

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HOWARD FRANK,

Plaintiff,

v.

Case No: 2:18-cv-162-FtM-99CM

ROCKHILL INSURANCE
COMPANY,

Defendant.

ORDER

This matter comes before the Court upon review of Defendant's Renewed Unopposed Motion for Cease and Desist Order filed on August 13, 2018. Doc. 46. Defendant Rockhill Insurance Company ("Rockhill") seeks an order prohibiting Plaintiff Howard Frank from attempting to contact, communicate with or leave messages for any witnesses or representatives of Rockhill. *See id.* at 10. Plaintiff's counsel does not oppose the motion. *Id.* at 5. For the reasons stated herein, the motion will be granted.

On March 13, 2018, this case was removed from the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida. Doc. 1. In his one-count Complaint, Plaintiff alleges Rockhill breached a homeowner's insurance policy when it failed to pay for all of the damages Hurricane Irma caused to Plaintiff's home. Doc. 2 at 1-3. On April 17, 2018, Rockhill filed a Motion for Cease and Desist Order, requesting Plaintiff be enjoined from contacting Rockhill claims professional Michael Edwards and any other witnesses or representatives of Rockhill. Doc. 18. Rockhill

alleged Plaintiff had been verbally abusing Mr. Edwards with inappropriate and profanity-laced phone calls and voicemails since September 2017. *Id.* at 2-4. The motion did not comply with Middle District of Florida Local Rule 3.01(g)¹ because Plaintiff's attorney at the time was seeking to withdraw as counsel. *See* Doc. 18 at 4-5; *see also* Doc. 19. As such, the Court denied the motion without prejudice, permitting Rockhill to refile the motion if necessary after having an opportunity to meaningfully confer. *See* Doc. 28 at 2. During the Preliminary Pretrial Conference ("PPTC") on July 18, 2018, the undersigned inquired as to whether the issues raised in Rockhill's Motion for a Cease and Desist Order were still persisting, and counsel for the parties indicated there had not been an issue since Plaintiff retained his current counsel. *See* Doc. 42. Rockhill now renews its motion. Doc. 46.

Rockhill's present motion reiterates the factual circumstances that supported its prior motion, including the reference that "Mr. Frank continues to call and harass Mr. Edwards after April 6, 2018." *See* Doc. 18 at 4; Doc. 46 at 3-4. Rockhill indicates it conferred with counsel for Plaintiff regarding the present motion on June 15, 2018. *See* Doc. 46 at 4-5. It is unclear why the requested relief is needed given the parties' representations at the PPTC on July 18, 2018 and that the renewed motion makes no references to recent attempted communications by Mr. Frank. Out of an abundance of caution and because the motion is unopposed, however, the

¹ Local Rule 3.01(g) requires that each motion filed in a civil case, with certain enumerated exceptions not at issue here, contain a statement regarding "whether counsel agree on the resolution of the motion." M.D. Fla. R. 3.01(g).

Court will grant the relief sought. *See generally Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) (recognizing district courts' inherent power to control the conduct of litigants). Plaintiff is advised that any future failures to comply with Local Rule 2.04(h)² or this Order could result in sanctions.

ACCORDINGLY, it is

ORDERED:

1. Defendant's Renewed Unopposed Motion for Cease and Desist Order (Doc. 46) is **GRANTED**. For the remaining duration of this litigation, Mr. Frank is prohibited from attempting to contact, communicate with or leave messages for Michael Edwards or any other witness for or representative of Rockhill regarding this litigation through any means of communication, and any of Mr. Frank's communications with Rockhill, its witnesses or its representatives relative to this case must be made through his counsel. Failure to comply with this Order could result in sanctions.

2. Pursuant to Defendant's Notice of Withdrawal (Doc. 48), Defendant's Renewed Motion for Appointment of Magistrate Judge to Supervise Depositions Where Plaintiff is Present (Doc. 47) is **DENIED as moot**.

² "Attorneys and litigants should conduct themselves with civility and in a spirit of cooperation in order to reduce unnecessary cost and delay." M.D. Fla. R. 2.04(h).

DONE and **ORDERED** in Fort Myers, Florida on this 15th day of August, 2018.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record