

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JULIA GREER and
CARRIE MOORE

Plaintiffs,

v.

No.: 2:07-cv-02639-SHM-egb

HOME REALTY COMPANY OF MEMPHIS
INC., HOME FINANCIAL SERVICES OF
MEMPHIS, INC., YALE MORTGAGE
CORPORATION, CHARLES E. MOORE,
DAVID MOORE, and LAWRENCE KERN

Defendants.

ORDER

On referral to this Court are Defendant David Moore's ("Defendant") November 17, 2009, Motion to Compel [D.E.140], Defendant's January 06, 2010 Pleading of the Courts [D.E.149], and Defendant's April 12, 2010, motion for hearing on client representation [D.E.169]. Defendant's motions are DENIED because he has failed to follow the consultation requirement as required by both the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Western District of Tennessee ("Local Rules").

First, Defendant David Moore's Motion to Compel Discovery [D.E.140] is denied by this Court for failing to certify that he has consulted in good faith with Plaintiffs before filing a motion to compel, which is inconsistent with Fed. R. Civ. P. 37(a)(1) and Local Rule 7.2(a)(1)(B). Similarly, the motion contains no evidence that the parties have consulted or have attempted to consult in order to reach an accord regarding the discovery requests at issue. The Court requires certificates of consultation for all non-dispositive motions to ensure that there is a

real dispute that cannot be resolved by the parties. Otherwise, judicial resources are wasted by ruling on motions that are, or could be, moot. Defendant's failure to properly consult with Plaintiffs' counsel before filing is grounds alone for dismissal of this motion. Defendant also neglected to file a Memorandum of Facts and Law accompanying the motion, as required by Local Rule 7.2(a)(1). Further, the Court construes at least one of Defendant's document requests as being an interrogatory, and it appears that Defendant has previously exceeded the twenty-five interrogatories allowed by Rule 33(a)(1) of the Federal Rules of Civil Procedure. In their response to Defendant's motion to compel [D.E.147], Plaintiffs appear to be willing to make "an effort to work with Mr. Moore" regarding his various discovery requests. Thus, it appears that consultation regarding this motion may yield a resolution without the further expenditure of judicial resources.

Secondly, Defendant's request in his Pleading of the Courts [D.E.149] is denied. Defendant, again, is not in compliance with Local Rule 7.2(a)(1)(B) which requires all motions to be accompanied by a certificate of consultation. L.R. 7.2(a)(1)(B) states in relevant part:

All motions, including discovery motions but not including motions pursuant to Fed. R. Civ. P. 12, 56, 59 and 60 shall be accompanied by a certificate of counsel affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues Failure to attach an accompanying certificate may be deemed good grounds for denying the motion The burden will be on counsel filing the motion to initiate the conference upon giving reasonable notice of the time, place and specific nature of the conference. If an opposing counsel or party refuses to cooperate in the conduct of a conference, counsel must file a certificate to that effect, setting out counsel's efforts to comply with this rule.

This motion by Defendant exemplifies the rationale behind the Local Rule's requirement of a certificate of consultation for every motion filed. If Defendant had simply consulted with Plaintiffs, then Defendant would have learned that the teleconference in question

had nothing to do with the present lawsuit before this Court. The failure to consult has required all involved in the present lawsuit to spend time and effort in order to resolve an issue that relates to a completely separate case in the Western District of Tennessee.

Lastly, Defendant's motion for hearing on client representation [D.E.169] is denied for the same reason as the other motions above; he has failed to consult opposing counsel. Defendant's motions will be continued to be denied by this Court so long as he refuses to abide by the certificate of consultation requirement unequivocally established by the Local Rules. Not only is Defendant's motion denied because of his violation of the Local Rules, but the motion also must be denied because Defendant raises an issue that is not an appropriate inquiry for this Court in the present case. Defendant's motion requests a hearing regarding whether Plaintiffs' counsel has misused grant money in representation of Plaintiffs. The misuse of grant money for legal representation is an issue that has no bearing on the merits of the present lawsuit, which involves a federal complaint alleging systematic efforts by Defendants to defraud homeowners through a predatory lending scheme.

The Court continues to grant significant leeway to Defendant, but strongly encourages this Defendant to abide by the rules of procedure. Defendant's status as a *pro se* litigant absolves him from neither the requirements of the Federal Rules of Civil Procedure nor the Local Rules. *See Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989) ("minimum pleading requirements are needed, even for pro se plaintiffs."). "[R]ules of procedure are based on the assumption that litigation is normally conducted by lawyers." *McNeil v. U.S.*, 508 U.S. 106, 113 (1980). The United States Supreme Court, therefore, has suggested that the pleadings of *pro se* litigants are to be held to a less stringent standard than formal pleadings drafted by lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). "Although district courts may liberally construe the

federal and local rules for *pro se* litigants, even *pro se* litigants are obligated to follow these rules.” *Whitfield v. Snyder*, 263 F. App’x 518, 521 (7th Cir. 2008); *see also McNeil*, 508 U.S. at 113 (“[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986) (“Pro se litigants must follow the same rules of procedure that govern other litigants.”).

Defendant must become familiar with, and follow, the Federal Rules of Civil Procedure and the Local Rules. Indeed, these Rules were not developed by accident. If Defendant would simply adhere to them and attempt to work out his discovery disagreements with Plaintiffs before filing motions, all involved would save time and expense.

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: **July 12, 2010**

ANY OBJECTIONS OR EXCEPTIONS TO THIS ORDER MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE ORDER. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.