

Ohio Business Litigation Blog

A blog about Ohio business litigation and beyond.

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Sunday, October 17, 2010

Denial of Discovery Motion Because of No Certification that Parties Attempted to Confer and Resolve Their Dispute in Good Faith

A recent post by [Chicago IP Litigation Blog](#) highlights a decision by the Northern District of Chicago. In [Chamberlain Group v. The Lear Corp.](#), No. 05 C 3449, Slip Op. (N.D. Ill. Jul. 15, 2010 (St. Eve, J)), the court denied a motion to compel deposition of a witness in a patent case merely because the party seeking to compel the deposition failed to comply with the meet and confer rule.

Other courts have similarly denied discovery motions when parties fail to comply with meet and confer requirements. See [Frazier v. Southeastern Pa. Transp. Auth.](#), 161 F.R.D. 309, 312 (E.D. Pa. 1995) (Plaintiff's motion for protective order denied because party failed to confer with Defendant prior to filing its motion in an attempt to resolve its dispute without court action); [Doe v. Nat'l Hemophilia Found.](#), 194 F.R.D. 516, 519 (D. Md. 2000) (Plaintiff's motion to compel answer to discovery interrogatories and document production requests denied because plaintiff failed to attempt to resolve its dispute with the defendant by even informal means); [Gibbs v. Oklahoma Dep't of Transp.](#), 1991 WL 405514 at *3 (W.D. Okla. August 21, 1991) (court denied otherwise meritorious motion to compel because counsel failed to follow meet and confer rule); [Mr. Electric Corp. v. Khalil](#), 2008 U.S. Dist. LEXIS 103801 (D. Kan. December 23, 2008) (motion to compel answer of discovery requests denied because party did not meet requirement of including certification of a good faith attempt to confer and resolve the issue with opposing counsel).



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Litigation and Trial - Max Kennerly

In a case I am working on, the opposing party filed a motion to quash, or alternatively for protective order, without attempting to meet and confer and resolve the dispute. Federal Rule of Civil Procedure 26(c)(1) is clear, a motion for protective order must include a certificate that the parties "in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." It will be interesting to see if the judge denies the motion because of this obvious failure, or decides to rule on its merits regardless.

This example of one attorney's inability to follow a simple procedural rule is important because it burns everyone's time and money. It serves as an important reminder to read and follow the rules as they are written.

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Posted by Aaron Minc at 5:55 PM    

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