

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN RE NEVENA CUTTING,)
 Pertaining to)
)
 PHILLIP CUTTING, JR., as next friend)
 and parent of INFANT PLAINTIFF,)
)
 Plaintiff)
)
 v.)
)
 UNITED STATES OF AMERICA, et al.,)
)
 Defendants)

Misc. No. 09-75-P-JHR

ORDER ON MOTION TO QUASH SUBPOENA OR, ALTERNATIVELY, STAY MATTER

Nevena Cutting, a resident of Portland, Maine, moves to quash a subpoena issued by this court on behalf of the United States of America, commanding her to submit to genetic blood testing on March 26, 2009, in connection with a medical malpractice action pending in the United States District Court for the District of Colorado (“Colorado District Court”). *See* Nevena Cutting’s Motion To Quash Subpoena (“Motion To Quash”) (Docket No. 1) at 1-2. Alternatively, she asks this court to stay action on the Motion To Quash to permit the Colorado District Court to rule on the substance of a related motion pending in that court. *See id.* at 8-9; Nevena Cutting’s Notice Concerning Motion for Protective Order Filed in Colorado (“Notice”) (Docket No. 10) at 3-4. Cutting’s alternative motion for a stay is **GRANTED**.

Cutting, who is Infant Plaintiff’s mother but is not a party to the underlying Colorado District Court action, *see* Motion To Quash at 2, represents that on April 28, 2009, a Colorado District Court

Magistrate Judge held a hearing on a motion for a protective order that Cutting had filed in that court, *see* Notice at 1, 3; Plaintiff's and Interested Party Nevena Cutting's Motion for Protective Order, *Cutting ex rel. Infant Plaintiff v. United States of America, et al*, Civil Action No. 07-cv-02053-PAB-MEH ("Motion for Protective Order"), attached thereto. The Magistrate Judge denied Cutting's motion for a protective order as premature, without prejudice. *See* Notice at 3. According to Cutting, the Magistrate Judge stated from the bench that the United States District Court for the District of Maine initially had jurisdiction over the subpoena, but that if this court stayed the Motion To Quash and deferred to the Colorado District Court, the Magistrate Judge would promptly rule on the substance of the Motion for Protective Order. *See id.* Cutting was ordered to advise the Colorado District Court as soon as this court either stayed, or ruled on, the Motion To Quash. *See id.* at 3-4.

In these circumstances, the requested stay is appropriate and serves the interests of speedy and just resolution of the matter at hand. The Colorado District Court is familiar with the underlying issues, and Cutting, the non-party subject to the subpoena, desires the stay and has sought resolution of the matter in the Colorado District Court. As this court previously has held, "the court from which [a] subpoena issues may not transfer a motion to quash but may stay its action on the motion and permit the party seeking to quash the subpoena to make a motion for a protective order in the court where the trial is to take place and then defer to the trial court's decision." *Hartz Mountain Corp. v. Chanelle Pharm. Veterinary Prods. Mfg. Ltd.*, 235 F.R.D. 535, 536 (D. Me. 2006). *See also, e.g., In re Sealed Case*, 141 F.3d 337, 342 (D.C. Cir. 1998) (in cases in which a non-party has moved for a protective order in a trial court, Federal Rules of Civil Procedure 37(a)(1), 45(e), and

26(c) may well permit a court issuing a subpoena to abstain from deciding a motion to quash that subpoena and defer to the trial court's decision on the motion for a protective order).

Accordingly, the motion to stay is **GRANTED**, and action on the Motion To Quash is hereby **STAYED** pending resolution by the Colorado District Court of the substance of the Motion for Protective Order. Cutting is directed to report the instant ruling promptly to the Colorado District Court, and to report promptly to this court the action of the Colorado District Court on the substance of the Motion for Protective Order.

SO ORDERED.

Dated this 7th day of May, 2009.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge