

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

PHILIP SCHREIER,

Plaintiff,

vs.

**COVENTRY HEALTH CARE OF
NEBRASKA, INC.,**

Defendant.

8:13CV71

ORDER

This matter is before the court on the plaintiff's Motion to Amend the Complaint ([Filing No. 16](#)). The plaintiff's motion states, in its entirety, "In response to the Defendant's Motion to Strike, Plaintiff moves to amend Complaint to add Breach of Contract and Bad Faith." The plaintiff also filed a signed "Amended Complaint" ([Filing No. 17](#)) as an amended motion in the case.

The plaintiff may not amend the complaint as of course (Fed. R. Civ. P. 15(a)(1)), accordingly the plaintiff "may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). To facilitate the procedure, the court has a local rule governing amending pleadings.

A party who moves for leave to amend a pleading . . . must file as an attachment to the motion an unsigned copy of the proposed amended pleading that clearly identifies the proposed amendments. . . . The motion for leave to amend must (1) specifically state the proposed amendments and (2) state whether the motion is unopposed or opposed, after conferring with opposing parties.

[NECivR 15.1](#).

The plaintiff failed to comply with the Nebraska Civil Rules in several respects. First, the plaintiff failed to state whether the motion was unopposed. Second, the plaintiff failed to file an unsigned proposed amended complaint attached to the motion. Third, the plaintiff filed a signed, dated complaint, as if leave had been given. Although the court has been apprised of the nature of the proposed amendments, the manner in which the amended complaint was filed will likely create confusion in the record. Additionally, the plaintiff's failure to confer with opposing counsel likely caused

unnecessary delay and court involvement in this action. Finally, the plaintiff's motion was filed as a response to the defendant's Motion to Strike ([Filing No. 6](#)) and does not address the merits of the defendant's motion. **See** [NECivR 7.1\(b\)](#) (noting failure to comply with the briefing rules may result in the abandonment of a party's position on a motion). Under the circumstances, the court will hold the plaintiff's motion to amend in abeyance to give the plaintiff an opportunity to cure the deficiencies. Accordingly,

IT IS ORDERED:

1. The plaintiff's Motion to Amend the Complaint ([Filing No. 16](#)) is held in abeyance.

2. The plaintiff shall have until **July 18, 2013**, to supplement the motion to amend to bring it in compliance with NECivR 15.1, by, for example, filing a notice stating whether the motion is unopposed or opposed.

3. Absent the defendant's consent to the amendment, the defendant shall have until **July 30, 2013**, to file a brief in support of its Motion to Strike ([Filing No. 6](#)) and in opposition to the plaintiff's Motion to Amend the Complaint ([Filing No. 16](#)).

4. The Clerk of Court shall amend the docket to terminate the "Amended Motion to Amend" ([Filing No. 17](#)) as a motion and change the docket text to reflect the filing is a "proposed amended complaint" and an attachment related to the motion to amend ([Filing No. 16](#)).

Dated this 15th day of July, 2013.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge