

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

TRACEY ALLEN BURCH,  
Petitioner,

vs.

Case No.: 3:09cv118/LAC/EMT

WALTER A. McNEIL,  
Respondent.

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**ORDER**

This cause is before the court on Petitioner's Motion to Compel (Doc. 27), in which Petitioner seeks an order compelling Respondent to provide copies of documents referenced by Respondent in his response (Doc. 22) to Petitioner's petition for writ of habeas corpus (Doc.1). Petitioner additionally requests that the time for filing a reply to Respondent's response be tolled during the pendency of the instant motion to compel (Doc. 27 at 3).<sup>1</sup>

Initially, the court notes that Petitioner failed to comply with Rule 7.1(B) of the Local Rules of the Northern District of Florida, which provides in relevant part as follows:

Counsel for the moving party, or a party who proceeds *pro se*, shall confer with counsel for the opposing party and shall file with the court, at the time of filing a motion, a statement certifying that counsel or the *pro se* party has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised or has attempted to so confer but, for good cause stated, was unsuccessful. If certain issues have been resolved by agreement, the certificate shall specify the issue so resolved and those remaining for resolution. Counsel shall clearly identify those motions which are consented to in their entirety.

N.D. Fla. Loc. R. 7.1(B). Petitioner's counsel does not indicate in the motion whether he conferred with counsel for Respondent prior to filing the motion to compel, and Respondent's position on the

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<sup>1</sup> Petitioner's reply was due on or before December 18, 2009 (*see* Docket Entry 26), the date Petitioner filed the instant motion to compel.

motion is unknown. Thus, the motion—to the extent Petitioner seeks an order compelling Respondent to provide copies of documents—will be denied without prejudice to Petitioner’s refiling a motion that complies with the rules of this court.

As to Petitioner’s request to toll the time for filing a reply, the court will construe Petitioner’s request as a motion to extend the time for filing a reply and grant the motion. The court grants Petitioner’s motion to this extent in the interest of justice, despite the failure by Petitioner’s counsel to comply with Local Rule 7.1(B).

Accordingly, it is **ORDERED**:

Petitioner’s Motion to Compel (Doc. 27) is **GRANTED** in part and **DENIED** in part. The motion is granted to the extent that Petitioner shall file a reply to Respondent’s answer on or before **JANUARY 20, 2010**. The motion is **DENIED without prejudice** to the extent Petitioner seeks an order compelling Respondent to provide Petitioner with copies of documents.

**DONE AND ORDERED** this 22<sup>nd</sup> day of December 2009.

*/s/ Elizabeth M. Timothy*  
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**ELIZABETH M. TIMOTHY**  
**UNITED STATES MAGISTRATE JUDGE**