

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DAMON P. STEPP,)
)
Plaintiff,)
)
vs.) No. 1:13-cv-00683-TWP-MJD
)
REXNORD INDUSTRIES, INC.,)
)
Defendant.)
_____)
Jay Meisenhelder,)
)
Intervenor.)
)

ORDER ON PLAINTIFF’S MOTION FOR FILING BELATED REQUESTS

This matter comes before the Court on Plaintiff’s Motions to Seek Leave of the Court for Filing Belated Requests. [Dkts. 80 & 84.] For the reasons described below, the Court **DENIES** the Motions.

I. Background

Mr. Stepp was *pro se* when he initiated this action. [Dkt. 1.] An initial pretrial conference was conducted on August 15, 2013, during which conference Mr. Stepp was provided detailed information regarding the various discovery tools available to him in this matter. Thereafter, on August 23, 2013, the Court issued an agreed Scheduling Order, which provided that “[a]ll discovery must be completed by **February 29, 2014**. [Dkt. 21 at 2 (emphasis in original).]

On August 27, 2013, attorney Jay Meisenhelder entered an appearance on behalf of Mr. Stepp. [Dkt. 22.] Thereafter, on September 25, 2013, an agreed Case Management Plan was

entered by the Court, which provided that “non-expert witness discovery and discovery relating to liability issues shall be completed by **April 1, 2014.**” [Dkt. 29 at 5-6 (emphasis in original).]

On March 18, 2014, Mr. Meisenhelder moved to withdraw as counsel for Mr. Stepp. [Dkt. 50.] The Court scheduled a hearing on the motion on March 27, 2014 and ordered Mr. Stepp to appear with Mr. Meisenhelder for that hearing. [Dkt. 51.] On March 21, 2014, Mr. Meisenhelder filed a proof of service on Mr. Stepp of the Court’s order requiring Mr. Stepp’s presence at the March 27, 2014 hearing on the motion to withdraw. [Dkt. 52.] Mr. Stepp failed to appear as ordered for the March 27, 2014 hearing and the motion of his counsel to withdraw was granted. [Dkt. 57.] During the March 27, 2014 hearing, Mr. Meisenhelder advised the Court on the record that he had provided Mr. Stepp with a complete copy of Mr. Meisenhelder’s litigation file for this matter. [See Dkt. 58 at 2.] Plaintiff then resumed litigating this case *pro se*.

On May 23, 2014, well after the April 1, 2014 deadline for non-expert discovery, Plaintiff filed a motion seeking leave to file belated requests. [Dkt. 80.] The motion did not identify what requests Plaintiff wished to serve. [*Id.*] On June 4, 2014, Plaintiff filed another motion seeking leave to file belated requests. [Dkt. 84.] This time, he alleged that his former attorney provided ineffective assistance of counsel. [*Id.* at 2.]

II. Discussion

Once a court enters a scheduling order, that “schedule may be modified only for good cause and with the judge’s consent.” Fed.R.Civ.P. 16(b)(4). The good cause standard “primarily considers the diligence of the party” seeking the change. *Trustmark Ins. Co. v. Gen. & Cologne Life Re of Am.*, 424 F.3d 542, 553 (7th Cir. 2005). The movant must show that the Court’s deadline could not have been met despite its diligence. *Tschantz v. McCann*, 160 F.R.D. 568, 571 (N.D. Ind. 1995).

Plaintiff in this case has not shown good cause for disregarding the Court's discovery deadlines. His first motion does not identify what requests he wishes to serve, [*see* Dkt. 80], let alone describe any circumstances that prohibited the earlier service of those requests. His second motion alleges misconduct on the part of his former counsel, [*see* Dkt. 84 at 2], but fails to provide any support for this allegation and fails to connect any misconduct to Plaintiff's dilatory service of his requests. The Court therefore **DENIES** Plaintiff's motions.

III. Conclusion

For the reasons stated above, the Court **DENIES** Plaintiff's Motions to Seek Leave of the Court for Filing Belated Requests. [Dkts. 80 & 84.]

Date: 10/02/2014



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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