

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

GWIN STEWART,	)	
	)	
Plaintiff,	)	
	)	No. 4:15-CV-1124 CAS
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on defendant United States of America's motion for physical exam of plaintiff, pursuant to Federal Rule of Civil Procedure 35.

Eastern District Local Rule 3.04(A) provides with respect to motions concerning discovery and disclosure:

The Court **will not** consider any motion relating to discovery and disclosure unless it contains a statement that movant's counsel has **conferred in person or by telephone** with the opposing counsel in good faith or has made reasonable efforts to do so, but that after sincere efforts to resolve their dispute, counsel are unable to reach an accord. This statement also shall recite the date, time and manner of such conference, and the names of the individuals participating therein, or shall state with specificity the efforts made to confer with opposing counsel.

E.D. Mo. L.R. 3.04(A) (emphasis added).

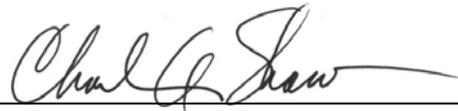
Defendant's motion contains no certificate regarding counsel's efforts to resolve this discovery dispute. Defendant did attached a letter, which referenced a prior e-mail, concerning the dispute. The Local Rules, however, require a conference in person or by telephone, along with details concerning the conference, or a statement of the reasonable efforts made to confer in person or by telephone. The sending of correspondence concerning discovery is insufficient to constitute a good faith attempt to resolve the dispute under the local rule. As a result of defendant's failure to

comply with Local Rule 3.04(A), the Court will not consider the instant motion and will deny the same without prejudice.

Accordingly,

**IT IS HEREBY ORDERED** that defendant United States of America's motion for physical exam of plaintiff pursuant to Federal Rule of Civil Procedure 35 is **DENIED without prejudice**.

[Doc. 17]

A handwritten signature in cursive script, appearing to read "Charles A. Shaw", written in black ink. The signature is positioned above a horizontal line.

**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 5th day of July, 2016.