



1 compel. Defendants contend they did all the work and complied with all discovery requests.  
2 Plaintiff failed to pursue records from third parties (the FBI and health care providers) and  
3 expected somehow to rely on defendants to gather plaintiff's evidence for plaintiff.  
4 Defendants note that they have already disclosed their expert testimony and would be  
5 prejudiced if plaintiff could now form her opinions based on defense theories.

6 In Reply, plaintiff again complains about the deadlines, acknowledges his mistakes  
7 and, quite remarkably, believes that the experts did not have to disclose their "actual  
8 opinions." Reply at 3. He simply ignored Rule 26(a)(2), Fed. R. Civ. P. Plaintiff actually  
9 claims that he thought defendants would "take the lead in procuring the FBI's file". Id. at 5.  
10 He actually claims that he relied on defendant to get those files and disclose them to  
11 him—even though a party's disclosure obligations do not extend to documents in the hands  
12 of third parties. Rule 26(a)(1)(A)(ii), Fed. R. Civ. P. That is what subpoenas are for. We  
13 do not labor the point.

14 Plaintiff's submission here falls far short of good cause under Rule 16 (b)(4), Fed. R.  
15 Civ. P. And, having let the deadlines expire before seeking amendment, it certainly falls far  
16 short of excusable neglect under Rule 6(b)(1)(B), Fed. R. Civ. P. And it is not as though  
17 plaintiff had no warning. At the Rule 16 conference, this court expressed its concern over  
18 the failure of plaintiff to follow the order scheduling the Rule 16 conference, urged plaintiff  
19 to read the Rule 16 order that would follow, and advised that it would enforce it rigidly. See  
20 Transcript of Proceedings, Sep. 3, 2010 (doc. 44). And yet the failure to prosecute  
21 continued.

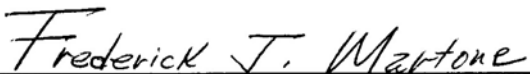
22 Our Rule 16 Order was carefully crafted to give the parties the firm trial date they  
23 requested. Each date in the sequence of events is dependent on prior dates. Discovery needs  
24 to be completed before the dispositive motion deadline. Dispositive motions must be filed  
25 four months before the pretrial conference so that they can be briefed, heard if necessary, and  
26 decided before trial. We cannot excuse plaintiff's inexcusable neglect without destroying  
27 the remainder of the plan. This would prejudice not only defendants, but this court's  
28 calendar. If plaintiff is prejudiced by her counsel's failures, she has a remedy. We note that

1 plaintiff is represented by a firm which engages in massive and unremitting advertising.

2 We are concerned about many of plaintiff's counsel's statements in both the motion  
3 and the reply. He does not seem to understand his obligation to investigate, discover and  
4 work up a case in accordance with the court's Scheduling Order and the Federal Rules of  
5 Civil Procedure. We urge counsel to prosecute this case within the remaining deadlines.  
6 There is still time to show the diligence that has been absent up to this point.

7 At all events, because plaintiff has shown neither good cause nor excusable neglect,  
8 it is ORDERED DENYING plaintiff's Motion to Modify and Amend Scheduling Order (doc.  
9 35).

10 DATED this 24<sup>th</sup> day of March, 2011.

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14 Frederick J. Martone  
15 United States District Judge  
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