

4. A decision from the Eastern District of Louisiana denying the plaintiffs' motion to compel discovery responses because the plaintiffs had failed to satisfy their obligation to confer or attempt to confer in good faith in an effort to resolve the discovery dispute before bringing the motion to compel.

In *Trinidad v. Equilon Enterprises LLC*, 2021 WL 1894868 (E.D. La. May 10, 2021), Chief Magistrate Judge Karen Wells Roby denied Plaintiffs' motion to compel discovery responses because Plaintiff failed to satisfy its obligation to confer or attempt to confer in good faith in an effort to resolve the discovery dispute without court action.

In this personal injury case, Plaintiffs, two scaffolding installers, received life-threatening injuries while working at Defendant's facility. *Id.* at *1. Plaintiffs served Defendant with approximately 81 discovery requests, including production requests, interrogatories, and requests for admission. On the date discovery responses were due, Defendant responded to the requests for admission but requested more time to respond to the interrogatories and production requests, which made up the bulk of Plaintiffs' requests. A Rule 37 status conference was held the following week to discuss the late discovery. Three days later, Defendant submitted responses to the remaining 72 requests. Within hours, Plaintiffs filed a motion to compel and sought an order striking Defendant's objections and affirmative defenses unless Defendant fully and satisfactorily responded to the requests within 10 days.

Defendant opposed this motion because Plaintiffs failed to hold a Rule 37(a) meet-and-confer following receipt of Defendant's responses but instead summarily stated that Defendant's responses were "insufficient," without specifically identifying which responses were inadequate and why, and because Defendant was given no time to cure any defective discovery responses. *Id.* at *2.

Chief Magistrate Roby began her analysis by discussing Federal Rule of Civil Procedure 37, which permits a party seeking discovery to move for an order compelling an answer if "a party fails to answer an interrogatory." Fed. R. Civ. P. 37(a)(3)(B). An "evasive or incomplete" answer is treated the same as a complete failure to answer. Fed. R. Civ. P. 37(a)(4). However, a party seeking discovery is not permitted to immediately appeal to the court on first receipt of a deficient response. A Rule 37(a) motion to compel must be accompanied by a "certification that the movant has in good faith conferred or attempted to confer" with the opposing party in an effort to cure whatever discovery defects exist, prior to seeking court action. Fed. R. Civ. P. 37(a)(1).

Chief Magistrate Roby reviewed one of her prior opinions, *Larkin v. U.S. Dep't of Navy*, 2002 WL 31427319 (E.D. La. Oct. 25, 2002), in which she held that a party seeking discovery had failed to comply with its discovery obligations when, after receiving responses they considered inadequate, they gave the other party only 3.5 hours to supplement those responses, without detailing which responses they considered inadequate and why.

Chief Magistrate Roby considered the significant similarities between *Larkin* and the present case: Both plaintiffs sent a general complaint about the inadequacy of the responses they received without reference to either which responses were deficient or why, and neither plaintiff waited even a day after receiving the discovery responses to file their motion to compel. 2021 WL 1894868 at *3. Chief Magistrate Roby further noted that Plaintiffs' Rule 37.1 Certificate was

deficient: failing to indicate any good faith attempt to cure the deficient responses. Plaintiffs attempted to rely on the status conference held *before* receiving Defendant's responses to satisfy their obligations under Rule 37. But Chief Magistrate Roby noted both the spirit and purpose of the rule: A party must receive a "good faith" opportunity to cure deficient discovery responses before judicial intervention is sought, and where a court finds that the opportunity — if any — is inadequate, a motion to compel will not be granted.

Finally, Chief Magistrate Roby addressed the impact of the impending discovery and other deadlines in the case. First, she noted that discovery was not set to close for over eight months after Plaintiffs filed their motion to compel. Second, while the deadline to amend pleadings was fast approaching, the Federal Rules allow for amendments after that deadline in case of "good cause," and courts have consistently held that newly discovered evidence constitutes such good cause.

Ultimately, Chief Magistrate Roby found that Plaintiffs' "attempt to secure a resolution was only a surface attempt without the true intent to accomplish the objectives contemplated by the rule." In light of Plaintiffs' failure to hold a discovery conference and give Defendant "reasonable opportunity" to supplement their responses, Chief Magistrate Roby denied Plaintiffs' motion in its entirety.