

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

NEIL LYNCH and  
JOHN DATTA,  
  
Plaintiffs,  
  
vs.  
  
NORTH SLOPE BOROUGH,  
  
Defendant.

Case No. 4:09-cv-0002-RRB

**ORDER REGARDING MOTION  
TO COMPEL AT DOCKET 19**

Before the Court is Defendant North Slope Borough ("the Borough") with a Motion to Compel at Docket 19. The Borough argues that Plaintiffs Neil Lynch and John Datta failed to properly respond to a great number of discovery requests. Plaintiffs oppose at Docket 32, arguing that the motion should be denied not only because their discovery responses were legally sufficient, but also because the Borough failed to comply with Local Rule 37.1 before it filed the motion.

Local Rule 37.1(a), which governs discovery motions, reads as follows:

Absent exigent circumstance, counsel for the moving party must confer in person, or if they are not located in the same city then by telephone, with counsel for the party against whom relief is sought in an effort to resolve any discovery dispute before filing a motion to compel discovery or for sanctions under Rule 37, Federal Rules of Civil Procedure. If such a motion is filed, it must: (1) have attached a Good Faith Certificate (Form 37.1); or (2) include in the first paragraph a statement as to the reason that a Good Faith Certificate can not be attached, including the efforts made to arrange a conference.

The Borough did include within its memorandum a "Good Faith" statement asserting that defense counsel had made efforts to resolve the discovery dispute with Plaintiffs' counsel. However, as Plaintiffs note, defense counsel did not attempt to arrange an in-person conference as required by LR 37.1.

The Borough argues that "exigent circumstances" justified the failure to arrange an in-person meeting because Plaintiffs' counsel was allegedly unresponsive to defense counsel's requests for clarification and further disclosures. But nowhere does the Borough say why it did not attempt to arrange an in-person meeting. The Court is confident that Plaintiffs' counsel would have accepted an offer to meet in accordance with the Local Rules. No exigent circumstances justify the Borough's failure to attempt to meet in person prior to filing this motion.

The Court is disinclined to simply deny the Borough's motion on the basis of this failure, given the fact that the Borough did

make some effort to communicate with Plaintiffs' counsel regarding the discovery dispute before filing this motion. Nonetheless, LR 37.1 exists for a reason, which is to ensure that the parties have done all they could to resolve their discovery disputes before resorting to the Court for intervention. It is improper for defense counsel to assert that "any further conferral would be futile" when they have not attempted to confer in accordance with the rules.<sup>1</sup>

For the foregoing reasons, counsel for both parties are hereby ordered to meet and confer in person regarding the discovery disputes raised by the Borough's Motion to Compel at Docket 19. The parties must meet and file a joint status report by **August 16, 2010**. The status report must inform the Court which of any discovery disputes have been resolved and which remain to be ruled upon by the Court. The Court will then rule upon the motion at Docket 19 without any further briefing. If the parties need more time to meet and file a status report, they may request an extension from the Court.

**IT IS SO ORDERED.**

ENTERED this 29th day of July, 2010.

s/RALPH R. BEISTLINE  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Docket 38 at 2.