

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANTHONY A. TOCCI,

Plaintiff,

:

Case No. 3:07-cv-314

- vs -

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

ANTIOCH UNIVERSITY, et al.,

Defendants.

:

ORDER

This case is before the Court on Plaintiff's letter to the undersigned dated October 26, 2013, and received October 29, 2013 (Doc. No. 100).

Plaintiff acknowledges receipt of the Order to the Clerk to furnish him with what he calls the "Mediation Completion Form," but asserts he has never received it "and time is of the essence." (PageID. 1220). The docket reflects that, as ordered, the Clerk mailed a copy to Plaintiff on October 15, 2013, and the mail has not been returned. The Clerk is hereby ORDERED to mail another copy of the Mediator's Report (Doc. No. 47) to Plaintiff and docket the mailing.

Plaintiff next asserts

I have never received the Documents that you submitted in Doc. No. 77. Please have the Court Clerk forward me a copy. If I have to pay for these documents, please have some one let me know of the cost. I will be happy to pay for them.

Id.

The referenced docket entry is my notice to all parties that, pursuant to the subpoena duces tecum served on me for the hearing on Defendants' Motion to Enforce Settlement, I delivered all the responsive documents to Judge Rice's judicial assistant. This was because I expected to participate in that hearing by video conference from the Administrative Office of United States Courts where I was scheduled to be in a meeting at the time of the hearing. The docket reflects that all of the exhibits introduced in evidence at the hearing are in the custody of the Clerk of Courts. Whether or not the documents I delivered were entered in evidence I do not know, but Plaintiff should know since he participated in the hearing. Plaintiff may obtain copies of any of those documents by direct request to the Clerk of Courts in the same way any litigant could, which is not by asking a judicial officer to do his research for him. The Division Manager for the Dayton location of Court, Mr. Jeffrey Garey, may be reached by telephone at 937-512-1421.

Mr. Tocci next complains of my use of a double negative in response to his prior letter when I stated "There are no documents responsive to the Plaintiff's request which were not among the [sic; "those" in the original, see PageID 1219] delivered." To clear up Mr. Tocci's stated confusion, I further state that all documents in my possession at the time I was served with the subpoena which were responsive to the subpoena were delivered to D.J. Vinolus, Judge Rice's Judicial Assistant, on September 8, 2011, and there are no documents described in Mr. Tocci's prior letter request (Doc. No. 98) other than those I delivered to Ms. Vinolus.

Mr. Tocci then propounds to me an interrogatory: "Did you disclose to anyone, by any means, any information, used or gained in the Mediation?" Mr. Tocci states "I should be entitled to this information" (PageID 1220), but he cites no authority for obtaining it. Final judgment has

been entered in this case and it is pending on appeal to the Sixth Circuit. There is no authority in the Federal Rules of Civil Procedure for obtaining post-judgment discovery from a mediator. I therefore decline to answer the question. (In the alternative, should some higher court disagree with my position in this matter, the answer to Mr. Tocci's question is "No except as I testified at the hearing on enforcement of the settlement.")

Mr. Tocci proceeds to instruct me:

You should be aware that the moment you signed your Mediation Completion Form you were required to destroy all records of the Mediation. The only paperwork that you could forward to the court or a judge was a Signed Agreement. (which you did not). One of the foundational cornerstones of Mediation is that any information gained in the mediation process (in any form) CANNOT BE USED FOR DISCOVERY.

Once again, Mr. Tocci cites no authority for these propositions. Certainly S. D. Ohio Civ. R. 16.3 which governs mediation in this Court, both now and at the time of the mediation in this case (July 12, 2010) contains no obligation imposed on a mediator to destroy "all records of the mediation."

Rule 16.3 does have an extensive confidentiality provision. To protect the parties' rights under that provision, the undersigned filed a Motion in Limine (Doc. No. 76) at the time this case was set for hearing on Defendants' Motion to Enforce. Mr. Tocci filed no response to that Motion and no objection to my testifying during the hearing. Any objection made now is obviously not a contemporaneous objection but in fact more than two years late. As to the

propriety of filing a the Mediator's Report stating that the case has settled, that is specifically authorized by S. D. Ohio Civ. R. 16.3(c)(3)(A)(i).

November 1, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge