

NEWS ALERT

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by F. James Robinson

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HONEYMAN L.L.P.
ATTORNEYS AT LAW

THE 30-DAY DEADLINE IN FEDERAL COURT TO FILE A MOTION TO COMPEL DISCOVERY MAY BE RELAXED WHILE THE PARTIES ARE MEETING AND CONFERRING

By rule, federal courts in the District of Kansas require that a motion to compel discovery be “filed and served within 30 days of the default or service of the response, answer, or objection that is the subject of the motion, unless the court extends the time for filing such motion for good cause. Otherwise, the objection to the default, response, answer, or objection is deemed waived.” D. Kan. Rule 37.1(b).

This rule may not be as mechanical as it seems.

The rule’s purpose is to “ensure the court can address discovery disputes while they are still fresh, and in turn expedite litigation.” *Black & Veatch Corp. v. Aspen Ins. (UK) Ltd.*, No. 12-2350-SAC-KGS, 2015 U.S. Dist. LEXIS 193782, 2015 WL 13047860 (D. Kan. Mar. 31, 2015). *Black & Veatch* and other decisions in the district confirm that the triggering event is the date of the challenged discovery response or the discovery default. *Black & Veatch* interpreted the 30-day period as beginning when specific information first leading to a dispute is discovered. That deadline is not tolled “while the parties are engaged in efforts to resolve the discovery dispute without judicial intervention.” However, the parties may “request, prior to expiration, an extension of the deadline to file a motion to compel with respect to any discovery dispute upon which the parties are still conferring.”

On April 11, 2019, in *Lawson v. Spirit Aerosystems, Inc.*, No. 6:18-cv-01100-EFM-ADM (D. Kan.), a federal magistrate judge denied the defendant’s unopposed motion to extend the deadline. (ECF No. 77) The judge’s order acknowledged “that some judges in this District prefer that parties file such motions on or before the 30-day time period set forth in D. Kan. Rule 37.1(b) expires—e.g., when the parties are continuing to meet and confer to resolve discovery disputes.” Nonetheless, the judge wrote, “[t]he undersigned does not interpret D. Kan. Rule 37.1(b) to require parties to file a motion for extension of time if they are engaged in meeting and conferring.” The judge continued, “[c]ategorical motions for extensions . . . are generally hypothetical and unmeritorious in the abstract.” The judge concluded, “[i]f and when a party files a motion to compel after the 30-day deadline set forth in D. Kan. Rule 37.1(b), the undersigned will, however, expect the party to demonstrate good cause for the late filing by setting forth the parties’ diligence in attempting to resolve the discovery dispute at issue.”

In a later, January 29, 2020, order in that case the judge found the plaintiff’s motion to compel was untimely because the defendant’s alleged failure over a period of months to meet and confer should have been enough to prompt the plaintiff to bring the matter to the court’s attention sooner. (ECF No. 254).

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SUITE 950 ▪ 100 NORTH BROADWAY ▪ WICHITA, KANSAS ▪ 67202 2216

TELEPHONE 316 265 7741 ▪ FACSIMILE 316 267 7803

WWW.HITEFANNING.COM