22, 2013, defendants removed the case to this court. At the same time, defendants also filed a motion for protective order and to stay discovery. *See* dkt. 2. At the time the case was removed, plaintiff had already submitted discovery requests.

In their motion, defendants request to stay all discovery pending a resolution of the immunity issues that defendants intend to pursue in response to the claims in plaintiff's complaint. *Landstrom v. Illinois Dept. of Children and Family Services*, 892 F.2d 670, 674 (7th Cir. 1990). It is well settled that immunity questions must be resolved at the earliest possible stage in litigation. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

In a pro se case like this one, discovery typically does not begin until after the telephonic pretrial conference, which in this case has been scheduled for May 2, 2013. To the extent that plaintiff already has served discovery requests, those requests have no effect at this time and will not take effect until after the preliminary pretrial conference at the earliest. *See, e.g., Estate of Wilson v. General Tavern Corp.*, No. 05-81128, 2006 WL 290490, \*1-2 (S.D. Fla. Feb. 2, 2006); *Riley v. Walgreen Co.*, No. H-04-2189, 2005 WL 1635443, \*1 (S.D. Tex., Jan. 31, 2005).

This circles back to defendants' reported intention to file soon a dispositive motion based on immunity. Provided that defendants file such a motion, discovery unrelated to immunity will

be stayed pending resolution of the motion. The May 2, 2013 preliminary pretrial conference will be taken off the schedule and rescheduled following resolution of defendants' motion on immunity.

Finally, I note that plaintiff is under a "no-filing" sanction in federal courts pursuant to an April 29, 1997 order entered by the Court of Appeals for the Seventh Circuit in *Balele v. Barnett*, App. Case. No. 96-1133. Because plaintiff did not file the instant lawsuit in federal court but was removed here by defendants, this court will follow the approach it took in *Balele v. Sears, Roebuck and Co.*, Case No. 12-cv-140-slc; plaintiff may respond to plaintiff's filings—such as the imminent dismissal motion—but plaintiff may not file any motions of his own. See May 23, 2012 Preliminary Pretrial Conference Order in 12-cv-140, dkt. 24 at 1-2. As a corollary to this, once the immunity issue actually is raised, the court will not forbid plaintiff from seeking discovery from defendants that is actually necessary to allow plaintiff to respond adequately to their claims of immunity. We will cross that bridge when we come to it.

## ORDER

IT IS ORDERED that

- (1) Defendants' motion to stay discovery, dkt. 2, is GRANTED. Discovery in this case is stayed pending the resolution of defendants' properly filed dispositive motion regarding the immunity issues in this case. Defendants may have until April 30, 2013 to file that motion.
- (2) Any pending discovery requests made by plaintiff are VOID.
- (3) The May 2, 2013 preliminary pretrial conference is STRICKEN from the schedule.

Entered this 16<sup>th</sup> day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge